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Contents

Federal Register

Vol. 85, No. 90

Friday, May 8, 2020

Separate Parts In This Issue

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 85, No. 90

Friday, May 8, 2020

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 113 and 120

[Docket Number SBA–2020–0024]

RIN 3245–AH40

Business Loan Program Temporary Changes; Paycheck Protection Program—Nondiscrimination and Additional Eligibility Criteria

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds a new program, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. The CARES Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, and April 30, 2020 and the Department of the Treasury posted an additional interim final rule on April 28, 2020. This interim final rule supplements the previously posted interim final rules by providing guidance on nondiscrimination obligations and additional eligibility requirements, and requests public comment.

DATES:

Effective date: This rule is effective May 8, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment date: Comments must be received on or before June 8, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0024 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP.

Prior to the CARES Act, nonprofit organizations were not eligible to participate in SBA's 7(a) Loan Program (15 U.S.C. 636(a)). Section 1102 of the CARES Act expanded eligibility, limited to PPP, to include certain nonprofit organizations, among other organizations.

SBA regulations at 13 CFR part 113 impose regulatory requirements ''to reflect to the fullest extent possible the nondiscrimination policies of the Federal Government as expressed in the several statutes, Executive Orders, and messages of the President dealing with civil rights and equality of opportunity.'' 13 CFR 113.1(a). But because SBA's loan programs previously served business entities, these regulations did not restate certain limitations and exemptions under federal law primarily pertinent to certain faith-based or nonprofit organizations. In particular, Title IX of the Education Amendments of 1972 permits single-sex admissions practices by preschools, non-vocational elementary or secondary schools, and private undergraduate higher education institutions. *See* 20 U.S.C. 1681(a)(1). Additionally, the Fair Housing Act of 1968 allows religious organizations to reserve housing for coreligionists, *see* 42 U.S.C. 3607, and allows for single-sex emergency shelters that provide refuge to abused women (or abused men), *see* 24 CFR 5.106; *see also Johnson* v. *Dixon,* 786 F. Supp. 1, 4 (D.D.C. 1991) (''It is . . . doubtful [that] 'emergency

overnight shelter,' . . . can be characterized as a 'dwelling' within the meaning of the [Fair Housing] Act.''). Finally, the Indian Child Welfare Act of 1978 requires certain placement preferences in the foster care and adoptions of Indian children. *See* 25 U.S.C. 1915. The broadly worded SBA regulations do not articulate these limitations on the application of the relevant nondiscrimination provisions.

In addition, there is a technical discrepancy between SBA's religious employer exemption at 13 CFR 113.3–1(h) and Title VII of the Civil Rights Act, which allows religious employers to make hiring decisions according to their religious beliefs with respect to all ''activities,'' not just ''religious activities.'' *See* An Act to further promote equal employment opportunities for American workers, Public Law 92–261, 86 Stat. 103, 104 (1972), *codified at* 42 U.S.C. 2000e–1(a).

Given these various discrepancies, organizations have accordingly faced uncertainty about whether their participation in the PPP program would require them to substantially change their operations for a short period of months. These types of changes are impossible for some organizations, and impractical for many. This uncertainty risks frustrating the purpose of the CARES Act, which was to afford swift stopgap relief to Americans who might otherwise lose their jobs or businesses because of the economic hardships wrought by the response to the COVID–19 public health emergency. To provide certainty to applicants and recipients of loans and loan forgiveness under the PPP, and to address the large-scale burdens that SBA regulations may impose on recipients participating only on a short-term basis, this interim final rule provides guidance that for purposes of the PPP, nonprofits must meet their nondiscrimination obligations under existing Federal laws and Executive Orders. This interim final rule also provides guidance with respect to the religious employer exemption to ensure harmony with Section 702 of Title VII.

In addition, as described below, to enable certain eligible small educational institutions to participate in PPP, this interim final rule provides that institutions of higher education shall exclude work study students when determining the number of employees for purposes of PPP loan eligibility.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020.

This interim final rule supplements previous regulations and guidance on certain important, discrete issues. The immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be contrary to the public interest. Specifically, SBA has determined that advance public notice and comment would delay the ability of certain organizations to implement their nondiscrimination obligations in a manner consistent with the limitations contained in existing Federal laws, and potentially force such organizations to change their operations until SBA adopted a final or interim final rule. Rather than change their operations, the affected organizations could elect not to apply for PPP loans and lay off employees, which would defeat the paycheck protection purposes of the PPP. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before June 8, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program Nondiscrimination and Additional Eligibility Criteria

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the PPP. Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans and any accrued interest may qualify for loan forgiveness. Additional information about the PPP is available in interim final rules published by SBA and the Department of the Treasury in the **Federal Register** (85 FR 20811, 85 FR 20817, 85 FR 21747, 85 FR 23450, 85 FR 23917, 85 FR 26321 and 85 FR 26324) (collectively, the PPP Interim Final Rules).

1. Non-Discrimination

Are recipients of PPP loans entitled to exemptions on the grounds provided in Federal nondiscrimination laws for sex-specific admissions practices, sex-specific domestic violence shelters, coreligionist housing, or Indian tribal preferences in connection with adoption or foster care practices?

Yes. With respect to any loan or loan forgiveness under the PPP, the nondiscrimination provisions in the applicable SBA regulations incorporate the limitations and exemptions provided in corresponding Federal statutory or regulatory nondiscrimination provisions for sex-specific admissions practices at preschools, non-vocational elementary or secondary schools, and private undergraduate higher education institutions under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), for sex-specific emergency shelters and coreligionist housing under the Fair Housing Act of 1968 (42 U.S.C. 3601 *et seq.*), and for adoption or foster care practices giving child placement preferences to Indian tribes under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*).

In addition, for purposes of the PPP, SBA regulations do not bar a religious nonprofit entity from making decisions with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such nonprofit of its activities.

2. Student Workers and PPP Loan Eligibility

Do student workers count when determining the number of employees for PPP loan eligibility?

Yes, student workers generally count as employees, unless (a) the applicant is an institution of higher education, as defined in the Department of Education's Federal Work-Study regulations, 34 675.2, and (b) the student worker's services are performed as part of a Federal Work-Study Program (as defined in those regulations [1]) or a

[1] The Department of Education's Federal Work-Study Programs described at 34 CFR part 675 are

substantially similar program of a State or political subdivision thereof. Institutions of higher education must exclude work study students when determining the number of employees for PPP loan eligibility, and must also exclude payroll costs for work study students from the calculation of payroll costs used to determine their PPP loan amount.

The Administrator, in consultation with the Secretary, has determined that this is a reasonable interpretation of section 1102(a) of the CARES Act's reference to ''individuals employed on a full-time, part-time, or other basis.'' Such programs generally provide part-time jobs for students with financial need, and their services are incident to and for the purpose of pursuing a course of study. Work study students are excluded from the definition of employees in other areas of federal law. For example, in the regulations implementing the Affordable Care Act, Treasury defined an employee's ''hours of service'' to exclude work study hours.[2] Explaining this exclusion, the regulation's preamble states that ''[t]he federal work study program, as a federally subsidized financial aid program, is distinct from traditional employment in that its primary purpose is to advance education.'' [3] Similarly, student work is generally exempt from Federal Insurance Contribution Act (FICA) and Federal Unemployment taxes.[4]

For similar reasons, the Administrator, in consultation with the Secretary of the Treasury, has determined that a limited exception for work study is appropriate here. In particular, the Administrator recognizes that requiring institutions of higher education to count work study students towards employee headcount would result in an anomalous outcome in two respects. First, it would prevent some small educational institutions from receiving PPP loans due solely to their provision of financial aid to students in the form of work study. Second, it would result in the exclusion of small educational institutions whose part-time work study headcount dwarfs their full-time faculty and staff headcounts. Educational institutions that filed loan applications prior to the issuance of the regulation are not bound by this interpretation but may rely on it. Lenders may continue to rely on borrower certifications as part of their good faith review process.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary

(1) the Federal Work-Study Program, (2) the Job Location and Development Program, and (3) Work Colleges Program.

[2] 26 CFR 54.4980H–1(a)(24) (''Hour of service . . . (ii) Excluded hours . . . (B) Work-study program. The term hour of service does not include any hour for services to the extent those services are performed as part of a Federal Work-Study Program as defined under 34 CFR 675 or a substantially similar program of a State or political subdivision thereof.'').

[3] 79 FR 8544, 8550 (Feb. 12, 2014).

[4] Internal Revenue Code Section 3121(b)(10) excepts from FICA tax ''service performed in the employ of—(A) a school, college, university . . . if such service is performed by a student who is enrolled and regularly attending classes at such school, college, university.'' Student workers, who are not full time, are excepted where the services are ''incident to and for the purposes of pursuing a course of study.'' 26 CFR 31.3121(b)(10)–2(d)(3)(i).

to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator.

[FR Doc. 2020–09963 Filed 5–7–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

RIN 3245–AH13

Regulatory Reform Initiative: Small Disadvantaged Businesses

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is removing from the Code of Federal Regulations (CFR) 16 regulations that are no longer necessary because they are either redundant or obsolete. This action will assist the public by simplifying SBA's regulations.

DATES: This rule is effective on August 6, 2020 without further action, unless significant adverse comment is received by July 7, 2020. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AH13 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, 8th Floor, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI), as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, 8th Floor, Washington, DC 20416, or send an email to *brenda.fernandez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

Small Disadvantaged Business Program

The government promotes contracting and subcontracting with small disadvantaged businesses (SDBs) by setting government-wide and agency-specific goals for the percentage of Federal contract and subcontract dollars awarded to SDBs each fiscal year. The government-wide goal is that not less than 5 percent of the total value of all prime contract and subcontract awards be made to SDBs. At one time, SDBs had to be certified by the SBA, or by a private certifying entity acting in compliance with SBA regulations, to qualify for certain Federal programs as prime contractors. However, all Federal programs for SDB prime contractors have been discontinued, with only the government-wide and agency-specific goals for the percentage of Federal contract and/or subcontract dollars awarded to SDBs each year remaining. Pursuant to the SDB subcontracting program, Federal agencies must negotiate subcontracting plans with the apparent successful bidder or offeror on qualifying prime contracts prior to awarding the contract. Subcontracting plans set goals for the percentage of subcontract dollars to be awarded to SDBs, among others, and describe efforts that will be made to ensure that SDBs have an equitable opportunity to compete for subcontracts. Federal agencies may also consider the extent of subcontracting with SDBs in determining to whom to award a contract or whether to give contractors monetary incentives to subcontract with SDBs.

Firms do not need to be certified SDBs to qualify for Federal programs for subcontractors. Rather, a firm may represent that it qualifies as an SDB for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals. In addition, 8(a) Participants are deemed to be SBDs for Federal contracting purposes. As of August 8, 2019, the SBA's Dynamic Small Business Search database included 125,616 self-certified SDBs.

Background Information

On February 24, 2017, President Trump issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: Eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

In response to the President's directive, SBA initiated a review of its regulations to determine which might be revised or eliminated. Based on this analysis, SBA has identified unnecessary provisions that can be removed from the CFR. First, this rule removes 13 CFR 124.516—which states that the procuring activity decides all contract disputes arising between an 8(a) Participant and a procuring activity contracting officer after the award of an 8(a) contract—because this provision is redundant. 13 CFR 124.512 already delegates 8(a) contract administration functions to procuring agencies and contract dispute resolution is an element of contract administration.

Second, this rule removes 13 CFR 124.1002 through 124.1016. As discussed below, these provisions pertain to the Small Disadvantaged Business Program, which is no longer a viable program. Section 1207 of the 1987 Defense Authorization Act (Pub. L. 99–661, codified in 10 U.S.C. 2323) established a statutory 5 percent goal for all Department of Defense (DOD) contracts to be awarded to small disadvantaged businesses (SDBs). To this end, the statute authorized the award of contracts to SDBs using less than full and open competitive procedures. Specifically, DOD implemented regulations requiring a contracting officer to set-aside a procurement for exclusive competition among SDBs whenever market research identified two or more SDBs that could perform the contract at a fair and reasonable price. In addition, SDBs would receive a 10 percent price evaluation adjustment for offers submitted in an unrestricted or full and open competition. DOD's SDB program was initially a self-certification program. SBA established eligibility criteria, but firms self-certified their SDB status for particular procurements. However, SBA was responsible for processing SDB

status protests and appeals filed in connection with individual contracts.

In 1994, Congress extended the authority granted to DOD to all Federal agencies through enactment of the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103–355). However, as a result of the U.S. Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1995), President Clinton directed the Department of Justice (DOJ) to work with Federal agencies to conduct a review of all race and gender conscious Federal contracting programs and implement necessary regulatory reforms to comply with the Court's ruling. Regulations to implement FASA were delayed until completion of this review.

On May 23, 1996, DOJ proposed reforms to these Federal preferential contracting programs (61 FR 26042–63). Among other things, DOJ placed the SDB set-aside authority in abeyance pending further review, which left the price evaluation adjustment for SBDs on full and open competitions as the primary benefit for SDBs. DOJ further proposed governmental SDB certification for all firms seeking to submit offers as SDBs for Federal prime contracts and subcontracts. Agencies were given the option to implement a certification program or enter into an agreement with SBA under which SBA would make all determinations of SDB eligibility. However, agencies were strongly encouraged to defer to SBA's experience on matters related to SDB eligibility. SBA published regulations governing its SDB certification process in August 1997 and June 1998.

SBA terminated its SDB certification program on October 3, 2008 (73 FR 57490) after determining that it was no longer efficient or effective to certify SDBs government-wide. At that time, statutory authority for the SDB price evaluation adjustment had expired for all but three agencies: DOD, the National Aeronautics and Space Administration, and the U.S. Coast Guard. Subsequently, on November 3, 2008, the U.S. Court of Appeals for the Federal Circuit struck down DOD's SDB program in *Rothe Development Corporation* v. *Department of Defense,* 545 F.3d 1023 (Fed. Cir. 2008), holding that Section 1207 of the 1987 Defense Authorization Act was facially unconstitutional because Congress did not have sufficient evidence to conclude that there was racial discrimination in defense contracting when it reauthorized the program in 2006. Congress declined to reauthorize the government's remaining SDB programs in 2009, and the SDB price evaluation adjustment was removed from the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement in 2014 and 2015, respectively (79 FR 61746 and 80 FR 15912). Currently, there is no SDB set-aside program; there is no statutory authority for the SDB price evaluation adjustment; and SBA does not administer an SDB certification program. As such, the provisions set forth in 13 CFR 124.1002 through 124.1016 are obsolete and SBA is removing them from the CFR. However, SBA is retaining and re-designating the SDB definition currently set forth in 13 CFR 124.1002. Because a firm may self-certify that it qualifies as an SDB for any Federal subcontracting program, SBA believes this provision should remain in the CFR in order to provide guidance to firms seeking to participate in the Federal subcontracting program.

Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: Eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

Section by Section Analysis

Section 124.516

The rule removes § 124.516, which provides that a contract dispute arising between an 8(a) contractor and the procuring activity contracting officer will be decided by the procuring activity, and that appeals may be taken by the 8(a) contractor without SBA involvement. As previously noted, § 124.512 already delegates 8(a) contract administration functions, including contract dispute resolution responsibilities, to procuring agencies. As such, § 124.516 is redundant and is no longer needed.

Section 124.1001

The rule amends § 124.1001 to eliminate references to SBA's SDB protest and appeal procedures as well as the SDB certification program, as these provisions are now obsolete. SBA is also amending this section to incorporate the substantive provisions of the SDB definition currently set forth in § 124.1002. As noted above, SDB status remains relevant for Federal subcontracting programs.

Sections 124.1002 Through 124.1016

The rule removes §§ 124.1002 through 124.1016, which set forth SBA's SDB certification program, as well as SBA's SDB protest and appeal procedures. These provisions are unnecessary because SBA no longer administers an SDB certification program, nor does it process SDB protests or appeals.

To provide more information to the public, the titles of these rules to be removed are as follows: (1) § 124.1002 What is a Small Disadvantaged Business (SDB)?; (2) § 124.1003 How does a firm become certified as an SDB?; (3) § 124.1004 What is a misrepresentation of SDB status?; (4) § 124.1005 How long does an SDB certification last?; (5) § 124.1006 Can SBA initiate a review of the SDB status of a firm claiming to be an SDB?; (6) § 124.1007 Who may protest the disadvantaged status of a concern?; (7) § 124.1008 When will SBA not decide an SDB protest?; (8) § 124.1009 Who decides disadvantaged status protests?; (9) § 124.1010 What procedures apply to disadvantaged status protests?; (10) § 124.1011 What format, degree of specificity, and basis does SBA require to consider an SDB protest?; (11) § 124.1012 What will SBA do when it receives an SDB protest?; (12) § 124.1013 How does SBA make disadvantaged status determinations in considering an SDB protest?; (13) § 124.1014 Appeals of disadvantaged status determinations.; (14) § 124.1015 What are the requirements for

representing SDB status, and what are the penalties for misrepresentation?; and (15) § 124.1016 What must a concern do in order to be identified as an SDB in any Federal procurement database?.

Administrative Procedure Act—Direct Final Rule

SBA is publishing this rule as a direct final rule because SBA views this action as an administrative action that relates solely to expired SBA programs and is non-controversial. This rule will be effective on the date shown in the **DATES** section unless SBA receives any significant adverse comments on or before the deadline for comments set forth in the **DATES** section. Significant adverse comments are comments that provide strong justifications for why the rule should not be adopted or for changing the rule. If SBA receives any significant adverse comments, SBA will publish a notice in the **Federal Register** withdrawing this rule before the effective date.

Compliance With Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Executive Order 13771

This direct final rule is an Executive Order 13771 deregulatory action with an annualized net savings of $74,606 and a net present value of $1,065,795, both in 2016 dollars.

This rule removes redundant and obsolete regulations, which will save SDBs time reading irrelevant information. These calculations assume 2 percent of the 125,616 self-certified SDBs read these regulations per year (or approximately 2,500 SDBs) and that they would save 30 minutes each from not reading them. This time is valued at $75.57 per hour—the wage of an attorney according to 2018 Bureau of Labor Statistics data adding 30 percent more for benefits. This produces savings to the SBA community of $94,928 per year.

The cost savings also includes a savings to the government workforce assuming that 2 percent of the 38,000 Federal contracting officers per year (or about 760) will save 30 minutes from not reading this removed information. This time is valued at a rate of $54.21 per hour—assuming the average Federal contracting officer is a GS–12 step 1 (DC locality) adding 30 percent more benefits, for savings of $20,600. This produces total savings per year of $115,528 in current dollars.

In the first year, it is assumed that 5 percent of SDBs (about 6,280) and 5 percent of Federal contracting officers (1,900) would read this Direct Final Rule, which is estimated to take 1 hour per SDB at $75.57 per hour and $54.21 per Federal contracting officer, producing cost in the first year of $577,639 ($474,640 for SDBs and $102,999 for the Federal government). This cost is not expected to continue in subsequent years.

Table 1 lays out the costs and savings of this rule over the first 2 years after publication, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

TABLE 1—SCHEDULE OF COSTS/(SAVINGS) OVER 2 YEAR HORIZON, CURRENT DOLLARS

	Savings	Costs
Year 1	1,636 hours ($115,528)	8,181 hours. $577,639.
Year 2	1,636 hours ($115,528)	0 hours. $0.

TABLE 2—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE, 2016 DOLLARS

	Estimate
Annualized Savings	$110,872
Annualized Costs	($36,267)
Annualized Net Savings	$74,606

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act (44 U.S.C., Ch. 35)

The SBA has determined that this final rule does not affect any existing collection of information.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rule, the Regulatory Flexibility Act (RFA) requires the agency to prepare a final regulatory flexibility analysis (FRFA), which describes whether the rule will have a significant economic impact on a substantial number of small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a FRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

There are approximately 125,000 self-certified SDBs in SBA's Dynamic Small Business Search and all can be affected by this rule. However, this rule removes regulations that are no longer necessary because they are either redundant or obsolete. The annualized net savings to SDBs is $63,877 in current dollars or less than a dollar per SDB, as detailed in the Executive Order13771 discussion above.

Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 124 as follows:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 1. The authority citation for part 124 is continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

§ 124.516 [Removed and Reserved]

■ 2. Remove and reserve § 124.516.

■ 3. Revise § 124.1001 to read as follows:

§ 124.1001 What is a Small Disadvantaged Business?

(a) *General.* A Small Disadvantaged Business (SDB) for purposes of any Federal subcontracting program is a concern that qualifies as small under part 121 of this title for the size standard corresponding to the six-digit North American Industry Classification System (NAICS) code that is assigned by the contracting officer to the procurement at issue, and that is owned and controlled by one or more socially and economically disadvantaged individuals. Unless specifically stated otherwise, the phrase ''socially and economically disadvantaged individuals'' includes Indian tribes, ANCs, CDCs, and NHOs. A firm may represent that it qualifies as an SDB for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals.

(b) *Reliance on 8(a) criteria.* In determining whether a firm qualifies as an SDB, the criteria of social and economic disadvantage and other eligibility requirements established in subpart A of this part apply, including the requirements of ownership and control and disadvantaged status, unless otherwise provided in this subpart. All current Participants in the 8(a) BD program qualify as SDBs.

§§ 124.1002 through 124.1016 [Removed]

■ 4. Remove §§ 124.1002 through 124.1016.

Jovita Carranza,

Administrator.

[FR Doc. 2020–08619 Filed 5–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1040; Airspace Docket No. 19–ASW–18]

RIN 2120–AA66

Amendment of Class E Airspace; Ada, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Ada Regional Airport, Ada, OK. This action is the result of an airspace review caused by the decommissioning of the Ada VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport. The name of the airport is also being updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Ada Regional Airport, Ada, OK, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 5352; January 30, 2020) for Docket No. FAA–2019–1040 to amend the Class E airspace extending upward from 700 feet above the surface at Ada Regional Airport, Ada, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace area extending upward from 700 feet above the surface to within a 6.6-mile radius (increased from a 6.5-mile radius) at Ada Regional Airport, Ada, OK; updates the name of the airport (previously Ada Municipal Airport) to coincide with the FAA's aeronautical database; extends the extension to the north of the airport to 10.4 miles north of the airport (increased from 10.3 miles); and removes the Ada VOR and associated extension from the airspace legal description.

This action is the result of an airspace review caused by the decommissioning of the Ada VOR, which provided navigation information for the instrument procedures at this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ASW OK E5 Ada, OK [Amended]

Ada Regional Airport, OK
(Lat. 34°48′15″ N, long. 96°40′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Ada Regional Airport, and within 4 miles each side of the 000° bearing from the airport extending from the 6.6-mile radius to 10.4 miles north of the airport, and within 4 miles each side of the 180° bearing from the airport extending from the 6.6-mile radius to 10.9 miles south of the airport.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09824 Filed 5–7–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0140; Airspace Docket No. 20–ASO–5]

RIN 2120–AA66

Amendment of Class E Airspace; Greenville and Madisonville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Muhlenberg County Airport, Greenville, KY, and Madisonville Regional Airport, Madisonville, KY. This action is the result of an airspace review caused by the decommissioning of the Central City VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program. Additionally, the name of Madisonville Regional Airport and the geographic coordinates of both airports are being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Muhlenberg County Airport, Greenville, KY, and Madisonville Regional Airport, Madisonville, KY, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 11006; February 26, 2020) for Docket No. FAA–2020–0140 to amend the Class E airspace extending upward from 700 feet above the surface at Muhlenberg County Airport, Greenville, KY, and Madisonville Regional Airport, Madisonville, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (increased from a 6.4-mile radius) of Muhlenberg County Airport, Greenville, KY; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautic database;

And amending the Class E airspace extending upward from 700 feet above the surface at Madisonville Regional Airport, Madisonville, KY, by updating the name (previously Madisonville Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautic database.

This action is the result of an airspace review caused by the decommissioning of the Central City VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ASO KY E5 Greenville, KY [Amended]

Muhlenberg County Airport, KY
(Lat. 37°13′34″ N, long. 87°09′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Muhlenberg County Airport.

* * * * *

ASO KY E5 Madisonville, KY [Amended]

Madisonville Regional Airport, KY
(Lat. 37°21′21″ N, long. 87°23′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Madisonville Regional Airport.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09819 Filed 5–7–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0142; Airspace Docket No. 20–AGL–7]

RIN 2120–AA66

Amendment of Class E Airspace; Big Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Roben-Hood Airport, Big Rapids, MI. This action is the result of airspace review caused by the cancellation and revision of the instrument procedures at this airport. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautic database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support

Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Roben-Hood Airport, Big Rapids, MI, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 11005; February 26, 2020) for Docket No. FAA–2020–0142 to amend the Class E airspace extending upward from 700 feet above the surface at Roben-Hood Airport, Big Rapids, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface within a 6.6-mile radius (decreased from a 6.7-mile radius) of Roben-Hood Airport, Big Rapids, MI; removing the White Cloud VORTAC and associated extensions from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautic database.

This action is the result of an airspace review caused by the cancellation and revision of the instrument procedures at this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

AGL MI E5 Big Rapids, MI [Amended]

Roben-Hood Airport, MI
(Lat. 43°43′22″ N, long. 85°30′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Roben-Hood Airport.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09820 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2017–8]

Secure Tests

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Copyright Office is issuing an interim rule amending its regulations governing the registration of copyright claims in secure tests in order to address a disruption caused by the COVID–19 pandemic. The Office has become aware that certain examinations that normally would qualify for registration as secure tests may be ineligible for this option because they currently are being administered remotely rather than at specified testing centers. The interim rule allows otherwise-eligible tests that are administered online during the national emergency to qualify as secure tests,

provided the test administrator employs sufficient security measures. In addition, the Office is requesting public comment on the technological requirements needed for examination of secure test claims via secure teleconference. Finally, the Office is announcing its intention to issue guidelines according to which parties may request *ex parte* meetings with the Office in this proceeding.

DATES: Effective May 8, 2020. Comments must be made in writing and must be received by the U.S. Copyright Office no later than June 8, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://copyright.gov/rulemaking/securetests.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, *regans@copyright.gov;* Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, *rkas@copyright.gov;* Kevin R. Amer, Deputy General Counsel, *kamer@copyright.gov;* or David Welkowitz, Attorney Advisor, *dwelkowitz@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 408 of the Copyright Act, the U.S. Copyright Office is responsible for registering copyright claims.[1] In so doing, the Office is obligated to obtain a registration deposit that is sufficient to verify the claim and to provide an archival record of what was examined and registered.[2] Deposits of unpublished material must be kept for the full term of copyright protection,[3] and deposits are available for public inspection.[4] The Act, however, authorizes the Office to issue regulations establishing ''the nature of the copies . . . to be deposited'' in specific classes of works and to ''permit, for particular classes, the deposit of identifying material instead of copies or phonorecords.'' [5]

Pursuant to that authority, the Office has long provided special registration procedures for ''secure tests'' that require the maintenance of confidentiality of their contents. These include tests ''used in connection with admission to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships, and professional certification.'' [6] Current regulations define a secure test as ''a nonmarketed test administered under supervision at specified centers on scheduled dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration.'' [7]

On June 12, 2017, the Office issued an interim rule (the ''June 2017 Interim Rule'') that memorialized certain aspects of its secure test procedure and adopted new processes to increase the efficiency of its examination of such works.[8] Under this rule, applicants must, among other things, submit an online application, a redacted copy of the entire test, and a brief questionnaire about the test through the electronic registration system.[9] This procedure allows the Office to prescreen an application to determine whether the work appears to be eligible for registration as a secure test. If the test appears to qualify, the Office will schedule an in-person appointment for examination of an unredacted copy of the test.[10]

During the in-person meeting, the examiner will review the redacted and unredacted copies in a secure location in the presence of the applicant or his/her representative.[11] If the examiner determines that the relevant legal and formal requirements have been met, he or she will register the claim(s) and add an annotation to the certificate reflecting that the work was examined under the secure test procedure. The registration is effective as of the date that the Office received in proper form the application, questionnaire, filing fee, and the redacted copy that was uploaded to the electronic registration system.[12] The June 2017 Interim Rule thus gives publishers the benefit of establishing as their effective date of registration the date when those materials are submitted to and received by the Office electronically, rather than the later date when the in-person examination takes place.

On November 13, 2017, in response to concerns raised by stakeholders following the June 2017 Interim Rule, the Office issued a second interim rule (the ''November 2017 Interim Rule'') to permit registration of a group of test items (*i.e.,* sets of questions and answers) stored in a database or test bank and used to create secure tests.[13] For these works, the November 2017 Interim Rule adopted most of the same registration procedures that apply to secure tests under the June 2017 Interim Rule.

The Office invited public comment on both the June 2017 and the November 2017 Interim Rules. The Office received a total of thirty-nine responses from a wide variety of testing organizations and other interested parties.[14]

II. The Interim Rule

While the Office is continuing to evaluate the secure tests regulations as a whole to determine whether changes may be warranted before issuing a final rule, it is issuing an additional interim rule at this time to address a specific disruption currently affecting test publishers' ability to exercise this option. The Office has become aware that, as a result of the COVID–19 pandemic, certain tests that normally are administered with test-takers physically assembled at one or more locations will instead be administered remotely, with test-takers completing the exam online from their homes. Publishers have expressed concern that this change may make the tests ineligible for registration as secure tests, as they will not be administered ''at specified centers.'' [15] As a result, these publishers may be forced to choose between registering their tests under the normal procedure for literary works (thus forfeiting confidentiality) and either delaying registration until they can administer the test according to the existing rule or foregoing copyright

[1] 17 U.S.C. 408.

[2] *Id.* 408(b), 705(a).

[3] *Id.* 704(d).

[4] *Id.* 705(b).

[5] *Id.* 408(c)(1).

[6] 42 FR 59302, 59304 & n.1 (Nov. 16, 1977); *see also* 43 FR 763, 768 (Jan. 4, 1978) (adopting the definition of a secure test).

[7] 37 CFR 202.13(b)(1).

[8] 82 FR 26850 (June 12, 2017); *see* 37 CFR 202.13, 202.20(b)(3), (c)(2)(vi) (implementing the June 2017 Interim Rule).

[9] 37 CFR 202.13(c)(2).

[10] *Id.*

[11] The applicant must bring to the meeting, among other materials, a signed declaration confirming that the redacted copy brought to the meeting is identical to the redacted copy that was uploaded to the electronic registration system. *Id.* 202.13(c)(3)(iv).

[12] 82 FR at 26853.

[13] 82 FR 52224 (Nov. 13, 2017). *See* 37 CFR 202.4(b), (k), 202.13 (implementing the November 2017 Interim Rule).

[14] The public comments in this proceeding may be accessed from the Office's website at *https://www.copyright.gov/rulemaking/securetests/.*

[15] 37 CFR 202.13(b)(1).

registration altogether. If a publisher chooses to delay registration, it could lose the benefit of an earlier effective date of registration. Although the building that houses the Copyright Office is currently closed to the public and therefore staff are unable to conduct in-person examinations or issue registrations for secure tests, as noted above, an eligible secure test publisher can establish an effective date of registration during this time by electronically submitting an application, questionnaire, filing fee, and redacted copy to the Office.[16]

The interim rule amends the regulations to provide an accommodation for tests that would be eligible for secure test registration but for the pandemic. The rule provides that an otherwise-qualifying test shall be considered a secure test if it normally is administered at specified centers but is being administered online during the national emergency, provided the test administrator employs measures to maintain the security and integrity of the test that it reasonably determines to be substantially equivalent to the security and integrity provided by in-person proctors. The rule does not specify particular measures that are required to meet this standard, as the Office believes that publishers generally should have flexibility to tailor such processes to their specific needs. But as examples, the Office expects that sufficient measures typically would include some combination of video monitoring and/or recording, the disabling of certain functions on test-takers' computers (*e.g.,* copying and pasting), technological measures to prevent access to external websites and other prohibited materials, and identity verification of the individual taking the test. It also should be noted that the interim rule does not alter the requirement that a secure test be administered ''under supervision,'' which means that ''test proctors or the equivalent supervise the administration of the test.'' [17]

The rule also makes a clarifying change to the portion of the definition concerning the storage of secure tests. The current language requires all copies of a secure test to be ''either destroyed or returned to restricted locked storage following each administration.'' [18] To make clear that this provision does not preclude the retention of digital copies, the interim rule provides that copies also may be returned to ''secure electronic storage.''

As the wording of the interim rule makes clear, the modification of the definition of secure tests is temporary, lasting only until the COVID–19 emergency ends. The Office is providing this flexibility to ensure that test administrators can continue to offer socially valuable secure tests during the national emergency. This accommodation should not be seen as determinative of the final rule in this proceeding, which will be established on the basis of the overall rulemaking record. The Office recognizes, however, that the ''specified centers'' limitation was a concern for many test publishers even before the emergency, with several commenters in this proceeding urging the Office to amend that language to facilitate a broader range of testing models. The Office therefore will monitor the operation of the interim rule to help it evaluate whether and under what conditions remote testing should be permitted under the secure tests regulations once the emergency period ends.

In light of the ongoing national emergency, the Copyright Office finds good cause to publish these amendments as an interim rule effective immediately, and without first publishing a notice of proposed rulemaking, ''because of the demonstrable urgency of the conditions they are designed to correct.'' [19]

III. Request for Comments

As noted, the Office is currently unable to conduct in-person examination of secure test applications. The Office is exploring possible options to provide such examinations via secure videoconference. The Office invites comments regarding the technological requirements that would be needed for test publishers to participate in such a process. In particular, the Office is interested in whether examination using the WebEx platform would be acceptable to publishers, as that program is currently supported by the Library of Congress. The Office requests that comments be limited to these topics.

IV. Ex Parte Communication

The Office has determined that informal communication with interested parties might be beneficial in this rulemaking, including to discuss how the change implemented by the interim rule has operated in practice. The Office therefore intends to issue guidelines according to which parties may request *ex parte* meetings with the Office in this proceeding. Consistent with its practice in other rulemakings, the Office will establish requirements to ensure transparency, including that participating parties submit a list of attendees and a written summary of any oral communications, which will be posted on the Office's website. The *ex parte* guidelines will made be available at *https://www.copyright.gov/rulemaking/securetests* when the Office initiates the availability of such communications. No *ex parte* meetings in this proceeding will be scheduled before that time.

* * * * *

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and Registration of Claims to Copyright.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.13 by revising paragraph (b)(1) to read as follows:

§ 202.13 Secure tests.

* * * * *

(b) * * *

(1) A *secure test* is a nonmarketed test administered under supervision at specified centers on scheduled dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage or secure electronic storage following each administration. A test otherwise meeting the requirements of this paragraph shall be considered a secure test if it normally is administered at specified centers but is being administered online during the national emergency concerning the COVID–19 pandemic, provided the test administrator employs measures to maintain the security and integrity of the test that it reasonably determines to be substantially equivalent to the security and integrity provided by in-person proctors.

[16] *See* 17 U.S.C. 412.

[17] 37 CFR 202.13(b)(3).

[18] 37 CFR 202.13(b)(1).

[19] H.R. Rep. No. 1980, 79th Cong., 2d Sess. 26 (1946). *See* 5 U.S.C. 553(b)(3)(B) (notice and comment is not necessary upon agency determination that it would be ''impracticable, unnecessary, or contrary to the public interest''); *id.* at 553(d)(3) (30-day notice not required where agency finds good cause).

Dated: May 4, 2020.

Maria Strong,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–09916 Filed 5–7–20; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Part 111

Seamless Changes for Detached Mail Unit (DMU) and Full-Service Mailings

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service™ is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to require Detached Mail Unit (DMU) mailers and mailers that enter full-service mailings at a Business Mail Entry Unit (BMEU) to participate in Seamless Parallel by June 1, 2020. In addition, the Postal Service provides advance notice of its intent: To require all mailers with an authorized Detached Mail Unit to enroll in the Seamless Acceptance Program by May 1, 2021; and to verify all BMEU-entered full-service mailings using only automated sampling and verification processes beginning July 1, 2021.

DATES: Effective June 1, 2020.

FOR FURTHER INFORMATION CONTACT: Lance Bell at (407) 782–2972, or Jacqueline Erwin at (202) 268–2158.

SUPPLEMENTARY INFORMATION:

Background

Seamless Acceptance leverages electronic documentation (eDoc) and the Intelligent Mail® barcodes (IMbs) on all containers, handling units, and mailpieces required under full-service. Mailpiece scans collected from mail processing equipment (MPE) and samples from hand-held scanning devices are reconciled to the mailer eDoc to confirm proper mail preparation for discounts claimed and confirm correct postage payment. This capability avoids the need for verification of mail at acceptance.

The Postal Service published a notice of proposed rulemaking on January 8, 2020 (85 FR 856–859), to require mailers with authorized Detached Mail Units (DMU) and mailers that enter full-service mailings at a Business Mail Entry Unit (BMEU) to participate in Seamless Parallel by March 1, 2020. In addition, the Postal Service provided advance notice of its intent to require DMU mailers to enroll in the Seamless Acceptance Program by February 1, 2021. Moreover, the Postal Service provided advance notices of its intent to verify all full-service mailings entered at a BMEU using automated sampling and verification processes, beginning July 1, 2021.

The Postal Service received many insightful comments and questions from the mailing community in response to the proposed rule of January 8, 2020. In response to those comments, the Postal Service incorporates the following changes into this final rule, and notes that aside from these changes, Seamless Acceptance plans have not changed in substance from the proposed rule of January 8, 2020:

- Mailers with authorized DMUs and mailers entering full-service mailings at BMEUs must enroll in Seamless Parallel by June 1, 2020 (instead of March 1, 2020).

In addition, the Postal Service intends to propose the following regulatory changes in a future rulemaking:

- Mailers with authorized DMUs, as a condition of their DMU authorization, must participate in Seamless Acceptance by May 1, 2021;
- Full-Service mailings entered at BMEUs will begin to be verified using only automated sampling and verification processes on July 1, 2021.

Comments on Seamless Changes for Detached Mail Unit (DMU) and Full-Service Mailings and USPS Responses

The Postal Service received seven formal responses on the Seamless changes for Detached Mail Unit (DMU) and Full-Service Mailings proposal. Six formal responses included comments on more than one issue.

Incentive for Mailers To Adopt Seamless Acceptance

Five comments encouraged the USPS® to provide an incentive for mailers to defray costs incurred from migrating to Seamless Acceptance. Respondents claim that there is a significant cost impact to business (above and beyond full-service IMb participation) to participate in Seamless Acceptance, and that the USPS should provide an incentive to offset the investment and ongoing costs incurred by mailers.

USPS Response

USPS will continue to work collaboratively with industry stakeholders to minimize any cost impact to mailers that adopt Seamless Acceptance. The Postal Service notes that new rates, including incentives, must be authorized by the Governors of the Postal Service and reviewed by the Postal Regulatory Commission.

Piece Weights May Cause Assessments

Four comments stated that varying piece weights may cause a mailer to be susceptible to an assessment. Respondents claim this is especially true for flat-size pieces susceptible to environmental impacts (*e.g.,* humidity).

USPS Response

USPS has initiated the creation of a Task Team (MTAC TT–30) to work collaboratively with industry stakeholders. USPS will consider recommendations from MTAC TT–30.

Images of Mailpieces To Assist With Undocumented Errors

Four comments encourage USPS to provide mailers with images of undocumented pieces and other mailer scorecard errors so they can identify the specific mailer or mailing to investigate and resolve mail quality issues.

USPS Response

USPS will continue to explore the feasibility of this proposal.

The Timeline for Mandating Seamless Acceptance for DMUs

Three comments had concerns that the intended February 1, 2021 date was too close to implementation of the January 2021 price change. Price changes require significant resources and commenters are concerned that their resources will be limited and will not be ready by February 1, 2021.

USPS Response

As previously indicated, the USPS recognizes the industry concern with the proposed dates and has made the following changes:

- Seamless Parallel enrollment must be completed by June 1, 2020.
- Intended date to require DMU sites to Seamless changed to May 1, 2021.
- Verification of BMEU full-service mailings intended to begin on July 1, 2021.

General Overall Timeline and Deadline To Adopt Seamless Acceptance

Three comments voice concerns on the general timeline in terms of USPS ability to provide the necessary education, training, and customer service needed for mailers to adopt Seamless Acceptance.

USPS Response

USPS has provided extensive internal and external training on the Streamlined Mail Entry Programs. The Mail Entry

staff will be able to effectively manage the influx of new Seamless mailers. In addition, USPS has created a centralized Mailing and Shipping Solutions Center (MSSC) with specially trained personnel to answer mailer questions and provide information. USPS continues to emphasize ongoing internal training to ensure USPS staff have the most up-to-date training and tools necessary to assist mailers with any concerns or issues that may arise.

Legacy Verifications at Acceptance To Avoid Assessments

One comment stated that the customer was using legacy verifications as their quality control to avoid unforeseen assessments.

USPS Response

Seamless Acceptance and the automated sampling and verification processes provide mailers with the opportunity to view their mail quality metrics throughout the month utilizing the Mailer Scorecard. The Mailer Scorecard is updated each night with current Mail Quality Metric reporting, enabling mailers to diagnose errors and implement changes prior to being assessed. The Scorecard provides a daily update informing the customer of any potential assessments that could be levied if the mail quality metric continues to exceed the posted error threshold.

''**After the Fact**'' **Postage Assessment**

One comment expressed a concern of a potential assessment after a mailing has been accepted and entered into the mailstream, without a chance to avoid the assessment by fixing the mailing.

USPS Response

The Postal Service works collaboratively with mailers to provide advice and guidance throughout the month on Mailer Scorecard issues. Mailers start in the Seamless Parallel process to gauge how they would have performed under Seamless verifications; no assessments are imposed during Seamless Parallel. Seamless Parallel provides mailers opportunities to gather information and correct issues prior to moving to Seamless Acceptance. During this Seamless Parallel process USPS works with mailers to mitigate Mailer Scorecard errors and prepare mailers to adopt Seamless Acceptance.

Impact on Exceptional Dispatch Periodicals, Associate Office Acceptance, and Updated Guides

Several other comments mentioned the Seamless Acceptance impact on Exceptional Dispatch for Periodicals mailings, mailings accepted at local associated offices (AO), and when updated guides would be posted.

USPS Response

There is no impact to Exceptional Dispatch Periodicals mailings. Customers would continue to drop at the sites that are currently established drop locations as part of their Exceptional Dispatch. Mailings at smaller AOs will continue as they currently do today. The updated Guide to the Mailer Scorecard and Publication 685, *Publication for Streamlined Mail Acceptance for Letters and Flats* will be posted on PostalPro in April 2020.

Non-Acceptance Detached Mail Unit (DMU) Duties if DMU Closes

Further comments inquired into the impact Seamless Acceptance will have on the other non-acceptance duties performed at a DMUs like Certificates of Mailing, and questioned whether DMUs may be closed.

USPS Response

Due to the automated verification processes, DMU sites enrolled in Seamless Acceptance will experience a reduced presence of USPS personnel onsite. Other duties such as Certificates of Mailings and non-acceptance duties will be completed when the clerk is on site for Seamless samplings. It is not the intent of the Postal Service to close DMUs but rather to require adoption of Seamless Acceptance by May 1, 2021, as a condition of DMU authorization. When mailers submit the PS Form 3834, *Detached Mail Unit Authorization Application,* they agree to prepare mailings in accordance with applicable standards in the DMM. Any DMU mailer that anticipates they will be unable to comply with Seamless Acceptance requirements by May 1, 2021 will be required to request an extension by February 1, 2021.

Availability of Resources To Navigate Seamless Acceptance

Additional comments related to the available resources for industry to train and educate their staff.

USPS Response

There are tremendous amounts of resources currently available to customers including web based searches on PostalPro and Postal Explorer. Fact sheets, process guides, and publications are available on those sites. Mailers may also reach out to the Mailing and Shipping Solutions Center (MSSC), *PostalOne!* or Facility Access & Shipment Tracking (FAST) helpdesks for information.

''**Just in Time**'' **Payment and Auto Finalization Impact**

Commenters wondered how auto finalization affects the balance of the permit when some clients of mail preparers pay just prior to mailing. Client's permits sometimes have insufficient funds on deposit. Is there a way for USPS to alert mail preparers when one of the client permits has insufficient funds?

USPS Response

Auto finalization puts control in the mailers' hands. The process has not changed and sufficient funds must be in the account at the time of mailing. Under current standards specified in DMM § 705.22.3, mailings accepted under Seamless auto finalize even if one of the permits in the mailing does not have sufficient funds in combined mailings. This allows mailings to be accepted without delay.

eInduction Participation and Container Placard Requirement for Small Mailings

Two different comments were submitted seeking clarity on eInduction requirements for BMEU-entered mailings and potential impact on container requirements.

USPS Response

No, BMEU mailers will not be required to participate in eInduction unless they elect to enroll in Seamless Acceptance. eInduction is a requirement of Seamless Acceptance for all drop shipment mailings. When the hardcopy PS 8125, Plant-Verified Drop Shipment (PVDS) would have been used. This allows mailers to enter mailings without using the hardcopy form. Mailers will continue to follow the current placarding under Publication 685, *Publication for Streamlined Mail Acceptance for Letters and Flats* available on PostalPro.

Undocumented Mail and Postal Automated Redirection System (PARS) Operations

One comment stated that USPS is causing undocumented mail on the mailer's scorecard by changing the IMb on the mailpiece to start with ''93''.

USPS Response

USPS does update mailpieces that go through PARS operations. These pieces will have their IMb ''Type'' updated to ''93'' and the Address (Delivery Point) information is changed to the new address. The changed IMb no longer matches the original IMb contained in eDoc. In the past, this resulted in the piece being erroneously reported as

undocumented. However, to keep these pieces from being reporting erroneously as undocumented in mailer scorecards, USPS implemented system logic to recognize that the ''93'' IMb type indicated a changed IMb. Prior to reporting a piece as undocumented, USPS drops the ''93'' and New Address portion of the IMb and attempts to match the remainder of the original IMb—STID, MID, Serial Number—combination to an eDoc. Only if a match is not found with the remaining STID, MID, Serial Number combination would the piece be reported as undocumented.

Mailers That Do Not Adopt Seamless Acceptance by July 1, 2021

One comment wanted to know what would happen if they did not adopt Seamless Acceptance by the July 1, 2021 deadline.

USPS Response

USPS clarifies that there is no July 1, 2021 ''deadline'' for mailers. Rather, that is the date on which the Postal Service intends to begin verifying all Full-Service mailings entered at BMEUs using automated verification processes. BMEU mailers would not be required to prepare or enter their mail differently. All other mailings will continue to be verified using manual verification methods.

USPS Should Create a Roadmap

One comment mentions that there used to be a roadmap and wanted to know if USPS has updated it and where it can be found.

USPS Response

We have an updated Roadmap available, by searching ''CIO Roadmap'' on PostalPro at: *https://postalpro.usps.com/usps-roadmap#!/category/mail-acceptance-payment.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

22.0 Seamless Acceptance Program

22.1 Description

[Revise the text of 22.1 to read as follows:]

Seamless Acceptance leverages electronic documentation (eDoc) and Intelligent Mail barcodes (IMbs) on containers, handling units and mailpieces that full-service provides. Mailpiece scans collected from USPS mail processing equipment (MPE) and samples from hand held scanning devices are reconciled to the mailer eDoc to confirm proper mail preparation for the discounts claimed and postage paid. Seamless Acceptance is available for First-Class Mail cards, letters, and flats, Periodicals, USPS Marketing Mail letters and flats, and Bound Printed Matter flats.

[Revise the title and text of 22.2 to read as follows:]

22.2 Seamless Participation

Mailers may initiate participation in the Seamless Acceptance Program by contacting a local BMEU or the *PostalOne!* Helpdesk at 1–800–522–9085.

22.3 Basic Standards

[Add new heading 22.3.1, General, and move text from 22.3 as new 22.3.1.]

22.3.1 General

* * * * *

[Revise the text of item c to read as follows:]

c. Participate in the Seamless Parallel Program under 22.3.2

* * * * *

[Add new subsection 22.3.2 to read as follows:]

22.3.2 Seamless Parallel Program

Detached Mail Unit (DMU) mailers and mailers that enter full-service mailings at a Business Mail Entry Unit (BMEU) must participate in the Seamless Parallel Program. Additional information on the Seamless Parallel Program is available in Publication 685, *Publication for Streamlined Mail Acceptance for Letters and Flats,* available at: *https://postalpro.usps.com/StreamlinedMailAcceptLettersFlatsPub685.*

* * * * *

23.0 Full-Service Automation Option

* * * * *

23.3 Fees

23.3.1 Eligibility for Exception to Payment of Annual Fees and Waiver of Deposit of Permit Imprint Mail Restrictions

Mailers who present automation or presort mailings (of First-Class Mail cards, letters, and flats, USPS Marketing Mail letters and flats, or Bound Printed Matter flats) that contain 90 percent or more full-service eligible mail as full-service, and 75 percent of their total mail is eligible for full-service incentives, are eligible for the following exceptions to standards:

* * * * *

[Revise the text of item c to read as follows:]

c. If any mailing falls under the 90-percent and 75-percent full-service thresholds for qualified full-service mailings, the annual mailing fee will be due and the mailing verification date will become the renewal or anniversary date of the permit fees. The full-service percentage will automatically set to 0 percent on each subsequent anniversary date. The first mailing presented after the anniversary date begins the cumulative process for the full-service percentage calculation. If the first mailing presented after the anniversary date is below 90 percent, the annual fee will need to be paid prior to the mail being finalized. Once the annual fees are paid, the next validation date will be the next anniversary date.

[Delete item c2 in its entirety:]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–08625 Filed 5–7–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3040

[Docket No. RM2020–8]

Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Commission is updating the market dominant and competitive product lists. This action reflects a publication policy adopted by Commission rules. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The market dominant and competitive product lists, which are re-published in their entirety, includes these updates.

DATES: This rule is effective June 22, 2020, without further action, unless adverse comment is received by June 8, 2020. If adverse comment is received, the Commission will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: For additional information, this document can be accessed electronically through the Commission's website *at https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 39 U.S.C. 3642(d) and 39 CFR 3040.103, the Commission establishes Docket No. RM2020–8 and provides a Notice of Update to Product Lists. In the instant Notice, the Commission explains the establishment of a new rulemaking docket, describes the Commission's process and authorization as it relates to updates to product lists, and provides a Notice of Update to Product Lists by listing all modifications to both the market dominant and competitive product lists between January 1, 2020, and March 31, 2020.

II. Background

The Commission has previously posted its Notices of Update to Product Lists as part of Docket Nos. MC2010–21 and CP2010–36.[1] In each notice, the Commission states that the process for the periodic publication of product list updates was established in Docket Nos. MC2010–21 and CP2010–36.[2] However, as part of Docket No. RM2016–8, the Commission codified its process for the publication of product list updates in the **Federal Register** in 39 CFR 3040.103—Notice of Product List Change.[3] Among other things, 39 CFR 3040.103 describes the required content of any Notice of Update to Product Lists and its corresponding **Federal Register** document. 39 CFR 3040.103(d). As such, the Commission finds it appropriate to establish a new docket where Notices of Update to Product Lists will be posted pursuant to 39 CFR 3040.103 and the publication process described therein. The Commission also notes that a rulemaking docket, instead of a Mail Classification (MC), Competitive Product (CP) combination docket, is most appropriate for two reasons. First, a Notice of Update to Product Lists can include market dominant product list changes and not solely competitive product list changes. Second, any Notice of Update to Product Lists is published in the **Federal Register** as a direct final rulemaking that amends the Code of Federal Regulations.[4] For all Notices of Update to Product Lists, the Commission will consider comments on issues related to each Notice. If the Commission does not receive a significant adverse comment, the product list updates in each Notice will go into effect 30 days after the date of publication of the Notice in the **Federal Register** without further action.

III. Commission Process

Pursuant to 39 CFR part 3040, the Commission maintains a Mail Classification Schedule (MCS) that includes rates, fees, and product descriptions for each market dominant and competitive product, as well as product lists that categorize Postal Service products as either market dominant or competitive. *See generally* 39 CFR part 3040. The product lists are published in the Code of Federal Regulations as 39 CFR Appendix A to Subpart A of Part 3040—Market Dominant Product List and Appendix B to Subpart A of Part 3040—Competitive Product List pursuant to 39 U.S.C. 3642(d)(2). *See* 39 U.S.C. 3642(d)(2). Both the MCS and its product lists are updated by the Commission on its website on a quarterly basis.[5] In addition, these quarterly updates to the product lists are also published in the **Federal Register** pursuant to 39 CFR 3040.103. *See* 39 CFR 3040.103.

IV. Authorization

Pursuant to 39 CFR 3040.103(d)(1), this Notice of Update to Product Lists identifies any modifications made to the market dominant or competitive product list, including product additions, removals, and transfers.[6] Pursuant to 39 CFR 3040.103(d)(2), the modifications identified in this document result from the Commission's most recent MCS update posted on the Commission's website on April 1, 2020, and supersede all previous product lists.[7]

V. Modifications

The following list of products are being removed from 39 CFR Appendix A to Subpart A of Part 3040—Market Dominant Product List:

1. Inbound Market Dominant Exprés Service Agreement 1
2. Inbound Market Dominant Registered Service Agreement 1
3. Inbound Market Dominant PRIME Tracked Service Agreement

The following list of products are being added to 39 CFR Appendix B to Subpart A of Part 3040—Competitive Product List:

1. First-Class Package Service Contract 106
2. Parcel Return Service Contract 17
3. Parcel Select Contract 37
4. Parcel Select & Parcel Return Service Contract 10
5. Priority Mail Contract 583
6. Priority Mail Contract 584
7. Priority Mail Contract 585
8. Priority Mail Contract 586

[1] *See, e.g.,* Docket Nos. MC2010–21 and CP2010–36, Notice of Update to Product List, February 11, 2020; Notice of Update to Product Lists, November 6, 2019.

[2] *See, e.g., id.; see also* Docket Nos. MC2010–21 and CP2010–36, Order Concerning Global Reseller Expedited Package Contracts Negotiated Service Agreement, April 22, 2010 (Order No. 445).

[3] Docket No. RM2016–8, Final Rule Concerning Product Lists and the Mail Classification Schedule, June 8, 2016 (Order No. 3360).

[4] A direct final rulemaking is an administrative process designed to efficiently finalize noncontroversial rules. *See* ADMINISTRATIVE CONFERENCE OF THE UNITED STATES RECOMMENDATION 95–4, PROCEDURES FOR NONCONTROVERSIAL AND EXPEDITED RULEMAKING 1 (1995), available at: *https://www.acus.gov/recommendation/procedures-noncontroversial-and-expedited-rulemaking.* In a direct final rulemaking, an agency publishes the proposed final rule in the **Federal Register**, with a statement that the rule will go into effect unless the agency receives a significant adverse comment within the period specified. *See id.; see also Sierra Club* v. *EPA,* 99 F.3d 1551, 1554 (10th Cir. 1996). If no significant adverse comments are received, the rule goes into effect. If the agency receives a significant adverse comment, the agency withdraws the direct final rule and may publish the rule as a proposed rule, with the typical notice-and-comment procedures.

[5] *See https://www.prc.gov/mail-classification-schedule* in the Current MCS section.

[6] 39 CFR 3040.103(d)(1). More detailed information (*e.g.,* Docket Nos., Order Nos., effective dates, and extensions) for each market dominant and competitive product can be found in the MCS, including the ''Revision History'' section. *See, e.g.,* file ''MCSBaseline01262020.docx,'' available at: *https://www.prc.gov/mail-classification-schedule.*

[7] Previous versions of the MCS and its product lists can be found on the Commission's website available at: *https://www.prc.gov/mail-classification-schedule* in the MCS Archives section.

9. Priority Mail Contract 587
10. Priority Mail Contract 588
11. Priority Mail Contract 589
12. Priority Mail Contract 590
13. Priority Mail Contract 591
14. Priority Mail Contract 592
15. Priority Mail Contract 593
16. Priority Mail Contract 594
17. Priority Mail Contract 595
18. Priority Mail Contract 596
19. Priority Mail & First-Class Package Service Contract 139
20. Priority Mail & First-Class Package Service Contract 140
21. Priority Mail & First-Class Package Service Contract 141
22. Priority Mail & First-Class Package Service Contract 142
23. Priority Mail & First-Class Package Service Contract 143
24. Priority Mail Express & Priority Mail Contract 110
25. Priority Mail Express & Priority Mail Contract 111
26. Priority Mail Express & Priority Mail Contract 112
27. Priority Mail Express, Priority Mail & First-Class Package Service Contract 68
28. Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1
29. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4

The following list of products are being removed from 39 CFR Appendix B to Subpart A of Part 3040—Competitive Product List:

1. First-Class Package Service Contract 71
2. First-Class Package Service Contract 72
3. First-Class Package Service Contract 73
4. First-Class Package Service Contract 76
5. First-Class Package Service Contract 81
6. Parcel Select & Parcel Return Service Contract 6
7. Parcel Select Contract 19
8. Parcel Select Contract 22
9. Parcel Select Contract 26
10. Parcel Select Contract 28
11. Priority Mail & First-Class Package Service Contract 38
12. Priority Mail & First-Class Package Service Contract 44
13. Priority Mail & First-Class Package Service Contract 45
14. Priority Mail & First-Class Package Service Contract 47
15. Priority Mail & First-Class Package Service Contract 51
16. Priority Mail & First-Class Package Service Contract 63
17. Priority Mail & First-Class Package Service Contract 75
18. Priority Mail & First-Class Package Service Contract 76
19. Priority Mail & First-Class Package Service Contract 82
20. Priority Mail & First-Class Package Service Contract 90
21. Priority Mail Contract 77
22. Priority Mail Contract 78
23. Priority Mail Contract 230
24. Priority Mail Contract 236
25. Priority Mail Contract 249
26. Priority Mail Contract 257
27. Priority Mail Contract 263
28. Priority Mail Contract 270
29. Priority Mail Contract 273
30. Priority Mail Contract 276
31. Priority Mail Contract 281
32. Priority Mail Contract 283
33. Priority Mail Contract 286
34. Priority Mail Contract 287
35. Priority Mail Contract 290
36. Priority Mail Contract 293
37. Priority Mail Contract 297
38. Priority Mail Contract 303
39. Priority Mail Contract 308
40. Priority Mail Contract 311
41. Priority Mail Contract 313
42. Priority Mail Contract 314
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49. Priority Mail Contract 338
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51. Priority Mail Contract 352
52. Priority Mail Contract 354
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56. Priority Mail Contract 399
57. Priority Mail Contract 408
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59. Priority Mail Contract 422
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63. Priority Mail Contract 476
64. Priority Mail Contract 489
65. Priority Mail Contract 491
66. Priority Mail Contract 494
67. Priority Mail Contract 498
68. Priority Mail Contract 512
69. Priority Mail Contract 513
70. Priority Mail Contract 517
71. Priority Mail Contract 518
72. Priority Mail Contract 524
73. Priority Mail Contract 534
74. Priority Mail Contract 539
75. Priority Mail Express & Priority Mail Contract 12
76. Priority Mail Express & Priority Mail Contract 41
77. Priority Mail Express & Priority Mail Contract 42
78. Priority Mail Express & Priority Mail Contract 44
79. Priority Mail Express & Priority Mail Contract 47
80. Priority Mail Express & Priority Mail Contract 53
81. Priority Mail Express & Priority Mail Contract 54
82. Priority Mail Express & Priority Mail Contract 71
83. Priority Mail Express & Priority Mail Contract 93
84. Priority Mail Express & Priority Mail Contract 97
85. Priority Mail Express Contract 43
86. Priority Mail Express Contract 51
87. Priority Mail Express Contract 52
88. Priority Mail Express Contract 59
89. Priority Mail Express Contract 76
90. Priority Mail Express, Priority Mail & First-Class Package Service Contract 18
91. Priority Mail Express, Priority Mail & First-Class Package Service Contract 19
92. Priority Mail Express, Priority Mail & First-Class Package Service Contract 26
93. Priority Mail Express, Priority Mail & First-Class Package Service Contract 42
94. Priority Mail Express, Priority Mail & First-Class Package Service Contract 50
95. Priority Mail Express, Priority Mail & First-Class Package Service Contract 64

The above-referenced changes to the market dominant product list and the competitive product list are incorporated into 39 CFR Appendix A and B to Subpart A of Part 3040—Competitive Product List.

VI. Ordering Paragraphs

It is ordered:

1. Part 3040 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Notice, effective 30 days after the date of publication of the Notice in the **Federal Register** without further action, unless adverse comments are received.

2. The Secretary shall arrange for publication of the Notice in the **Federal Register**.

3. Interested persons may submit adverse comments no later than 30 days from the date of the publication of this Notice in the **Federal Register**.

4. If adverse comments are received, the Secretary will publish a timely withdrawal of the Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

List of Subjects in 39 CFR Part 3040

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3040—PRODUCT LISTS

■ 1. The authority citation for part 3040 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise appendix A to subpart A of part 3040 to read as follows:

Appendix A to Subpart A of Part 3040—Market Dominant Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

First-Class Mail *
- Single-Piece Letters/Postcards
- Presorted Letters/Postcards
- Flats
- Outbound Single-Piece First-Class Mail International
- Inbound Letter Post

USPS Marketing Mail (Commercial and Nonprofit) *
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Parcels
- Every Door Direct Mail—Retail

Periodicals *
- In-County Periodicals
- Outside County Periodicals

Package Services *
- Alaska Bypass Service
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services *
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Credit Card Authentication
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- Customized Postage
- Stamp Fulfillment Services

Negotiated Service Agreements *
- Domestic *
- International *
- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators

Nonpostal Services *
- Alliances with the Private Sector to Defray Cost of Key Postal Functions
- Philatelic Sales

Market Tests *
- Plus One

■ 3. Revise appendix B to subpart A of part 3040 to read as follows:

Appendix B to Subpart A of Part 3040—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Domestic Products *
- Priority Mail Express
- Priority Mail
- Parcel Select
- Parcel Return Service
- First-Class Package Service
- USPS Retail Ground

International Products *
- Outbound International Expedited Services
- Inbound Parcel Post (at UPU rates)
- Outbound Priority Mail International
- International Priority Airmail (IPA)
- International Surface Air Lift (ISAL)
- International Direct Sacks—M-Bags
- Outbound Single-Piece First-Class Package International Service
- Inbound Letter Post Small Packets and Bulky Letters

Negotiated Service Agreements *
- Domestic *
- Priority Mail Express Contract 46
- Priority Mail Express Contract 47
- Priority Mail Express Contract 48
- Priority Mail Express Contract 53
- Priority Mail Express Contract 54
- Priority Mail Express Contract 55
- Priority Mail Express Contract 56
- Priority Mail Express Contract 57
- Priority Mail Express Contract 60
- Priority Mail Express Contract 61
- Priority Mail Express Contract 62
- Priority Mail Express Contract 64
- Priority Mail Express Contract 65
- Priority Mail Express Contract 74
- Priority Mail Express Contract 75
- Priority Mail Express Contract 77
- Priority Mail Express Contract 78
- Priority Mail Express Contract 79
- Priority Mail Express Contract 80
- Parcel Return Service Contract 6
- Parcel Return Service Contract 11
- Parcel Return Service Contract 13
- Parcel Return Service Contract 14
- Parcel Return Service Contract 15
- Parcel Return Service Contract 16
- Parcel Return Service Contract 17
- Priority Mail Contract 80
- Priority Mail Contract 125
- Priority Mail Contract 150
- Priority Mail Contract 153
- Priority Mail Contract 203
- Priority Mail Contract 231
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Priority Mail Express & Priority Mail Contract 112
Parcel Select & Parcel Return Service Contract 3
Parcel Select & Parcel Return Service Contract 7
Parcel Select & Parcel Return Service Contract 8
Parcel Select & Parcel Return Service Contract 9
Parcel Select & Parcel Return Service Contract 10
Parcel Select Contract 9
Parcel Select Contract 20
Parcel Select Contract 25
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Parcel Select Contract 36
Parcel Select Contract 37
Priority Mail—Non-Published Rates
Priority Mail—Non-Published Rates 1
First-Class Package Service Contract 45
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First-Class Package Service Contract 75
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Priority Mail Express, Priority Mail & First-Class Package Service Contract 15
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Priority Mail & First-Class Package Service Contract 142
Priority Mail & First-Class Package Service Contract 143
Priority Mail Express & First-Class Package Service Contract 1
Priority Mail Express & First-Class Package Service Contract 3
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 1
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 2
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel

Select Contract 3
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4
Outbound International *
Global Expedited Package Services (GEPS) Contracts
GEPS 3
GEPS 5
GEPS 6
GEPS 7
GEPS 8
GEPS 9
GEPS 10
Global Bulk Economy (GBE) Contracts
Global Plus Contracts
Global Plus 1C
Global Plus 1D
Global Plus 1E
Global Plus 2C
Global Plus 3
Global Plus 4
Global Plus 5
Global Plus 6
Global Reseller Expedited Package Contracts
Global Reseller Expedited Package Services 1
Global Reseller Expedited Package Services 2
Global Reseller Expedited Package Services 3
Global Reseller Expedited Package Services 4
Global Expedited Package Services (GEPS)—Non-Published Rates
Global Expedited Package Services (GEPS)—Non-Published Rates 2
Global Expedited Package Services (GEPS)—Non-Published Rates 3
Global Expedited Package Services (GEPS)—Non-Published Rates 4
Global Expedited Package Services (GEPS)—Non-Published Rates 5
Global Expedited Package Services (GEPS)—Non-Published Rates 6
Global Expedited Package Services (GEPS)—Non-Published Rates 7
Global Expedited Package Services (GEPS)—Non-Published Rates 8
Global Expedited Package Services (GEPS)—Non-Published Rates 9
Global Expedited Package Services (GEPS)—Non-Published Rates 10
Global Expedited Package Services (GEPS)—Non-Published Rates 11
Global Expedited Package Services (GEPS)—Non-Published Rates 12
Global Expedited Package Services (GEPS)—Non-Published Rates 13
Global Expedited Package Services (GEPS)—Non-Published Rates 14
Priority Mail International Regional Rate Boxes—Non-Published Rates
Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.
Priority Mail International Regional Rate Boxes Contracts
Priority Mail International Regional Rate Boxes Contracts 1
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 1
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2
Alternative Delivery Provider (ADP) Contracts
ADP 1
Alternative Delivery Provider Reseller (ADPR) Contracts
ADPR 1
Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1
Inbound International *
International Business Reply Service (IBRS) Competitive Contracts
International Business Reply Service Competitive Contract 1
International Business Reply Service Competitive Contract 3
Inbound Direct Entry Contracts with Customers
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations 1
Inbound EMS
Inbound EMS 2
Inbound Air Parcel Post (at non-UPU rates)
Royal Mail Group Inbound Air Parcel Post Agreement
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1
Special Services *
Address Enhancement Services
Greeting Cards, Gift Cards, and Stationery
International Ancillary Services
International Money Transfer Service—Outbound
International Money Transfer Service—Inbound
Premium Forwarding Service
Shipping and Mailing Supplies
Post Office Box Service
Competitive Ancillary Services
Nonpostal Services *
Advertising
Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)
Mail Service Promotion
Officially Licensed Retail Products (OLRP)
Passport Photo Service
Photocopying Service
Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property
Training Facilities and Related Services
USPS Electronic Postmark (EPM) Program
Market Tests *

[FR Doc. 2020–08454 Filed 5–7–20; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 30, 150, and 153

[Docket No. USCG–2013–0423]

RIN 1625–AB94

2013 Liquid Chemical Categorization Updates; Correction

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: On April 17, 2020, the Coast Guard published a final rule updating the Liquid Chemical Categorization tables. The final rule contained minor typographical errors. This document corrects those errors.

DATES: Effective May 18, 2020.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LT Jake Lobb, Coast Guard; telephone (202) 372–1428, email *Jake.R.Lobb2@uscg.mil,* or Dr. Raghunath Halder, Coast Guard; telephone (202) 372–1422, email *Raghunath.Halder@uscg.mil.*

SUPPLEMENTARY INFORMATION: On April 17, 2020, the Coast Guard published a final rule titled ''2013 Liquid Chemical Categorization Updates'' (85 FR 21660) that becomes effective May 18, 2020. A routine post-publication review by the Coast Guard revealed minor typographical errors, such as text that was incorrectly italicized or run together. The errors included one incorrect Group Number and one incorrect Related CHRIS Code in the tables. The Group Number does not correspond to any Group, and the Related CHRIS Code repeats the listed CHRIS Code instead of displaying a related code. These typographical errors are not substantive, and correcting them aligns the final text with the stated

purpose of the rulemaking. Therefore, no additional notice and opportunity for public comment is required under 5 U.S.C. 553(b). For the same reasons, and to forestall any confusion caused by incorrect text, the Coast Guard finds good cause under 5 U.S.C. 553(d) to make the corrected text effective upon publication in the **Federal Register**.

■ Accordingly, in FR Doc. 2019–27628, appearing on page 21660 in the **Federal Register** of Friday, April 17, 2020, the following corrections are made:

Table 30.25–1 [Corrected]

1. On page 21666, in the entry for ''2,6-Di-ter*t*-butylphenol,'' remove the italicized ''*t*'' and replace it with a non-italicized ''t''.

2. On page 21668, revise the text ''Latex (ammonia (1% or less) inhibited)'' to read ''Latex, ammonia (1% or less)-inhibited''.

Table 1 to Part 150 [Corrected]

3. On page 21674, in the entry for ''Alcohol (C12–C13, branched and linear) poly(4-8) propoxy sulfates (alternately sulphates, sodium salt 25–30% solution'' add a parenthesis at the end of ''alternately sulphates''.

4. On page 21676, revise the text ''*Aluminum* (alternately, *Aluminium*) chloride/*Hydrochloric acid solution,* see ''Aluminum (alternately, Aluminium (chloride/Hydrogen chloride solution'' to read as follows: ''*Aluminum* (alternately, *Aluminium*) *chloride/Hydrochloric acid solution, see* Aluminum (alternately, Aluminium) chloride/Hydrogen chloride solution''.

5. On page 21684, in the entry for ''Fatty Acids (saturated, C13+)'', change ''334'' in the ''Group Number'' column to ''34''.

6. On page 21691, in the entry for ''Olefin mixtures (C5–C7)'', change ''OFX'' in the ''Related CHRIS Codes'' column to ''OFY''.

Table 2 to Part 150 [Corrected]

7. On page 21701, revise the amendatory language instruction 8. (u.) (xlv.) to read as follows:

8. * * *

u. * * *

xlv. A. Palm kernel acid oil, methyl ester

B. Palm kernel oil fatty acid

* * * * *

8. On page 21711, in section 30. OLEFINS, revise the text ''Latex (ammonia (1% or less)-inhibited.'' to read ''Latex, ammonia (1% or less)-inhibited.''.

Dated: May 5, 2020.

J.E. McLeod,

Acting Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2020–09958 Filed 5–7–20; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51; FCC 20–7; FRS 16658]

Video Relay Service Call Handling

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) authorizes Telecommunications Relay Services (TRS) Fund compensation of video relay service (VRS) providers for calls handled by communications assistants (CAs) from home workstations, subject to safeguards for service quality, call confidentiality, and prevention of waste, fraud, and abuse.

DATES: *Effective Date:* These rules are effective June 8, 2020, except for amendments to §§ 64.604 and 64.606, which are delayed. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, document FCC 20–7, adopted on January 30, 2020, released on January 31, 2020, in CG Docket Nos. 10–51 and 03–123. The Commission previously sought comment on the issue in a Further Notice of Proposed Rulemaking (*2019 VRS Program Management FNPRM*), published at 84 FR 26379, June 6, 2019. The full text of document FCC 20–7 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Congressional Review Act

The Commission sent a copy of document FCC 20–7 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 20–7 contains modified information collection requirements, which are not effective until approval is obtained from the Office of Management and Budget (OMB). As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public to comment on the information collection requirements as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might ''further reduce the information burden for small business concerns with fewer than 25 employees.'' *2019 VRS Program Management FNPRM.*

Synopsis

1. The Commission authorizes TRS Fund compensation of VRS providers for calls handled by CAs from home workstations, converting the existing pilot at-home call-handling program to a permanent one. VRS enables people with hearing or speech disabilities who use American Sign Language (ASL) to employ video equipment to communicate with voice telephone users. A video link allows a CA and the VRS user on the video side of the call to view and sign with each other, and the CA is also connected to a user on the voice side of the call via telephone. The CA interprets and relays the conversation back and forth between the two parties.

2. Allowing VRS CAs to work at home under appropriate regulation can improve the efficiency and effectiveness of VRS. Adding this flexibility enables VRS providers to attract and retain qualified CAs for whom working at the companies' call centers is not a practical option, and working at home can reduce CA stress and improve productivity and performance. Further, at-home call handling can improve network reliability and redundancy, and there is potential for cost savings. By largely retaining the safeguards established in

the *2017 VRS Improvements Order,* published at 82 FR 17754, April 13, 2017, the Commission can permit at-home VRS call handling without increasing the risk of waste, fraud, and abuse or endangering the confidentiality, reliability, and quality of VRS. In adopting these safeguards as minimum TRS standards, the Commission also simplifies the organization and wording of the rules to provide a clearer and more concise statement of provider obligations.

3. *Maximum percentage of at-home minutes.* The Commission raises the percentage cap on a provider's at-home call-handling to 50% of the provider's monthly VRS minutes, continuing the pilot-program approach whereby at-home workstations for VRS CAs complement rather than replace the functions performed at call centers.

4. *Personnel safeguards.* The Commission adopts a few substantive changes to these safeguards. *First,* rather than requiring CAs working from home to have three years of *VRS call center* experience, the Commission requires three years of full-time or equivalent part-time experience in professional ASL interpreting, whether in a community, business, VRS, or other context.

5. *Second,* the Commission retains the pilot program requirement for at-home CAs to receive training on compliance with at-home safeguards and the provider's specific protocols for handling calls at home. However, because the Commission's rules already require a detailed plan describing how the VRS provider will ensure compliance, the Commission deletes as redundant the specific requirement that VRS providers establish at-home protocols.

6. *Third,* while continuing to require that a CA be removed from at-home call handling if the CA violates the at-home safeguards or other Commission rules, the Commission deletes the specific requirements that VRS providers establish and provide to CAs in writing the specific grounds and process for terminating a CA's permission to work at home and to have at-home CAs sign written certifications as to their understanding of and commitment to comply with the Commission's rules. VRS providers are required to effectively train and supervise at-home CAs and are responsible for their CAs' compliance with the minimum TRS standards.

7. *Technical and environmental safeguards.* The Commission adopts the pilot program's technical and environmental safeguards without substantial changes. VRS providers must ensure that home workstations enable the provision of confidential and uninterrupted service to the same extent as the provider's call centers, and that calls handled by at-home CAs are seamlessly integrated into the provider's call-routing, distribution, tracking, and support systems. The VRS provider must ensure that each home workstation resides in a separate, secure location within the home, with restricted access; allows the CA to use all call-handling technology to the same extent as call-center CAs; is capable of supporting VRS in compliance with the Commission's mandatory minimum standards to the same degree as at call centers; is equipped with effective means to prevent eavesdropping and outside interruptions; and connects to the provider's network over a secure connection to ensure caller privacy. These performance-based standards allow providers flexibility in deciding how to achieve technical and environmental parity with call-center workstations, enabling the specific implementations to adapt and improve as technology changes.

8. The Commission provides the following clarifications to help VRS providers understand their compliance options. It is the VRS provider's responsibility to ensure that its CAs comply with the security-related safeguards for home workstations, which are intended to protect the confidentiality of user information and call content in accordance with longstanding TRS rules. Measures to ensure that home workstations have security equivalent to that of a call center may include, for example, password protection for equipment, a lock on the door to the CA's workspace, a virtual private network connection to the VRS provider's network, VRS call encryption, soundproofing material, and sound-dampening installations, such as a white noise machine. Although the VRS provider is responsible for ensuring secure communications between the home workstation and the provider's network, the rules do not require subscription to a separate broadband internet access line dedicated solely to that purpose.

9. Similarly, a VRS provider must ensure the overall redundancy of its communications system, which must be functionally equivalent to the redundancy achieved by telephone networks, and the inclusion of at-home interpreting may be part of a provider's plan. The Commission's rules do not require VRS providers to duplicate each element of redundancy, such as back-up power and business-grade internet access service, at each home workstation.

10. The Commission also clarifies that ''home workstation'' includes any work site that is used by a single CA or by multiple CAs working different shifts. If a home (other than a shared residence) or other work site is used simultaneously by more than one CA, that location will be deemed a VRS call center subject to the applicable Commission rules. This clarification ensures that the Commission is aware of the location and responsible supervisor for each such work site housing multiple CAs. However, if two or more CAs share a residence, it will not be deemed a ''call center'' even if they work there simultaneously.

11. *Emergency call handling.* The Commission retains the requirement that home workstations support the handling of emergency calls. The Commission does not allow the transfer of an emergency 911 call from an at-home CA to a call center CA, which would introduce delay. However, the Commission clarifies that, if the CAs available to immediately answer a 911 call include both call-center and at-home CAs, a VRS provider's call-routing algorithm may give preference to having the call answered at a call center, provided that such routing is consistent with the priority treatment required by the Commission's rules and does not delay answering the 911 call. The Commission will continue to assess the performance of at-home CAs in emergencies and will revisit this issue if the evidence warrants.

12. *Authorization to participate.* The Commission does not require currently certified VRS providers—each of whom was previously approved to participate in the pilot program—to seek further authorization for at-home call handling. A new applicant for VRS certification desiring to use at-home call handling must request such authorization as part of its application. As under the pilot program, such authorization requests must include a detailed description of how the applicant will comply with the at-home call-handling safeguards and the monitoring and oversight requirements. All VRS providers authorized for at-home call handling, including currently authorized providers, must inform the Commission in their annual VRS compliance reports of any substantive changes to their previously filed compliance plans. Because the at-home call-handling safeguards and requirements are part of the Commission's mandatory minimum standards, noncompliance with such standards, or failure to adhere to a filed at-home compliance plan, may be

considered in determining whether to grant or deny renewal of, or whether to suspend or revoke, a certification to provide VRS. Because it is redundant with existing rules relating generally to TRS providers, the Commission deletes the separate provision stating that VRS providers may also be subject to withholding, forfeitures, and penalties for noncompliant minutes handled by home workstations.

13. *Monitoring, oversight, auditing, and inspection requirements.* The Commission adopts without substantive change the pilot program's monitoring, oversight, auditing, and inspection requirements. These rules require VRS providers to inspect and approve each home workstation before it is used; equip each home workstation with monitoring technology sufficient to ensure that CA performance is supervised to the same extent as CAs in a call center; regularly analyze any data collected to address possible waste, fraud, and abuse; conduct random, unannounced inspections of at least 5% of home workstations per year; keep all records pertaining to home workstations for a minimum of five years; and allow review, audit, and inspection of home workstations and workstation records by the Commission and the TRS Fund administrator. The Commission clarifies that the rule requiring a VRS provider to conduct initial and periodic inspections of each home workstation does not specify how the inspections are conducted, provided that such inspections are consistent with the provider's at-home compliance plan and are effective in determining whether the CA's home workstation and workspace are in compliance with the at-home safeguards.

14. The Commission retains the pilot program's five-year retention period for at-home call-handling data, which will provide greater assurance that relevant information is available and can be reviewed, if necessary, in deciding whether renewal of a VRS provider's certification is warranted. This is consistent with the retention periods for other VRS provider records, such as the data supporting cost reports and claims for payment from the TRS Fund.

15. *Call detail reports and call center information.* The Commission adopts without substantive change the pilot program rules requiring monthly requests for compensation to include, for each at-home CA, a home workstation identification number (ID), street address, and CA ID; and the call center ID, location, and supervisor name for the call center supervising that CA. Collecting such data ensures that the TRS Fund administrator and the Commission are able to review, audit, and, if necessary, investigate the handling of calls at home workstations to the same extent as at call centers.

16. *Annual reports.* In lieu of the semi-annual report required under the pilot program, the Commission requires VRS providers to include at-home call-handling data in their annual VRS compliance reports. These reports must include the same information that has proved useful in evaluating call-handling performance under the pilot program: The total number of CAs who have worked at home during the reporting period; the total number of 911 calls handled during the reporting period; and the total number of complaints, if any, submitted to the provider regarding its at-home call-handling program or calls handled by at-home CAs.

17. The Commission deletes the specific pilot-program requirements for the submission of detailed information about the at-home CA screening process, at-home CA training materials and call-handling protocols, CA surveys and self-evaluations, CAs terminated from the program, inspections of home workstations, oversight of CAs working at home, tracking software reports, and costs of at-home call handling. In lieu of these voluminous reports, the Commission requires VRS providers to describe in their annual reports any substantive changes in the information previously submitted in the provider's at-home compliance plan.

Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980 as amended (RFA) the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Further Notice of Proposed Rulemaking. The Commission sought written public comment on the proposals in the *2019 VRS Program Management FNPRM,* including comment on the IRFA.

Need For, and Objectives of, the Rules

19. Document FCC 20–7 makes permanent, with some modifications, a pilot program that permits CAs to handle VRS calls at home, subject to safeguards designed to maintain service quality, protect call confidentiality, and prevent waste, fraud, and abuse. Adopting permanent rules for at-home call handling will expand the available pool of qualified sign-language interpreters who can work as VRS CAs and enable VRS providers to improve service quality and reliability.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

20. No comments were filed in response to the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

21. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Small Entities Impacted

22. The rules adopted in document FCC 20–7 will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. In allowing VRS CAs to handle VRS calls at-home on a permanent basis, the Commission retains some of the reporting, recordkeeping, and other compliance requirements previously applicable to VRS providers under the pilot program, while eliminating others.

24. A VRS provider or applicant for VRS certification may request authorization to provide at-home VRS call handling in conjunction with an application for certification to provide VRS or for renewal of such certification, or at any other time. As under the existing pilot program rules, the application must include a detailed description of how the applicant will comply with the at-home call handling safeguards and monitoring and oversight requirements.

25. To work at home, a CA must: Be a qualified interpreter with at least three years of professional interpreting experience, have the experience, skills, and knowledge necessary to effectively interpret VRS calls without in-person supervision, have learned the provider's protocols for at-home call handling, and understand and follow the TRS mandatory minimum standards. A VRS provider must provide on-the-job support equivalent to that provided to CAs working from call centers, including team interpreting and readily available supervisors to resolve problems that may arise during a relay call.

26. Requirements for at-home CA workstations remain substantially the same as under the pilot program. They must be placed in a separate location within the home, with restricted access and effective means to minimize the impact of outside noise and prevent eavesdropping; configured to enable the

CA to use all call-handling technology to the same extent as other CAs; capable of supporting VRS in compliance with the Commission's mandatory minimum standards; and connected to the provider's network over a secure connection to ensure caller privacy.

27. As under the pilot program, VRS providers must appropriately monitor and oversee the provision of at-home call handling. They must approve each at-home CA workstation and its home environment before activation; equip workstations with monitoring technology sufficient to ensure that off-site supervision approximates the level of supervision at the provider's call center; conduct random, unannounced inspections of at least 5% of all at-home workstations annually; and keep all records pertaining to at-home workstations for a minimum of five years.

28. As under the pilot program, for calls handled through at-home workstations, VRS providers must submit to the TRS Fund administrator in their monthly requests for compensation, in addition to the data otherwise required to receive payment for handling calls: A unique workstation ID, street address, and CA ID for each CA working at home; and the location and call center IDs of call centers providing supervision for at-home workstations, and the names of persons at such call centers responsible for oversight of these workstations.

29. VRS providers that provide at-home call handling must submit some but not all of the information previously required in implementation reports. The amended rule requires the submission of the total number of CAs handling VRS calls from home workstations over the preceding year; the number of 911 calls handled by the provider's home workstations; the total number of complaints, if any, submitted to the provider regarding its at-home call handling program or calls handled by at-home CAs; and a description of any substantive changes in the VRS provider's currently effective at-home call-handling compliance plan. Instead of being submitted every six months, as under the pilot program, these reports must only be filed annually, as part of the annual filings already required to demonstrate VRS providers' overall compliance with the Commission's VRS rules.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

30. The rule amendments adopted by the Commission do not increase VRS providers' compliance burden compared with the existing rules applicable under the pilot at-home call-handling program. Providing at-home call handling remains optional for any small entities certified to provide VRS. Maintaining most of the existing safeguards as conditions for permitting VRS providers to let CAs work at home will help prevent waste, fraud, and abuse; assure that mandatory minimum standards are met; and ensure the confidentiality, reliability, and quality of VRS. The requirements apply equally to all VRS providers. To the extent there are differences in operating costs resulting from economies of scale, those costs are reflected in the different rate structures applicable to large and small VRS providers.

31. To eliminate counterproductive effects and unnecessary compliance burdens, the Commission relaxes or eliminates some of the regulations applicable to VRS providers that choose to allow CAs to work at home. Instead of requiring at-home CAs to have a minimum of three years of VRS call center experience, as under the pilot program, the Commission only requires three years of full-time professional sign language interpreting, whether in community interpreting or VRS call handling. This modification will allow VRS providers to hire interpreters who have not previously been able to work in VRS. The Commission also eliminates the specific requirements for VRS providers to adopt written dismissal policies for at-home CAs and require such CAs to sign written compliance certifications, as VRS providers have sufficient incentives to ensure at-home CAs comply with the Commission's rules without adopting paperwork rules on these matters. Lastly, the Commission increases the limit on the percentage of minutes that may be handled by at-home CAs from 30% to 50%, increasing the flexibility of VRS providers, including small businesses, in hiring CAs.

32. The Commission authorizes each currently certified VRS provider to continue providing at-home call handling under the new rules, without additional filings. Only new applicants for VRS certification are required to include a request for authorization in their applications, if they wish to employ at-home CAs. Incorporating at-home call handling requirements into the recertification requirement streamlines the application process and aligns with existing, more general filing requirements. Similarly, the Commission eases the burden imposed by required reports on at-home call-handling compliance by reducing their frequency, eliminating most of the required information, including the detailed cost and workstation-monitoring data required under the pilot program, and consolidating the at-home call-handling compliance report with the more comprehensive annual filing already required to demonstrate a VRS provider's overall compliance with Commission's VRS rules.

Ordering Clauses

33. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, document FCC 20–7 is adopted, and part 64 of title 47 is amended.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; sec. 503, Pub. L. 115–141, 132 Stat. 348.

■ 2. Amend § 64.601 by redesignating paragraphs (a)(5) through (16) and (17) through (51) as paragraphs (a)(7) through (18) and (20) through (54) and adding new paragraphs (a)(5), (6), and (19) and paragraph (b) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(5) *At-home CA.* A communications assistant (CA) that a video relay service (VRS) provider authorizes to handle VRS calls at a home workstation.

(6) *At-home VRS call handling.* The handling of VRS calls by a CA at a home workstation.

* * * * *

(19) *Home workstation or home CA workstation.* A VRS CA's workstation in the CA's home or in any location where two or more CAs do not simultaneously handle VRS calls.

* * * * *

(b) For purposes of this subpart, all regulations and requirements applicable

to common carriers shall also be applicable to providers of interconnected VoIP service.

■ 3. Amend § 64.604 by revising paragraphs (b)(4)(iii), (b)(8), and (c)(5)(iii)(D)(*2*)(*ix*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(b) * * *

(4) * * *

(iii) A VRS provider shall not allow its CAs to handle VRS calls from a home workstation unless so authorized by the Commission.

* * * * *

(8) *At-home VRS call handling*—(i) *Limit on minutes handled.* In any calendar month, a VRS provider authorized by the Commission to employ at-home CAs may be compensated for minutes handled from home workstations up to a maximum of the greater of:

(A) Fifty percent (50%) of a VRS provider's total minutes for which compensation is paid in that month; or

(B) Fifty percent (50%) of the provider's average projected monthly conversation minutes for the calendar year, according to the projections most recently filed with the TRS Fund administrator.

(ii) *Personnel safeguards.* A VRS provider shall:

(A) Allow a CA to work at home only if the CA is a qualified interpreter with at least three years of professional interpreting experience, has the experience, skills, and knowledge necessary to effectively interpret VRS calls without in-person supervision, has learned the provider's protocols for at-home call handling, and understands and follows the TRS mandatory minimum standards set out in this section; and

(B) Provide at-home CAs equivalent support to that provided to CAs working from call centers, including, where appropriate, the opportunity to team-interpret and consult with supervisors, and ensure that supervisors are readily available to resolve problems that may arise during a relay call.

(iii) *Technical and environmental safeguards.* A VRS provider shall ensure that each home workstation enables the provision of confidential and uninterrupted service to the same extent as the provider's call centers and is seamlessly integrated into the provider's call routing, distribution, tracking, and support systems. Each home workstation shall:

(A) Reside in a separate, secure workspace where access during working hours is restricted solely to the CA;

(B) Allow a CA to use all call-handling technology to the same extent as call-center CAs;

(C) Be capable of supporting VRS in compliance with the applicable mandatory minimum standards set out in this section to the same degree as at call centers;

(D) Be equipped with an effective means to prevent eavesdropping and outside interruptions; and

(E) Be connected to the provider's network over a secure connection to ensure caller privacy.

(iv) *Monitoring and oversight obligations.* A VRS provider shall:

(A) Inspect each home workstation and its home environment to confirm their compliance with paragraph (b)(8)(iii) of this section before activating the workstation for use;

(B) Assign a unique workstation identification number to each VRS home workstation;

(C) Equip each home workstation with monitoring technology sufficient to ensure that off-site supervision approximates the level of supervision at the provider's call center and regularly analyze the records and data produced by such monitoring to proactively address possible waste, fraud, and abuse;

(D) Keep all records pertaining to home workstations, except records of the content of interpreted conversations, for a minimum of five years; and

(E) Conduct random and unannounced inspections of at least five percent (5%) of all home workstations, including their home environments, in each 12-month period.

(v) *Commission audits and inspections.* Home workstations and workstation records shall be subject to review, audit, and inspection by the Commission and the TRS Fund administrator and unannounced on-site inspections by the Commission to the same extent as call centers and call center records subject to the rules in this chapter.

(vi) *Monthly reports.* With its monthly requests for compensation, a VRS provider employing at-home CAs shall report the following information to the TRS Fund administrator for each home workstation:

(A) The home workstation identification number and full street address (number, street, city, state, and zip code);

(B) The CA identification number of each individual handling VRS calls from that home workstation; and

(C) The call center identification number, street address, and name of supervisor of the call center responsible for oversight of that workstation.

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(*2*) * * *

(*ix*) The call center (by assigned center ID number) or home workstation (by assigned home workstation identification number) that handled the call; and

* * * * *

■ 4. Amend § 64.606 by adding paragraphs (a)(4) and (g)(5) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) * * *

(4) *At-home VRS call handling.* An applicant for initial VRS certification that desires to provide at-home VRS call handling shall include a detailed plan describing how the VRS provider will ensure compliance with the requirements of § 64.604(b)(8).

* * * * *

(g) * * *

(5) If a VRS provider is authorized to provide at-home call handling, its annual compliance report shall include the following information:

(i) The total number of CAs handling VRS calls from home workstations over the preceding year;

(ii) The number of 911 calls handled by the provider's home workstations;

(iii) The total number of complaints, if any, submitted to the provider regarding its at-home call handling program or calls handled by at-home CAs; and

(iv) A description of any substantive changes in the VRS provider's currently effective at-home call-handling compliance plan.

* * * * *

[FR Doc. 2020–08097 Filed 5–7–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS–HQ–MB–2019–0105; FXMB 12330900000//201//FF09M13200]

RIN 1018–BE20

Revision of Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is revising

regulations governing the annual Federal Migratory Bird Hunting and Conservation Stamp Contest, also known as the Federal Duck Stamp Contest (Contest). We are instituting changes to design elements and judging requirements beginning with the 2020 Contest. Beginning in 2020, the Contest will include a permanent theme of ''celebrating our waterfowl hunting heritage,'' and it will be mandatory that each entry include an appropriate waterfowl hunting scene and/or accessory.

DATES: This rule is effective May 8, 2020.

ADDRESSES: You can view the 2020 Contest Artist Brochure by one of the following methods:

- *Duck Stamp Contest and Event Information: https://www.fws.gov/birds/get-involved/duck-stamp/duck-stamp-contest-and-event-information.php.*
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

You can view the proposed rule and the comments received on it at the Federal rulemaking portal at *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2019–0105.

FOR FURTHER INFORMATION CONTACT: Suzanne D. Fellows, Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, MS:MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–2145; *suzanne_fellows@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a Stamp annually. The revenue generated from the sale of the Stamp is used to buy or lease waterfowl habitat.

Since its enactment, the Federal Duck Stamp Program has become internationally known as one of the most popular and successful conservation programs ever initiated. Today, some 1.5 million Stamps are sold each year primarily to sportswomen and men prior to hunting related activities. As of 2019, Federal Duck Stamps have generated more than $1.1 billion for the preservation of over 6 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat conservation made possible by the program. Many of the Nation's endangered and threatened species find food or shelter on refuges preserved by Duck Stamp funds. Moreover, protected wetlands help dissipate storm water runoff, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

The first Federal Duck Stamp was designed by Jay N. ''Ding'' Darling, a nationally known political cartoonist for the Des Moines Register and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter. Regulations governing the Contest appear in title 50 of the Code of Federal Regulations at 50 CFR part 91.

To select each year's design, a panel of noted art, waterfowl, and philatelic authorities is appointed by the Secretary of the Interior (Secretary). Winners receive no compensation for their work except for a pane of their stamps signed by the Secretary. However, artists maintain the copyright to their artwork and may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

An annual rules brochure is published to announce the Contest and provide artists with official entry forms, a list of five or fewer eligible species that may be depicted, and instructions for submitting entries. Any changes to the Contest regulations must be completed via the formal rulemaking process.

On January 29, 2020, we published a proposed rule (85 FR 5182) to revise the Duck Stamp Contest regulations. We proposed to specify a permanent ''celebrating our waterfowl hunting heritage'' theme, which would require all qualified Contest entries to include waterfowl hunting-related accessories and/or themes. By requiring this theme, we would recognize the role of hunters, the primary purchasers of Duck Stamps, in raising over $1.1 billion for waterfowl habitat conservation through the sale of Duck Stamps. The January 29, 2020, proposed rule opened a 45-day public comment period, ending March 16, 2020, and invited comments on the proposed changes from all interested individuals and organizations.

Summary of Public Comments and Responses

We received 708 unique comments on the January 29, 2020, proposed rule (85 FR 5182), which are grouped under appropriate subject-matter headings and addressed below.

Proposed Requirement for a Permanent, Mandatory Waterfowl Hunting Theme

(1) *Comment:* Of the commenters indicating that they were in favor of the permanent theme ''celebrating our waterfowl hunting heritage'' and subsequent mandatory inclusion of a waterfowl hunting scene or accessory as part of the entry design, several expressed their opinions that it was important and long overdue to recognize hunters' contributions to conservation and the waterfowl hunting heritage.

Of the commenters who expressed that they opposed the proposed change for the Contest regulations, several commenters stated their belief that the Federal Duck Stamp already celebrates hunting, as the inclusion of hunting-related accessories, hunters, and hunting scenes are already permitted as an optional part of the Stamp design. Several believed that making such inclusion mandatory was divisive and would jeopardize the Stamp's appeal to non-hunters who are interested in purchasing the Stamp as a way of supporting conservation. Many of those against the change for the Contest did not want the inclusion of hunting-related items to detract from the primary waterfowl and habitat conservation focus of the Stamp. A few commenters expressed the opinion that they were not supportive of a permanent change but proposed a schedule for the ''celebrating our waterfowl hunting heritage'' theme on a rotating and known cycle.

Service Response: The Service is instituting a permanent theme of ''celebrating our waterfowl hunting heritage'' that will necessitate the mandatory inclusion of hunting-related accessories in every entry beginning with the 2020 Contest. This change will recognize the contributions of hunters and hunting to waterfowl and wetland conservation.

Inclusion of a Theme

(2) *Comment:* Several commenters felt that requirements for a theme be implemented only with careful consideration of all aspects of the Stamp program, artists, and purchasers of the Stamp. Suggestions were made that proposed themes should have an intrinsic biological or conservation message or celebrate other user and Stamp purchaser groups. Several commenters believed that the inclusion of an annual theme would make a poor-quality stamp and would not significantly improve the resulting design. Several also suggested that the inclusion of objects (such as humans or dogs) to satisfy the requirement of

addressing the theme would detract from the natural beauty of the depicted waterfowl. Several commented that only specific species would be eligible with a mandatory theme, leading the Stamps and artist prints to become repetitive and boring. Commenters also noted that there are relatively few accessories to any theme that could be included in a composition due to the size, scale, and other restrictions of the artwork.

Several commenters suggested, rather than using the Stamp itself to illustrate the theme, that the theme be celebrated on the carrier and other products produced to market the Stamp.

Service Response: The theme of ''celebrating our waterfowl hunting heritage'' will be permanent beginning with the 2020 Contest, which will require the inclusion of a waterfowl hunting-related accessory or theme in the design of the entry.

Regarding the inclusion of objects in the Stamps, several previous Stamps contained objects such as decoys, dogs, and hunters that have made memorable Stamps. The judges' mandate will be that they choose the design that will best make an attractive Federal Duck Stamp that illustrates the theme ''celebrating our waterfowl hunting heritage.''

Hunter Recognition

(3) *Comment:* Most commenters applauded the huge financial commitment hunters annually put toward wildlife conservation.

One commenter noted that celebrating hunters for legally doing what they are required to do (purchase a Stamp) was an interesting concept. The commenter, who self-identified as a hunter, raised the question of how many hunters would purchase the Duck Stamp if it was not mandatory for them to do so.

Many commenters who purchased Stamps for reasons other than waterfowl hunting did not feel that their contributions and purchases of Duck Stamps were being acknowledged or appreciated. Others expressed the desire that, although hunters in the past may have been financially responsible for raising conservation dollars, they wanted non-hunters to be encouraged to purchase Stamps and would find it harder to convince them if there was a hunting theme.

Service Response: The recognition of waterfowl hunters' contributions to wildlife and habitat conservation will further the Department of the Interior's priorities of increased sportsperson access on public lands. By focusing on the long heritage of waterfowl hunting on the Federal Duck Stamp, we acknowledge the contributions of waterfowl hunters as conservationists.

Further, upon its conception in 1934, the proper name of the Federal Duck Stamp was the ''Migratory Bird Hunting Stamp.'' The name became ''Migratory Bird Hunting and Conservation Stamp'' with the 1977–78 Stamp to reflect the broader conservation aspects and primary goal of the Stamp. While the theme and inclusion of a hunting-related accessory and/or scene will be mandatory for the Federal Duck Stamp design, the central focal point and dominant aspect of each entry will still be the live portrayal of at least one of that year's five eligible waterfowl species.

Raising Funds for Wildlife Habitat Conservation

(4) *Comment:* Commenters questioned whether the proposed change would increase interest in the Duck Stamp Program and boost the annual sale of Stamps. Several believed that the hunting theme would alienate non-consumptive buyers, such as stamp collectors, bird watchers, or those expressing support for the National Wildlife Refuge System. Although these discretionary purchasers obtain the Stamp for reasons other than ''because it is mandatory,'' their contribution also goes to the conservation of habitat.

Many commenters mentioned the lack of a solid marketing strategy for Duck Stamps, the lack of baseline data on who purchases the Stamp, and the lack of funding and personnel in the Duck Stamp Office.

Service Response: The Service made no change to the final rule in response to these comments. The Federal Duck Stamp has been mandatory to hunt waterfowl since 1934 and has been incredibly successful in conserving habitat for wildlife. By using the theme ''celebrating our waterfowl hunting heritage,'' we are recognizing the conservation contributions made by millions of waterfowl hunters over this period. The inclusion of this theme provides the opportunity to present information on the history and tradition of waterfowl hunting in the United States.

We appreciate those who voluntarily help fund wildlife habitat conservation through their purchase of Federal Duck Stamps and will continue to encourage non-consumptive wildlife resource users, stamp collectors, and other conservationists to purchase Federal Duck Stamps to support migratory bird habitat conservation. Many individuals, friends groups and birding groups have made a concerted effort over the past several years to encourage purchase of the Stamp by bird watchers, photographers, and other interested in habitat conservation. We hope that current non-consumptive purchasers will recognize that hunting is part of the tradition behind the Federal Duck Stamp and will continue to support conservation afforded by Stamp sales. The inclusion of the ''celebrating our waterfowl hunting heritage'' theme provides the opportunity to present information on the history and tradition of waterfowl hunting in the United States.

Comments regarding marketing of the Duck Stamp, and funding and staffing of the Duck Stamp Program, are beyond the scope of this rule. The need for baseline data on who purchases the Stamp may be sought to develop a marketing strategy for the Duck Stamp Office. The Service welcomes other ideas that may help promote, market, and sell more Duck Stamps, in particular to non-hunters.

Artist Issues

(5) *Comment:* Several artists expressed their discouragement that the Service has not provided enough time to execute their designs between the time the rules are finalized for 2020 and the Contest due date. Most artists expressed resentment of changes that are not finalized more than 12 months ahead of the beginning of the Contest year and would prefer that we provide final Contest rules and each year's eligible species list at least 3 years ahead of the annual Contest open date (June 1). Adding mandatory elements with less than a full year to research and gather reference materials, design, and then execute their entries will prevent some artists from entering the 2020 Contest.

Several artists felt that the mandatory ''inclusion of a hunting accessory'' would alienate or discourage many artists. By changing hunting elements from optional to mandatory, several artists stated that they will not enter the Contest on principle. Not all artists are waterfowl hunters or are part of the hunting culture, so they expressed the opinion that they would be at a severe disadvantage as to what qualifies as a hunting accessory. It was suggested that ''hunting accessories'' be kept as ''optional'' and the rules to read ''recommended but not mandatory.''

Another primary concern by artists was that a mandatory theme hampered their creativity. Several felt that the size, position, media, and other restrictions placed on the artwork were already making it difficult for artists to compose their entries.

One commenter analyzed the entries from the 2018 Contest when the

''celebrating our waterfowl hunting heritage'' theme was mandatory. The commenter remarked on the lack of racial, sexual, generational, and cultural diversity among the scenes portraying hunters. A second commenter was offended that indigenous hunting methods were not described in the rule. A third commented that the lack of rules in the native languages of people in the U.S. States and Territories was prejudicial and discouraged their ability to enter the Contest.

A final commenter felt that it was difficult for anyone else to interpret an artist's idea of a ''hunting scene'' and others would have difficulty determining what qualified as a ''hunting element.''

Service Response: We understand the artists' desire to have rules available to them as early as possible and appreciate the amount of preparation and research needed before artists can design and execute their entries. Unfortunately, we are unable at this time to provide final rules 12 to 36 months ahead of the relevant Contest date. By making this a permanent theme with the mandatory inclusion of waterfowl hunting accessories, artists are hereby informed as to future Contest design requirements. Having a permanent mandatory theme will also allow the Service to set the eligible species lists for successive Contests at least 3 years in advance.

It is not our intention to alienate potential Duck Stamp Contest artists. We hope that the theme will encourage both artists and Stamp purchasers to learn more about the rich tradition of waterfowl hunting. The Federal Duck Stamp has been mandatory to hunt waterfowl since 1934 and has been incredibly successful in conserving habitat for wildlife. By using the theme ''celebrating our waterfowl hunting heritage,'' we are recognizing the conservation contributions made by millions of waterfowl hunters over this period. The inclusion of this theme provides the opportunity to present information on the history and tradition of waterfowl hunting in the United States.

Decoys and hunting dogs are among the examples of elements that can be included to satisfy this requirement.

The Duck Stamp Office staff does not like to disqualify any entry and prides itself on advocating for and working with the artists. If an entry is submitted without an identifiable hunting accessory, staff would contact the artist for clarification prior to the Contest start date. In the event that there is a disagreement of the applicability of an element, the Contest Coordinator would be consulted and the argument may be presented to the judging panel for their decision.

It is hoped that the changing demographics of the country will encourage more diversity among artists and in entries. The Service will endeavor to have translations of the entire Contest Brochure available in different languages in the future and will consider developing a single-page Contest Brochure for translation and wider distribution. The Service will rely on liaisons and partnerships to increase and broaden opportunities to promote the Duck Stamp among Tribes, Alaska Natives, and Hawaiian and other Pacific and Caribbean residents living in the States and U.S. Territories.

Judging Requirement/Judge Competency

(6) *Comment:* There was no opposition expressed to the requirement that all selected contest judges have an understanding and appreciation of the waterfowl hunting heritage and the ability to recognize waterfowl hunting accessories. Rather, several commenters expressed the opinion that waterfowl hunters were the most qualified, or the only ones qualified to judge the Contest.

Other comments were provided on the number and quality of judges on the panel. Proposals ranged from increasing the number of judges from five to seven and dropping the high and low scores; providing judges with a briefing on how to vote; and having the judges pass a competency test.

Service Response: The Service made no changes to the final rule in response to these comments. We will continue to develop a slate of qualified nominees to be judges that will be forwarded to the Secretary of the Interior, or his or her designee, for concurrence. All potential judges will be deemed as qualified if they have one or more of the following qualifications: Recognized art credentials; knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species; an understanding of the wildlife sporting world in which the Duck Stamp is used; an awareness of philately and the role the Duck Stamp plays in stamp collecting; and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community. All selected Contest judges will be vetted prior to nomination to ensure that they have an understanding and appreciation of the waterfowl hunting heritage.

The ability to recognize all waterfowl hunting accessories may necessitate additional discussion and information provided by law enforcement officers (for legality of methods) as well as cultural experts by Contest officials prior to the actual judging process. The Contest Coordinator will provide any necessary background provided from these discussions in his or her briefing remarks with the Contest judges.

The number of judges and testing them for their abilities is outside the scope of this rulemaking.

Duck Stamp and Wildlife Art Collectors

(7) *Comment:* Comments from those self-identifying as Duck Stamp collectors were mixed. Some believed that their collecting habits would decrease if the traditional Duck Stamp design was radically altered, while others believed that some variation from the standard design could be well accepted.

Comments were also received from wildlife art collectors and those who collect sporting art. Several felt that imposing the theme and mandatory inclusion of hunting-related accessories on Duck Stamps would further restrict print sales and diminish the value of sporting art.

Service Response: The Service made no change to the final rule in response to these comments. We do not believe that the winning artwork will create a Stamp that will be radically different from historical Stamps.

Depiction of Firearms and Gun Violence

(8) *Comment:* Several commenters expressed negative opinions regarding hunting, as well as the possible representation of firearms as part of the Stamp design.

Service Response: Issues regarding gun violence are beyond the scope of this rule. Hunting is a recognized wildlife management tool, and the Service supports the legal and ethical right of lawful hunters to use firearms to hunt wildlife. Contest entries may include other appropriate items to fulfill the thematic requirement that a waterfowl hunting-related accessory and/or scene be included in a contestant's design.

Amendments to Existing Regulations

The Service made no changes to the final rule in response to comments received from the proposed rule. As we proposed on January 29, 2020, at 85 FR 5182, this rule incorporates the permanent change to adopt the theme of ''celebrating our waterfowl hunting heritage'' and the mandatory inclusion of a waterfowl hunting-related scene or accessory in every entry beginning with the 2020 Contest.

Accordingly, this rule sets forth:

• The Contest restriction on subject matter for entries at § 91.14(b).
• Judge qualifications at § 91.21(b).
• Language to reflect the permanent mandatory theme at § 91.23.

Effective Date

We are making this rule effective upon publication (see **DATES**, above). We provided a 45-day public comment period for the January 29, 2020, proposed rule (85 FR 5182). We have determined that any further delay in implementing these regulations would not be in the interest of Contest participants, in that a delay would hinder their ability to address the theme required for the 2020 Contest in submitted artwork. This rule does not impact the public generally. Rather, it impacts the small number of artists who submit artwork to the annual Duck Stamp Contest. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

Required Determinations

For this final rule, we affirm the following required determinations provided in our January 29, 2020, proposed rule (85 FR 5182):
• National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
• Endangered Species Act (16 U.S.C. 1531 *et seq.*);
• Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
• Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
• Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*);
• Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*); and
• Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Regulation Promulgation

For the reasons stated in the preamble, we amend 50 CFR part 91, as set forth below:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

■ 2. Revise § 91.14(b) to read as follows:

§ 91.14 Restrictions on subject matter for entry.

* * * * *

(b) *Mandatory waterfowl hunting components.* In addition to the restrictions set forth in paragraph (a) of this section, all designs must also include appropriate waterfowl hunting-related accessories or elements celebrating the Federal Duck Stamp's longstanding connection as part of our Nation's waterfowl hunting heritage and the contributions to conservation made by waterfowl hunters. Designs may include, but are not limited to, waterfowl hunting dogs, waterfowl hunting scenes, waterfowl hunting equipment, waterfowl decoys, or other designs that represent our waterfowl hunting heritage. The designs chosen will clearly meet the theme of ''celebrating our waterfowl hunting heritage.''

■ 3. Revise § 91.21(b) to read as follows:

§ 91.21 Selection and qualification of contest judges.

* * * * *

(b) *Qualifications.* The panel of five judges will comprise individuals who have one or more of the following prerequisites: Recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community, and an understanding and appreciation of waterfowl hunting heritage and the ability to recognize waterfowl hunting accessories.

* * * * *

■ 4. Revise § 91.23 to read as follows:

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition, suitability for reduction in the production of a stamp, and how well they illustrate the theme of ''celebrating our waterfowl hunting heritage.''

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–09908 Filed 5–6–20; 11:15 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200505–0127]

RIN 0648–BJ48

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2020 Management Measures

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

ACTION: Final rule.

SUMMARY: Through this final rule, NMFS establishes fishery management measures for the 2020 ocean salmon fisheries off Washington, Oregon, and California and the 2021 salmon seasons opening earlier than the effective date of the 2021 rule, which is expected to be no later than May 16, 2021, under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Specific fishery management measures vary by fishery and by area, and establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 nautical miles (nmi)) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and to provide fishing opportunity for inside fisheries (fisheries occurring in state internal waters).

DATES: This final rule is effective from 0001 hours Pacific Daylight Time, May 6, 2020, until the effective date of the 2021 management measures, as published in the **Federal Register**.

ADDRESSES: The documents cited in this document are available on the Pacific Fishery Management Council's (Council's) website (*www.pcouncil.org*).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California

are managed under a ''framework'' Fishery Management Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**. 50 CFR 660.408 governs the establishment of annual management measures.

The management measures for the 2020 and early 2021 ocean salmon fisheries that are implemented in this final rule were recommended by the Council at its April 4 to 10, 2020, meeting.

Process Used To Establish 2020 Management Measures

The Council announced its annual preseason management process for the 2020 ocean salmon fisheries in the **Federal Register** on December 26, 2019 (84 FR 70954), and on the Council's website at *www.pcouncil.org.* NMFS published an additional notice of opportunities to submit public comments on the 2020 ocean salmon fisheries in the **Federal Register** on February 12, 2020 (85 FR 7977). These notices announced the availability of Council documents, the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on the development of the 2019 ocean salmon fisheries. The agendas for the March and April Council meetings were published in the **Federal Register** (85 FR 7922, February 12, 2020, and 85 FR 15433, March 18, 2020, respectively) and posted on the Council's website prior to the actual meetings.

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared four reports for the Council, its advisors, and the public. All four reports were made available on the Council's website upon their completion. The first of the reports, ''Review of 2019 Ocean Salmon Fisheries,'' was prepared in February when the first increment of scientific information necessary for crafting management measures for the 2020 and early 2021 ocean salmon fisheries became available. The first report summarizes biological and socio-economic data for the 2019 ocean salmon fisheries and assesses the performance of the fisheries with respect to the Council's 2019 management objectives as well as providing historical information for comparison. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2020 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2020 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2019 regulations and regulatory procedures were applied to the projected 2020 stock abundances. The completion of PRE I is the initial step in developing and evaluating the full suite of preseason alternatives.

Following completion of the first two reports, the Council met in Rohnert Park, CA, from March 3 to 9, 2020, to develop 2020 management alternatives for proposal to the public. The Council proposed three alternatives for commercial and recreational fisheries management, and six alternatives for treaty Indian fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to ensure that stocks of coho and Chinook salmon meet conservation goals, and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2020 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2020 management alternatives.

The Council sponsored public hearings via webinar to receive testimony on the proposed alternatives on March 23, 2020, for Washington and Oregon, and on March 24, 2020, for California. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office and electronic submissions via the Council's electronic portal.

The Council met from April 4 to 10, 2020, via webinar, to adopt its final 2020 salmon management recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2020 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. After the Council took final action on the annual ocean salmon specifications in April, it transmitted the recommended management measures to NMFS, published them in its newsletter, and posted them on the Council website (*www.pcouncil.org*).

The annual salmon management cycle historically begins May 1 and continues through April 30 of the following year. This final rule is effective on May 6, rather than the traditional May 1 date, to accommodate the rulemaking process, as was done in 2019. The rule implementing the salmon fishery management measures in 2019 was effective until the effective date of this 2020 rule and governs fisheries that begin prior to May 6, 2020 (84 FR 19729, May 6, 2019). The majority of fisheries recommended by the Council for 2020 begin after May 6, 2020 and are authorized under this rule. Fisheries scheduled to begin before May 6, 2020, which were authorized under the 2019 rule, are the commercial fisheries from Cape Falcon, OR, to the Oregon/California border and from Pigeon Point, CA, to the U.S./Mexico border, recreational fisheries from Cape Falcon, OR, to Humbug Mountain, OR, and from Horse Mountain, CA, to the U.S./Mexico border, and treaty Indian troll fisheries north of Cape Falcon. For purposes of analyzing the impacts of these fisheries on individual stocks relative to the applicable objectives in the FMP, Council analysts assumed fisheries prior to May 6, 2020, would be conducted under the 2019 management measures for the May 1 to May 6 time period, consistent with the effective date of the 2019 salmon management measures rule and subsequent inseason actions under 50 CFR 660.409.

National Environmental Policy Act (NEPA)

The environmental assessment (EA) for this action comprises the Council's documents described above (PRE I, PRE II, and PRE III), providing analysis of environmental and socioeconomic effects under NEPA. The EA and its related Finding of No Significant Impact are posted on the NMFS West Coast Region website (*www.fisheries.noaa.gov/region/west-coast*).

Resource Status

Stocks of Concern

The FMP requires that the fisheries be shaped to meet escapement-based Annual Catch Limits (ACLs), Endangered Species Act (ESA) consultation requirements, obligations of the Pacific Salmon Treaty (PST)

between the U.S. and Canada, and other conservation objectives detailed in the FMP. In addition, under the MSA, all regulations must be consistent with other applicable law. Because the ocean salmon fisheries are mixed-stock fisheries, this requires ''weak stock'' management to avoid exceeding limits for the stocks with the most constraining limits. Abundance forecasts for individual salmon stocks can vary significantly from one year to the next; therefore, the stocks that constrain the fishery in one year may differ from those that constrain the fishery in the next. For 2020, several stocks will constrain fisheries; these are described below.

Fisheries south of Cape Falcon, are limited in 2020 primarily by conservation concerns for Klamath River fall-run Chinook salmon (KRFC) and, north of the Oregon/California border, ESA conservation requirements for Oregon Coastal natural (OCN) coho salmon. The KRFC stock was determined in 2018 to be overfished; the Council has developed a rebuilding plan which NMFS has proposed to approve (85 FR 6135, February 4, 2020). Fisheries north of Cape Falcon are limited by conservation concerns for Washington coastal coho salmon stocks, primarily Queets River natural (Queets) and Grays Harbor coho salmon, and ESA conservation requirements for Puget Sound Chinook salmon, Lower Columbia River natural (LCR) Chinook salmon and Lower Columbia River natural (LCN) coho salmon. Queets coho salmon was determined in 2018 to be overfished; the Council has developed a rebuilding plan which NMFS is considering for approval. The limitations imposed in order to protect these stocks are described below. The alternatives and the Council's recommended management measures for 2020 were designed to avoid exceeding these limitations. In addition to KRFC and Queets coho salmon, three other salmon stocks (Sacramento River fall-run Chinook salmon (SRFC), Strait of Juan de Fuca natural coho salmon, and Snohomish River natural coho salmon) were also determined in 2018 to be overfished, and the Council has recommended rebuilding plans for these stocks. NMFS proposes to approve the rebuilding plan for SRFC (85 FR 6135, February 4, 2020) and is considering approval for the Strait of Juan de Fuca and Snohomish River natural coho salmon stocks, in addition to Queets coho salmon mentioned above. Meeting conservation objectives for these three overfished stocks (SRFC, Strait of Juan de Fuca, and Snohomish River natural coho salmon) will not constrain fisheries in 2020.

KRFC (not ESA-listed): Abundance for this non-ESA-listed stock in recent years has been historically low, and the stock is currently overfished based on spawning escapement in 2015, 2016, and 2017. The FMP defines ''overfished'' status in terms of a three-year geometric mean escapement level and whether it is below the minimum stock size threshold (MSST). Forecast abundance for KRFC in 2020, 186.6 thousand, is the seventh lowest on record; the record low was in 2017, 54.2 thousand. Fisheries in 2020 will be constrained in Oregon and California to meet the requirements of the KRFC harvest control rule in the FMP and the rebuilding plan, to meet a 25.0 percent *de minimis* exploitation rate, which results in a natural-area spawning escapement projection of 36,206, which is greater than the MSST, but below the maximum sustainable yield spawner escapement (S_{MSY}). Fisheries south of Cape Falcon, particularly in the Klamath Management Zone (KMZ) from Humbug Mountain, OR, to Horse Mountain, CA, will be constrained to meet this goal, but less so than in 2017 when there was a complete closure of commercial and recreational ocean salmon fishing in the KMZ.

OCN coho salmon (ESA-listed threatened): OCN coho salmon is an aggregate coho salmon stock that largely corresponds to the Oregon coast coho salmon Evolutionarily Significant Unit (ESU) and is a component of the Oregon Production Index (OPI) area coho. Allowable fishery impacts on OCN coho salmon are determined annually using a matrix that considers parental escapement and OPI smolt-to-jack survival. For 2020, both of these criteria are in the ''low'' category, which limits the total allowable OCN coho salmon exploitation rate to 15.0 percent. OPI area coho production is dominated by hatchery coho salmon. In 2020, the forecast abundance of hatchery produced OPI area coho is only 20 percent of the 2019 forecast. Out of concern that the low abundance of hatchery coho salmon would result in increased fishery impacts on OCN coho salmon, the Council recommended fisheries that are conservative in their impacts on OCN coho salmon, this will constrain fisheries, primarily in Oregon.

Queets coho (not ESA-listed): The Queets coho stock is managed in Council-area and northern fisheries subject to the provisions of the PST. In 2018, NMFS determined that Queets coho was overfished, based on escapements in 2014, 2015, and 2016. Under the FMP and the Council's recommended rebuilding plan, Queets coho is managed for an escapement of 5.8 thousand (S_{MSY}) natural adult spawners. The forecast abundance of Queets coho in 2020 is 7.8 thousand coho, compared to an average of 14.3 thousand coho over the past decade (2010–2019). Under the criteria of the PST's Southern Coho Management Plan, Queets coho salmon abundance is in the ''moderate'' category in 2020 and subject to a total exploitation rate limit of 26 percent. Meeting the escapement goal and exploitation rate limit for Queets coho salmon in 2020 will constrain fisheries north of Cape Falcon.

Grays Harbor coho salmon (not ESA-listed): The Grays Harbor coho salmon stock, like Queets coho salmon, is managed in Council-area and northern fisheries subject to provisions of the PST. The forecast abundance of Grays Harbor coho salmon in 2020 is 50 thousand coho, compared to an average of 95.5 thousand coho over the past decade (2010–2019). Under the criteria of the PST's Southern Coho Management Plan, Grays Harbor coho salmon abundance is in the ''moderate'' category in 2020 and subject to a total exploitation rate limit of 29 percent. Meeting the exploitation rate limit for Grays Harbor coho salmon in 2020 will constrain fisheries north of Cape Falcon.

Puget Sound Chinook salmon (ESA-listed threatened): Impacts on the threatened Puget Sound Chinook salmon ESU from Council-managed fisheries are addressed through a 2004 biological opinion. Generally, these impacts are quite low and within the range contemplated in the 2004 opinion. However, because the Puget Sound Chinook salmon ESU is also impacted by salmon fisheries in Puget Sound and associated freshwater fisheries (collectively referred to as ''inside'' fisheries), the Council and NMFS usually consider the impacts of Council-area and inside fisheries on Puget Sound Chinook salmon together, and they base their analysis of the combined fishery impacts on a package of Puget Sound fisheries to which the State of Washington and Indian tribes with treaty rights to fish in Puget Sound have agreed through a negotiation process, the North of Falcon forum, that runs concurrent with the Council's salmon season planning process. In 2020, fisheries north of Cape Falcon will be constrained to avoid jeopardy to the Puget Sound Chinook salmon ESU, when combined with inside fisheries.

LCR Chinook salmon (ESA-listed threatened): The LCR Chinook salmon ESU comprises a spring component, a ''far-north'' migrating bright component, and a component of north migrating

tules. The bright and tule components both have fall run timing. There are twenty-one separate populations within the tule component of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Council fisheries in the area north of Cape Falcon. Under the provisions of NMFS' 2012 biological opinion on the impact of Council-area salmon fisheries on LCR Chinook salmon, NMFS uses an abundance-based management (ABM) framework to set an annual exploitation rate limit for LCR tule Chinook salmon in ocean salmon fisheries and in-river fisheries below Bonneville Dam, collectively. Applying the ABM framework to the 2020 preseason abundance forecast, the total LCR tule exploitation rate is limited to a maximum of 38 percent. Fisheries will be constrained north of Cape Falcon in 2020 such that, when combined with all other salmon fisheries in the ocean and in the Columbia River below Bonneville Dam, the ESA requirement is met.

Lower Columbia River natural (LCN) coho salmon (ESA-listed threatened): Like OCN coho salmon, LCN coho salmon is a component of the OPI area coho. In 2015, NMFS conducted an ESA section 7 consultation and issued a biological opinion regarding the effects of Council fisheries and fisheries in the Columbia River on LCN coho salmon. The opinion analyzed the use of a harvest matrix to manage impacts to LCN coho salmon. Under the matrix the allowable harvest in a given year depends on indicators of marine survival and parental escapement to spawning. In 2020, ocean salmon fisheries under the Council's jurisdiction in 2020, and commercial and recreational salmon fisheries in the mainstem Columbia River below Bonneville Dam, including select area fisheries (*e.g.,* Youngs Bay), must be managed subject to a total exploitation rate limit on LCN coho not to exceed 18 percent. In 2020, LCN coho will constrain Council-area salmon fisheries, particularly those north of Cape Falcon, such that, when combined with commercial and recreational fisheries in the mainstem Columbia River, the ESA requirement is met.

Other Resource Issues

Southern Resident Killer Whale (SRKW) (ESA-listed endangered): The SRKW distinct population segment (DPS) was listed under the ESA as endangered in 2005 (70 FR 69903, November 18, 2005). NMFS issued a biological opinion analyzing the effects of the ocean salmon fisheries on SRKW in 2009 which concluded that these fisheries are not likely to jeopardize SRKW. NMFS reinitiated consultation on the effects of the ocean salmon fisheries on SRKW on April 12, 2019. To inform the new consultation, the Council formed an *ad hoc* workgroup (SRKW Workgroup), including salmon and SRKW experts, at its April 2019 meeting. The Council endorsed a schedule for the workgroup to reassess the effects of Council-area salmon fisheries on SRKW. The SRKW Workgroup was also tasked to, as needed, develop a long-term approach that may include proposed conservation measure(s) or management tool(s) that limits PFMC fishery impacts to prey availability for SRKW relative to implementing the FMP. The SRKW workgroup presented its risk assessment report to the Council at the March 2020 Council meeting.

The SRKW Workgroup report suggests that Chinook salmon abundance north of Cape Falcon is consistently more important to SRKW than abundance in areas south of Cape Falcon. It noted that the whales are observed north of Cape Falcon in all seasons and likely have some direct overlap with the salmon fisheries every year, whereas there is likely limited overlap with the salmon fisheries in some years south of Cape Falcon. Furthermore, the contribution of Chinook salmon south of Cape Falcon to SRKW diet may also be largely confined to the winter/spring season, after maturing fall-run Chinook salmon adults that escaped the current year's fishery leave the ocean. The report also provides evidence that after executing Council-area salmon fisheries, the percent of prey remaining and available to SRKW has increased coastwide over the last several decades. NMFS remains committed to this collaborative effort with the Council to develop a long-term approach that ensures the Council's harvest management is responsive to the status of SRKW and will support SRKW recovery to the extent necessary.

For fisheries in 2020, NMFS explained in our guidance letter to the Council that ''NMFS is most concerned when Chinook salmon abundance in [North of Falcon] waters is critically low, and there may be insufficient foraging opportunities for SRKWs.'' NMFS concluded in our guidance letter that ''[i]f the [North of Falcon] abundance is equal to or less than the average of the seven lowest years of abundance . . . , the Council should implement precautionary conservation measures for Council salmon fisheries that affect the abundance in [North of Falcon] waters . . . to benefit the whales.'' Guidance with respect to SRKW was largely informed by the SRKW Workgroup's risk assessment. The Council's recommended management measures for 2020 are consistent with NMFS' guidance.

After receiving the Council's recommended management measures for 2020, NMFS completed the Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Conference Opinion Consultation on Implementation of the Pacific Fishery Management Council Salmon Fishery Management Plan in 2020 for Southern Resident Killer Whales and their Current and Proposed Critical Habitat. The biological opinion concluded that the 2020 Council-area ocean salmon fisheries would not jeopardize the SRKW DPS and does not aversely modify critical habitat.

Annual Catch Limits and Status Determination Criteria

Annual Catch Limits (ACLs) are set for two Chinook salmon stocks, SRFC and KRFC, and one coho stock, Willapa Bay natural coho. The Chinook salmon stocks are indicator stocks for the Central Valley Fall Chinook complex and the Southern Oregon/Northern California Chinook complex, respectively. The Far North Migrating Coastal Chinook salmon complex (FNMC) includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon and other fisheries that occur north of the U.S./Canada border. No ACL is set for FNMC stocks because they are managed subject to provisions of the PST between the U.S. and Canada. Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery produced, and are managed consistent with ESA consultations or hatchery goals. Willapa Bay natural coho is the only coho stock for which an ACL is set, as the other coho stocks in the FMP are either ESA-listed, hatchery produced, or managed under the PST.

ACLs for salmon stocks are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. ACLs are set based on the annual potential spawner abundance forecast and a fishing rate reduced to account for scientific uncertainty. For SRFC in 2020, the overfishing limit (OFL) is S_{OFL} = 473,183 (potential spawner abundance forecast) multiplied by $1-F_{MSY}$ $(1-0.78)$ or 104,100 returning spawners (F_{MSY} is the fishing mortality rate that

would result in maximum sustainable yield—MSY). S_{ABC} is 473,183 multiplied by $1-F_{ABC}$ $(1-0.70)$ (F_{MSY} reduced for scientific uncertainty = 0.70) or 141,955. The S_{ACL} is set equal to S_{ABC}, *i.e.,* 141,955 spawners. The adopted management measures provide for a projected SRFC spawning escapement of 233,174. For KRFC in 2020, S_{OFL} is 48,274 (potential spawner abundance forecast) multiplied by $1-F_{MSY}$ $(1-0.71)$, or 13,999 returning spawners. S_{ABC} is 48,274 multiplied by $1-F_{ABC}$ $(1-0.68)$ (F_{MSY} reduced for scientific uncertainty = 0.68) or 15,448 returning spawners. S_{ACL} is set equal to S_{ABC}, *i.e.,* 15,448 spawners. When KRFC potential spawner abundance is projected to be less than 54,267 natural-area adults, fisheries are managed under the de minimis portion of the control rule, which allows for some fishing opportunity but results in the expected escapement falling below 40,700 natural-area adult spawners (S_{MSY}). The adopted management measures provide for a projected KRFC spawning escapement of 36,206. For Willapa Bay natural coho in 2020, S_{OFL} = 32,868 (potential spawner abundance forecast) multiplied by $1-F_{MSY}$ $(1-0.74)$ or 8,546 returning spawners. S_{ABC} is 32,868 multiplied by $1-F_{ABC}$ $(1-0.70)$ (F_{MSY} reduced for scientific uncertainty = 0.70) or 9,860. S_{ACL} is set equal to S_{ABC}, *i.e.,* 9,860 spawners. The adopted management measures provide for a projected Willapa Bay natural coho ocean escapement of 27,700. In summary, for 2020, projected abundance of the three stocks with ACLs (SRFC, KRFC, and Willapa Bay natural coho), in combination with the constraints for ESA-listed and non-ESA-listed stocks, are expected to result in escapements greater than required to meet the ACLs for all three stocks with defined ACLs.

As explained in more detail above under ''Stocks of Concern,'' fisheries north and south of Cape Falcon are constrained by impact limits necessary to protect ESA-listed salmon stocks including OCN and LCN coho and LCR and Puget Sound Chinook salmon, and to meet conservation objectives for non-ESA listed Queets and Grays Harbor coho and KRFC. For KRFC, SRFC, and Willapa Bay natural coho, FMP conservation objectives provide for higher escapement than 2020 ACLs.

Public Comments

The Council invited written comments on developing 2020 salmon management measures in their notice announcing public meetings and hearings (84 FR 70954, December 26, 2019). At its March meeting, the Council adopted three alternatives for 2020 commercial and recreational salmon management measures having a range of quotas, season structure, and impacts, from the least restrictive in Alternative I to the most restrictive in Alternative III, as well as six alternatives for 2020 North of Cape Falcon treaty Indian troll salmon management measures. These alternatives are described in detail in PRE II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council and NMFS. The Council received 229 written comments on 2020 ocean salmon fisheries via their electronic portal. The three public hearings were attended by a total of 130 people; 20 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, processors, and conservation organizations. Written and oral comments addressed the 2020 management alternatives described in PRE II, and generally expressed preferences for a specific alternative or for particular season structures. One comment submitted for the April meeting was focused on fishery effects on ESA-listed SRKW. All comments were made available via the Council's online briefing book for the April 2020 Council meeting and were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 15, 2020. In addition to comments collected at the public hearings and those submitted directly to the Council, several people provided oral comments at the April 2020 Council meeting. NMFS also invited comments to be submitted directly to the Council or to NMFS, via the Federal Rulemaking Portal (*www.regulations.gov*) in a notice (85 FR 7977, February 12, 2020); NMFS received one comment, which was a duplicate of a comment submitted to the Council.

Comments on alternatives for fisheries north of Cape Falcon. For fisheries north of Cape Falcon, Alternative I was favored by most commercial and recreational fishery commenters at the public hearing, some supported a combination of Alternative I and II for the commercial fishery. Concern was expressed about the lack of market for seafood products at the present time. The Council adopted an alternative that is within the range of the alternatives considered.

Comments on alternatives for fisheries south of Cape Falcon. Comments on the alternatives for fisheries south of Cape Falcon tended to favor Alternative I, with some support for Alternative II, and a few supporting Alternative III. There were many objections to a ''fourth'' alternative that was submitted by a commercial fisherman. Several favored a later season, citing concerns over the current lack of market for seafood products. The Council adopted an alternative within the range of alternatives considered.

Comments from federally recognized tribes, including treaty tribe representatives. At its March and April meetings, the Council heard testimony from members of several federally recognized tribes including tribes with treaty rights for salmon harvest; additional comments were submitted in writing. Tribes expressed concern over the low forecasts for many stocks in 2020 and the ramifications for tribal fisheries.

Comments on SRKW. One comment was received for the April Council meeting, in addition to three comments for the March Council meeting, on potential fishery effects on SRKW. Specific comments were made regarding prey availability, suggesting additional analyses and fishery action, and the draft NEPA document. After considering information provided by NMFS on the potential effects of the 2020 fishery alternatives to SRKW, the Council recommended management measures that were responsive to NMFS' guidance and provide fishery escapement of several Chinook salmon stocks in excess of what is required for spawning.

The Council, including the NMFS representative, took all of these comments into consideration. The Council's final recommendation generally includes aspects of all three alternatives, while taking into account the best available scientific information and ensuring that fisheries are consistent with impact limits for ESA-listed stocks, ACLs, PST obligations, other ESA requirements, and tribal fishing rights. The Council and NMFS also considered comments on the NEPA analysis in preparing the final EA.

Management Measures

The Council's recommended ocean harvest levels and management measures for the 2020 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations to be responsive to the goals of the FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The

recommendations are consistent with the requirements of the MSA, U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. The Council's recommended management measures are consistent with the proposed actions analyzed in NMFS' ESA consultations for those ESA-listed species that may be affected by Council fisheries, and are otherwise consistent with ESA obligations. Accordingly, NMFS, through this final rule, approves and implements the Council's recommendations.

North of Cape Falcon, 2020 management measures for non-Indian commercial troll and recreational fisheries have somewhat increased quotas for Chinook salmon compared to 2019; coho quotas are substantially lower than in 2019.

Quotas for the 2020 treaty-Indian commercial troll fishery North of Cape Falcon are 35,000 Chinook salmon and 16,500 coho in ocean management areas and Washington State Statistical Area 4B combined. These quotas provide the same amount of Chinook salmon and substantially fewer coho than in 2019. The treaty-Indian commercial fisheries include a May and June fishery with a quota of 17,500 Chinook, and a July and August fishery, with quotas of 17,500 Chinook and 16,500 coho.

South of Cape Falcon, commercial troll and recreational fishery management measures are are shaped to meet conservation and management goals for KRFC spawning escapement and fishery impact limitations for OCN coho. Commercial and recreational fisheries south of Cape Falcon will be directed primarily at Chinook salmon; commercial fisheries south of Cape Falcon will have no coho retention.

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May of the same year. Therefore, this action also establishes the 2021 fishing seasons that open earlier than May 6. The Council recommended, and NMFS concurs, that the commercial and recreational seasons will open in 2021 as indicated in the ''Season Description'' section of this document. At the March and/or April 2021 meeting, NMFS may take inseason action, if recommended by the Council, to adjust the commercial and recreational seasons prior to the effective date of the 2021 management measures which are expected to be effective in mid-May 2021.

The following sections set out the management regime for the ocean salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2020 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard (USCG) Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council, approved, and implemented here for 2020 and, as specified, for 2021.

Section 1. Commercial Management Measures for 2020 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions, and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Falcon

May 6 through the earlier of June 28, or 13,820 Chinook. No more than 5,100 of which may be caught in the area between the U.S./Canada border and the Queets River, and no more than 3,770 of which may be caught in the area between Leadbetter Point and Cape Falcon (C.8). Open seven days per week (C.1). All salmon, except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). In the area between the U.S./Canada border and the Queets River, the landing and possession limit is 75 Chinook per vessel per landing week (Thursday–Wednesday) (C.1, C.6). In the area between Leadbetter Point and Cape Falcon, the landing and possession limit is 75 Chinook per vessel per landing week (Thursday–Wednesday) (C.1, C.6). When it is projected that approximately 75 percent of the overall Chinook guideline has been landed, or approximately 75 percent of any of the individual Chinook subarea guidelines have been landed, inseason action will be considered to ensure the guideline is not exceeded.

In 2021, the season will open May 1 for all salmon except coho consistent with preseason regulations as described for this area and subareas for May 6–June 28, 2020, including subarea salmon guidelines and weekly vessel limits. These regulations would apply from the opening of the fishery on May 1, 2021, until modified inseason following Council review at its March and/or April 2021 meetings. Catch during this opening will be counted towards quotas set for this area and subareas at the April 2021 meeting.

July 1 through the earlier of September 30, or 13,820 Chinook or 2,000 coho (C.8). Open seven days per week. All salmon. Chinook minimum size limit of 28 inches total length. Coho minimum size limit of 16 inches total length (B, C.1). All coho must be marked with a healed adipose fin clip (C.8.e). No chum retention north of Cape Alava, WA, in August and September (C.4, C.7). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Landing and possession limit of 10 marked coho per vessel per landing week (Thursday–Wednesday) (C.1).

For all commercial troll fisheries north of Cape Falcon: Mandatory closed areas include: Salmon troll Yelloweye Rockfish Conservation (YRCA) Area, Cape Flattery, and Columbia Control Zones, and beginning August 10, the Grays Harbor Control Zone (C.5). Vessels must land and deliver their salmon within 24 hours of any closure of this fishery. Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license. Vessels may not land fish east of the Sekiu River or east of the Megler-Astoria bridge. For delivery to Washington ports south of Leadbetter Point, vessels must notify the WDFW at 360–249–1215 prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery. During any single trip, only one side of the Leadbetter Point line may be fished (C.11). Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land all species of fish in Garibaldi, Oregon. Under state law, vessels must report their catch on a state fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon,

Oregon to notify ODFW within one hour of delivery or prior to transport away from the port of landing by either calling 541–867–0300 ext. 271 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8). Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook, coho, and halibut catch aboard and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–249–1215 with area fished, total Chinook, coho, and halibut catch aboard, and destination (C.11).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

April 20–30;
May 1–5, 26–31;
June 4–30;
July 1–31;
August 1–25;
September 1–October 31 (C.8.g, C.9).

Open seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). All vessels fishing in the area must land their salmon in the State of Oregon. See gear restrictions and definitions (C.2, C.3). Beginning September 1, no more than 75 Chinook allowed per vessel per landing week (Thursday–Wednesday).

In 2021, the season will open March 15 for all salmon except coho. Chinook minimum size limit of 28 inches total length (B, C.1). Gear and other restrictions same as in 2020 (C.2, C.3, C.4). This opening could be modified following Council review at its March 2021 meetings (C.8).

—Humbug Mt. to OR/CA Border (Oregon KMZ)

April 20–30;
May 1–5, 26–31;
June 4 through the earlier of June 30, or a 700 Chinook quota;
July 1 through the earlier of July 31, or a 300 Chinook quota (C.8.g, C.9).

Open seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Prior to June 4, all salmon caught in this area must be landed and delivered in the State of Oregon.

June 4–July 31 weekly landing and possession limit of 40 Chinook per vessel per landing week (Thursday–Wednesday) (C.8.f). Any remaining portion of Chinook quotas may be transferred inseason on an impact neutral basis to the next open quota period (C.8.b).

All vessels fishing in this area during June and July, must land and deliver all salmon within this area or into Port Orford within 24 hours of any closure of this fishery and prior to fishing outside of this area (C.6).

For all quota managed seasons (June and July), Oregon state regulations require fishers to notify ODFW within one hour of landing and prior to transport away from the port of landing by calling 541–867–0300 Ext. 252 or sending notification via email to *kmzor.trollreport@state.or.us,* with vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

In 2021, the season will open March 15 for all salmon except coho. Chinook minimum size limit of 28 inches total length (B; C.1). Gear restrictions same as in 2020 (C.2, C.3, C.4). This season would open without quota or weekly landing limits unless modified following Council review at its March 2021 meeting (C.8).

—Oregon/California Border to Humboldt South Jetty (California KMZ)

Closed (C.9).

In 2021, the season will open May 1 through the earlier of May 31, or a 3,000 Chinook quota. Chinook minimum size limit of 27 inches total length. Landing and possession limit of 20 Chinook per vessel per day (C.8.f). Open five days per week (Friday–Tuesday). All salmon except coho (C.4, C.7). Any remaining portion of Chinook quotas may be transferred inseason on an impact neutral basis to the next open quota period (C.8.b). All fish caught in this area must be landed within the area, within 24 hours of any closure of the fishery (C.6), and prior to fishing outside the area (C.10). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed (C.5.e). See California State regulations for an additional closures adjacent to the Smith River. This opening could be modified following Council review at its March or April 2021 meetings.

—Humboldt South Jetty to Horse Mountain

Closed.

For all commercial fisheries south of Cape Falcon: When the fishery is closed between the OR/CA border and Humbug Mountain (C.11) and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival (C.6).

—Horse Mountain to Point Arena (Fort Bragg)

August 1–10;
September 1–30 (C.8.g, C.9).

Open seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). All salmon must be landed in California and north of Point Arena (C.6).

In 2021, the season will open April 15 for all salmon except coho. Chinook minimum size limit of 27 inches total length. Gear restrictions same as in 2020. This opening could be modified following Council review at its March or April 2021 meetings.

—Point Arena to Pigeon Point (San Francisco)

May 6–12, 18–31;
June 1–6, 14–30;
July 13–31;
August 1–28;
September 1–30 (C.8.g, C.9).

Open seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length through August, then 26 inches thereafter (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). All salmon must be landed in California. All salmon caught in the area prior to September 1 must be landed and offloaded no later than 11:59 p.m., August 30 (C.6). During September, all salmon must be landed south of Point Arena (C.6, C.11).

In 2021, the season will open May 1 for all salmon except coho. Chinook minimum size limit of 27 inches total length. Gear restrictions same as in 2020. This opening could be modified following Council review at its March or April 2021 meetings.

• Point Reyes to Point San Pedro (Fall Area Target Zone)

October 1–2, 5–9, 12–15.

Open five days per week (Monday–Friday). All salmon except coho (C.4, C.7). Chinook minimum size limit of 26 inches total length (B, C.1). All salmon

caught in this area must be landed between Point Arena and Pigeon Point (C.6, C.11). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

—Pigeon Point to U.S./Mexico border (Monterey)

May 1–12, 18–31;
June 1–6, 14–30;
July 13–31;
August 1–28 (C.8.g, C.9).

Open seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). All salmon must be landed in California. All salmon caught in the area must be landed and offloaded no later than 11:59 p.m., August 30 (C.6).

In 2021, the season will open May 1 for all salmon except coho. Chinook minimum size limit of 27 inches total length. Gear restrictions same as in 2020. This opening could be modified following Council review at its March or April 2021 meeting.

For all commercial troll fisheries in California: California State regulations require all salmon be made available to a California Department of Fish and Wildlife (CDFW) representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Fish and Game Code § 8226).

B. Minimum Size (Inches) (See C.1)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR	28.0	21.5	16	12	None.
Cape Falcon to Humbug Mountain	28.0	21.5			None.
Humbug Mountain to OR/CA border	28.0	21.5			None.
OR/CA border to Humboldt South Jetty	Closed				
Horse Mountain to Point Arena	27.0	20.5			27.
Point Arena to Pigeon Point (through August)	27.0	20.5			27.
Point Arena to Pigeon Point (September–October)	26.0	19.5			26.
Pigeon Point to U.S./Mexico border	27.0	20.5			27.

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.5 cm, 26 in = 66 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 19.5 in = 49.5 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 48 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 48 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required to report a salmon landing by applicable state law must include on the state landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets be kept on board the vessel for 90 days or more after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon, OR, to the Oregon/California border: No more than 4 spreads are allowed per line.

c. Oregon/California border to U.S./Mexico border: No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear defined: One or more lines that drag hooks behind a moving fishing vessel engaged in trolling. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread defined: A single leader connected to an individual lure and/or bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement, USCG, CDFW, WDFW, and Oregon State Police at least 24 hours prior to sampling and provide the following information: The vessel name, date, location, and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. *Cape Flattery Control Zone*—The area from Cape Flattery (48°23′00″ N lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N lat.) and east of 125°05′00″ W long.

b. *Salmon Troll YRCA (50 CFR 660.70(c))*—The area in Washington Marine Catch Area 3 from 48°00.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°14.00′ W long. to 48°02.00′ N lat.; 125°16.50′ W long. to 48°00.00′ N lat.; 125°16.50′ W long. and connecting back to 48°00.00′ N lat.; 125°14.00′ W long.

c. *Grays Harbor Control Zone*—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N lat., 124° 07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

d. *Columbia Control Zone*—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09′ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat., 124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nautical miles north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nautical miles off shore); and on the south by 41°26′48″ N lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate number of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within one hour of leaving the management area by calling 800–889–8346 and providing the same information as reported to the USCG. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

License applications for incidental harvest for halibut during commercial salmon fishing must be obtained from IPHC. The application deadline was March 15, 2020 to obtain a 2020 license from IPHC.

During the 2020 salmon troll season, incidental harvest is authorized only during April, May, and June, and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825 or 206–526–6667). WDFW, Oregon Department of Fish and Wildlife (ODFW), and CDFW will monitor landings. If the landings are projected to exceed the IPHC's 44,899 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Beginning May 1, 2020 through the end of the 2020 salmon troll fishery, and beginning April 1, 2021, until modified through inseason action or superseded by the 2021 management measures the following applies: License holders may land no more than one Pacific halibut per each two Chinook, except one Pacific halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip.

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2020, prior to any 2020 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2021 unless otherwise modified by inseason action at the March 2021 Council meeting.

a. ''C-shaped'' YRCA is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18′ N lat.; 125°18′ W long.;
48°18′ N lat.; 124°59′ W long.;
48°11′ N lat.; 124°59′ W long.;
48°11′ N lat.; 125°11′ W long.;
48°04′ N lat.; 125°11′ W long.;
48°04′ N lat.; 124°59′ W long.;
48°00′ N lat.; 124°59′ W long.;
48°00′ N lat.; 125°18′ W long.;
and connecting back to 48°18′ N lat.;
125°18′ W long.

C.8. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook remaining from May, June, and/or July non-Indian commercial troll quotas in the Oregon or California KMZ may be transferred to the Chinook quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer salmon between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. At the March 2021 meeting, the Council will consider inseason recommendations for special regulations for any experimental fisheries (proposals must meet Council protocol and be received in November 2020).

e. If retention of unmarked coho (adipose fin intact) is permitted by inseason action, the allowable coho quota will be adjusted to ensure preseason projected impacts on all stocks is not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

g. NMFS may close fisheries through inseason action on the recommendation of the affected state(s) of Washington, Oregon or California where the recommendation to close is informed by an evaluation of actions or orders promulgated or issued by jurisdictions in these areas to address public health concerns concluding that these actions would likely make access to the fishery impracticable (*e.g.,* restrictions on activities or closure of harbors, launch ramps and other forms of access) or would make information essential to manage and implement the fishery unavailable. NMFS should open fisheries closed on this basis through inseason action upon notice from the affected State(s) that said actions or orders making access to the fishery impracticable have been lifted and information essential to manage and implement the fishery would be available.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The State of Oregon may establish additional late-season fisheries in state waters.

b. The State of California may establish limited fisheries in selected state waters. Check state regulations for details.

C.10. For the Purposes of California Fish and Game Code, Section 8232.5, the Definition of the KMZ for the Ocean Salmon Season Shall Be That Area From Humbug Mountain, Oregon, to Horse Mountain, California

C.11. Latitudes for Geographical Reference of Major Landmarks Along the West Coast Are Listed in Section 5 of This Rule

Section 2. Recreational Management Measures for 2020 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada border to Cape Alava (Neah Bay Subarea)

June 20 through the earlier of September 30, or 2,760 marked coho subarea quota, with a subarea guideline of 5,600 Chinook (C.5). Open seven days a week. See minimum size limits (B). See gear restrictions and definitions (C.2, C.3).

During June 20–28: All salmon except coho; one salmon per day (C.1).

Beginning June 29: All salmon, except no chum beginning August 1; two salmon per day. All coho must be marked with a healed adipose fin clip (C.1).

Beginning August 1, Chinook non-retention east of the Bonilla-Tatoosh line (C.4.a) during Council managed ocean fishery.

—Cape Alava to Queets River (La Push Subarea)

June 20 through the earlier of September 30, or 690 marked coho subarea quota, with a subarea guideline of 1,300 Chinook (C.5). Open seven days a week. See salmon minimum size limits (B). See gear restrictions and definitions (C.2, C.3).

During June 20–28: All salmon except coho; one salmon per day (C.1).

Beginning June 29: All salmon, except no chum beginning August 1; two salmon per day. All coho must be marked with a healed adipose fin clip (C.1).

—Queets River to Leadbetter Point (Westport Subarea)

June 20 through the earlier of September 30, or 9,800 marked coho subarea quota, with a subarea guideline of 12,460 Chinook (C.5). Chinook minimum size limit of 22 inches total length (B). Coho minimum size limit of 16 inches total length (B). See gear restrictions and definitions (C.2, C.3).

During June 20–28: Open seven days per week. All salmon except coho; one salmon per day (C.1).

Beginning June 29: Open five days per week (Sunday–Thursday). All salmon; two salmon per day, no more than one of which may be a Chinook. All coho must be marked with a healed adipose fin clip (C.1).

Grays Harbor Control Zone closed beginning August 10 (C.4.b).

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 20 through the earlier of September 30, or 13,250 marked coho subarea quota, with a subarea guideline of 7,000 Chinook (C.5). Chinook minimum size limit of 22 inches total length (B). Coho minimum size limit of 16 inches total length (B). See gear restrictions and definitions (C.2, C.3).

During June 20–28: Open seven days per week. All salmon except coho; one salmon per day (C.1).

Beginning June 29, open seven days per week. All salmon; two salmon per day, no more than one of which may be a Chinook. All coho must be marked with a healed adipose fin clip (C.1).

Columbia Control Zone closed (C.4.c).

For all Recreational fisheries north of Cape Falcon: Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

March 15–October 31 (C.6), except as provided below during the all-salmon mark-selective fishery and the non-mark-selective coho fishery (C.5). Open seven days per week. All salmon except coho, two fish per day (C.1). See minimum size limits (B). See gear restrictions and definitions (C.2, C.3).

In 2021, the season will open March 15 for all salmon except coho, two salmon per day (C.1). Same minimum size limits (B), and the same gear restrictions as in 2020 (C.2, C.3). This opening could be modified following Council review at its March 2021 meeting (C.5).

—Cape Falcon to Humbug Mountain

Mark-selective coho fishery: June 27 through the earlier of August 16, or 22,000 marked coho quota (C.5.g, C.6). Open seven days per week. All salmon, two salmon per day. All retained coho must be marked with a healed adipose fin clip (C.1). See minimum size limits (B). See gear restrictions and definitions (C.2, C.3). Any remainder of the mark-selective coho quota may be transferred inseason on an impact neutral basis to the non-selective coho quota from Cape Falcon to Humbug Mountain (C.5).

Non-mark-selective coho fishery: September 4–5, and open each Friday and Saturday through the earlier of September 30, or 3,000 non-mark-selective coho quota (C.5.g, C.6). Open days may be modified inseason. All salmon, two salmon per day (C.1). See minimum size limits (B). See gear restrictions and definitions (C.2, C.3).

—Humbug Mountain to Oregon/California border (Oregon KMZ)

June 20–August 7 (C.5.g, C.6). Open seven days per week. All salmon except coho, two salmon per day (C.1). See minimum size limits (B). See gear restrictions and definitions (C.2, C.3).

For recreational fisheries from Cape Falcon to Humbug Mountain: Fishing in the Stonewall Bank YRCA restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 for specific dates) (C.3.b, C.4.d).

—Oregon/California border to Horse Mountain (California KMZ)

- June 6–August 9 (C.5.f, C.5.g, C.6). Open seven days per week. All salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

Klamath Control Zone closed in August (C.4.e). See California State regulations for additional closures adjacent to the Smith, Eel, and Klamath Rivers.

In 2021, season opens May 1 for all salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2020 (C.2, C.3). This opening could be modified following Council review at its March 2021 meeting.

—Horse Mountain to Point Arena (Fort Bragg)

May 1–November 8 (C.5.f, C.5.g, C.6). Open seven days per week. All salmon except coho, two salmon per day (C.1).

Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2021, season opens April 3 for all salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2020 (C.2, C.3). This opening could be modified following Council review at its March 2021 meeting.

—Point Arena to Pigeon Point (San Francisco)

May 1–November 8 (C.5.f, C.5.g, C.6). Open seven days per week. All salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 20 inches total length. See gear restrictions and definitions (C.2, C.3).

In 2021, season opens April 3 for all salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2020 (C.2, C.3). This opening could be modified following Council review at its March 2021 meeting.

—Pigeon Point to U.S./Mexico border (Monterey)

May 1–October 4 (C.5.f, C.5.g, C.6). Open seven days per week. All salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2021, season opens April 3 for all salmon except coho, two salmon per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2020 (C.2, C.3). This opening could be modified following Council review at its March 2021 meeting.

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Code of Regulations Title 14 Section 1.73).

B. Minimum Size (Total Length in Inches) (See C.1)

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon (Westport and Columbia River)	22.0	16.0	None.
North of Cape Falcon (Neah Bay and La Push)	24.0	16.0	None.
Cape Falcon to Humbug Mt	24.0	16.0	None.
Humbug Mt. to OR/CA border	24.0	.....	None.
OR/CA border to Horse Mt	20.0	.....	20.0.
Horse Mt. to Pt. Arena	20.0	.....	20.0.
Pt. Arena to Pigeon Pt. (in 2020)	20.0	.....	20.0.
Pt. Arena to Pigeon Pt. (in 2021)	24.0	.....	24.0.
Pigeon Pt. to U.S./Mexico border	24.0	.....	24.0.

Metric equivalents: 24.0 in = 61.0 cm, 22.0 in = 55.9 cm, 20.0 in = 50.8 cm, and 16.0 in = 40.6 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook and coho salmon for all licensed and juvenile anglers aboard have been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board, must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada border to Point Conception, CA: No more than one rod may be used per angler; and no more than two single point, single shank barbless hooks are required for all fishing gear.

b. Horse Mountain, CA, to Point Conception, CA: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed five inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. *Recreational fishing gear defined:* Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. *Trolling defined:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. *Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. The Bonilla-Tatoosh Line: A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N lat., 124°44′12″ W long.) to the buoy adjacent to Duntze Rock (48°24′37″ N lat., 124°44′37″ W long.), then in a straight line to Bonilla Point (48°35′39″ N lat., 124°42′58″ W long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone—The area defined by a line drawn from the

Westport Lighthouse (46°53′18″ N lat., 124°07′01″ W long.) to Buoy #2 (46°52′42″ N lat., 124°12′42″ W long.) to Buoy #3 (46°55′00″ N lat., 124°14′48″ W long.) to the Grays Harbor north jetty (46°55′36″ N lat., 124°10′51″ W long.).

c. Columbia Control Zone: An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N lat., 124°06′50″ W long.) and the green lighted Buoy #7 (46°15′09″ N lat., 124°06′16″ W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N lat., 124°03′07″ W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N lat., 124°05′20″ W long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N lat., 124°04′05″ W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Stonewall Bank YRCA: The area defined by the following coordinates in the order listed:

44°37.46′ N lat.; 124°24.92′ W long.
44°37.46′ N lat.; 124°23.63′ W long.
44°28.71′ N lat.; 124°21.80′ W long.
44°28.71′ N lat.; 124°24.10′ W long.
44°31.42′ N lat.; 124°25.47′ W long.
and connecting back to 44°37.46′ N lat.; 124°24.92′ W long.

e. Klamath Control Zone: The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N lat. (approximately 6 nautical miles north of the Klamath River mouth); on the west by 124°23′00″ W long. (approximately 12 nautical miles off shore); and, on the south by 41°26′48″ N lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Chinook and coho may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked (adipose fin intact) coho. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted (adipose-clipped) mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho.

e. Marked coho remaining from the Cape Falcon to Humbug Mt. recreational mark-selective coho quota may be transferred inseason to the Cape Falcon to Humbug Mt. non-mark-selective recreational fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

f. NMFS may by inseason action close recreational fisheries between May 1 and June 15, 2020 in the Fort Bragg, San Francisco, and Monterey subareas on the recommendation of the CDFW. The recommendation to close would be informed by an evaluation of actions or orders enacted by jurisdictions in these subareas to address public health concerns that would make access to the ocean salmon recreational fishery impracticable (*e.g.,* restrictions on activities or closure of harbors, launch ramps and other forms of access). If NMFS closes these subareas May 1–15, May 16–31, June 1–15, or an additive combination of these specific date ranges in succession; NMFS may by inseason action extend the season in the California KMZ beyond August 9 not to exceed August 31 if the STT determines that such opening would not increase impacts to stocks in the FMP beyond those described in Table 5 of Pre-III for 2020, and would otherwise meet the objectives described in that table, including but not limited to 50/50 harvest sharing with the Klamath River Tribes (Yurok and Hoopa Valley Tribe).

g. NMFS may close fisheries through inseason action on the recommendation of the affected state(s) of Washington, Oregon or California where the recommendation to close is informed by an evaluation of actions or orders promulgated or issued by jurisdictions in these areas to address public health concerns concluding that these actions would likely make access to the fishery impracticable (*e.g.,* restrictions on activities or closure of harbors, launch ramps and other forms of access) or would make information essential to manage and implement the fishery unavailable. NMFS should open fisheries closed on this basis through inseason action upon notice from the affected State(s) that said actions or orders making access to the fishery impracticable have been lifted and information essential to manage and implement the fishery would be available.

C.6. Additional Seasons in State Territorial Waters

Consistent with Council management objectives, the States of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2020 Ocean Salmon Fisheries

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the fishery.

A. Season Descriptions

May 1 through the earlier of June 30 or 17,500 Chinook quota.

All salmon may be retained except coho. If the Chinook quota is exceeded, the excess will be deducted from the later all-salmon season (C.5). See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or 17,500 Chinook quota, or 16,500 coho quota.

All Salmon. See size limit (B) and other restrictions (C).

B. Minimum Size (Inches)

Area (when open)	Chinook		Coho		
	Total length	Head-off	Total length	Head-off	Pink
North of Cape Falcon	24.0	18.0	16.0	12.0	None.

Metric equivalents: 24.0 in = 61.0 cm, 18.0 in = 45.7 cm, 16.0 in = 40.6 cm, 12.0 in = 30.5 cm.

C. Requirements, Restrictions, and Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (defined to include those waters of Puget Sound easterly of a line projected from the Bonilla Point Light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River [WAC 220–301–030]).

MAKAH—Washington State Statistical Area 4B and that portion of the fishery management area (FMA) north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.

QUILEUTE—A polygon commencing at Cape Alava, located at latitude 48°10′00″ north, longitude 124°43′56.9″ west; then proceeding west approximately forty nautical miles at that latitude to a northwestern point located at latitude 48°10′00″ north, longitude 125°44′00″ west; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nmi from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at latitude 47°31′42″ north, longitude 125°20′26″ west; then proceeding east along that line of latitude to the Pacific coast shoreline at latitude 47°31′42″ north, longitude 124°21′9.0″ west (per court order dated March 5, 2018, Federal District Court for the Western District of Washington).

HOH—That portion of the FMA between 47°54′18″ N lat. (Quillayute River) and 47°21′00″ N lat. (Quinault River) and east of 125°44′00″ W long.

QUINAULT—A polygon commencing at the Pacific coast shoreline near Destruction Island, located at latitude 47°40′06″ north, longitude 124°23′51.362″ west; then proceeding west approximately 30 nmi at that latitude to a northwestern point located at latitude 47°40′06″ north, longitude 125°08′30″ west; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nmi from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at latitude 46°53′18″ north, longitude 124°53′53″ west; then proceeding east along that line of latitude to the Pacific coast shoreline at latitude 46°53′18″ north, longitude 124°7′36.6″ west (per court order dated March 5, 2018, Federal District Court for the Western District of Washington).

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N lat. (Norwegian Memorial) and east of 125°44′00″ W long.).

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of October 1 through October 15 in the same manner as in 2004–2015. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2020 season (estimated harvest during the October ceremonial and subsistence fishery: 20 Chinook; 40 coho).

C.4. Area Closures

a. The area within a six nautical mile radius of the mouths of the Queets River (47°31′42″ N lat.) and the Hoh River (47°45′12″ N lat.) will be closed to commercial fishing.

b. A closure within two nautical miles of the mouth of the Quinault River (47°21′00″ N lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management: In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery, which appear at 50 CFR part 300, subpart E. On March 13, 2020, NMFS published a final rule announcing the IPHC's regulations, including season dates, management measures, total allowable catch (TACs) for each IPHC management area including the U.S. West Coast (Area 2A) and Catch Sharing Plans for the U.S. waters off of Alaska (85 FR 14586). The Area 2A Catch Sharing Plan, in combination with the IPHC regulations, provides that vessels participating in the salmon troll fishery in Area 2A, which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on.

License applications for incidental harvest must be obtained from the IPHC (phone: 206–634–1838). Applicants must apply prior to mid-March 2021 for 2021 permits (exact date to be set by the IPHC in early 2021). Incidental harvest is authorized only during April, May, and June of the 2020 troll seasons and after June 30 in 2020 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825 or 800–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the 44,899 pound preseason allocation or the total Area

2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

May 1, 2020, until the end of the 2020 salmon troll season, and beginning April 1, 2021, until modified through insesason action or superseded by the 2021 management measures, license holders may land or possess no more than one Pacific halibut per each two Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on). IPHC license holders must comply with all applicable IPHC regulations.

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2020, prior to any 2020 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2021, unless otherwise modified by inseason action at the March 2021 Council meeting.

NMFS and the Council request that salmon trollers voluntarily avoid a ''C-shaped'' YRCA (also known as the Salmon Troll YRCA) in order to protect yelloweye rockfish. Coordinates for the Salmon Troll YRCA are defined at 50 CFR 660.70(a) in the North Coast subarea (Washington marine area 3). See Section 1.C.7 in this document for the coordinates.

Section 5. Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery, WA 48°23′00″ N lat.

Cape Alava, WA 48°10′00″ N lat.

Queets River, WA 47°31′42″ N lat.

Leadbetter Point, WA 46°38′10″ N lat.

Cape Falcon, OR 45°46′00″ N lat.

Florence South Jetty, OR 44°00′54″ N lat.

Humbug Mountain, OR 42°40′30″ N lat.

Oregon-California border 42°00′00″ N lat.

Humboldt South Jetty, CA 40°45′53″ N lat.

Horse Mountain, CA 40°05′00″ N lat.

Point Arena, CA 38°57′30″ N lat.

Point Reyes, CA 37°59′44″ N lat.

Point San Pedro, CA 37°35′40″ N lat.

Pigeon Point, CA 37°11′00″ N lat.

Point Sur, CA 36°18′00″ N lat.

Point Conception, CA 34°27′00″ N lat.

Section 6. Inseason Notice Procedures

Notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, 800–662–9825 or 206–526–6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be published in the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or USCG broadcasts for current information for the area in which they are fishing.

Classification

This final rule is necessary for conservation and management of Pacific coast salmon stocks and is consistent with the MSA and other applicable law. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

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

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures would be impracticable and contrary to the public interest.

The annual salmon management cycle traditionally begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small portion of the annual catch. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from previous years' observed spawning escapement, vary substantially from year to year, and are not available until January or February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a two-month period culminating with the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval, and implementation of fishing regulations typically effective on May 1. For 2020, even with the waiver of notice and comment, NMFS does not expect the rule to be effective until May 6 to accommodate the completion of the necessary regulatory process to review, approve, and implement these fishing regulations. Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the two-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year, without the benefit of information regarding current stock abundance. For the 2020 fishing regulations, the current stock abundance was not available to the Council until February. In addition, information related to northern fisheries and stock status in Alaska and Canada which is important to assessing the amount of available salmon in southern U.S. ocean fisheries is not available until mid- to late-March. Because a substantial amount of fishing normally occurs during May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May are managed under measures developed the previous year, as modified by the Council at its March and April meetings, relatively little harvest occurs during that period (*e.g.,* on average, less than 5 percent of commercial and recreational harvest occurred prior to May 1 during the years 2001 through 2017). Allowing the much more substantial harvest levels normally associated with the May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA-listed salmon stocks, and to

provide harvest opportunity where appropriate. The choice of May 1 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the need to manage the fishery using the best available scientific information.

If the 2020 measures are not in place on May 6, salmon fisheries will not open as scheduled. This would result in lost fishing opportunity, negative economic impacts, and confusion for the public as the state fisheries adopt concurrent regulations that conform to the Federal management measures.

Overall, the annual population dynamics of the various salmon stocks require managers to adjust the season structure of the West Coast salmon fisheries to both protect weaker stocks and provide access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action.

In addition, these measures were developed with significant public input. Public comment was received and considered by the Council and NMFS throughout the process of developing these management measures. As described above, the Council took comment at its March and April meetings, and heard summaries of comments received at public meetings held between the March and April meetings for each of the coastal states. NMFS also invited comments in a notice published prior to the March Council meeting, and considered comments received by the Council through its representative on the Council.

Based upon the above-described need to have these measures effective on May 6 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the 2020 ocean salmon fishing year on May 6, NMFS has concluded it would be impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data were not available until February and management measures were not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks as well as potentially overfished stocks, and to provide for harvest of more abundant stocks. Delaying the effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the MSA.

To enhance the fishing industry's notification of these new measures, and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is posting the regulations on its West Coast Region website (*www.fisheries.noaa.gov/region/west-coast*). NMFS is also advising the states of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The current information collection approval expires on August 30, 2020, and is in the process of being renewed (85 FR 17314, March 27, 2020). The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS has current ESA biological opinions that cover fishing under these regulations on all listed salmon species. NMFS provided guidance on the impact limits for all ESA-listed salmon and steelhead species, given annual abundance projections, in our annual guidance letter to the Council dated February 27, 2020. The management measures for 2020 are consistent with the biological opinions. The Council's recommended management measures therefore have been determined not likely to jeopardize the continued existence of any listed salmon species which may be affected by Council fisheries or adversely modify critical habitat. In some cases, the recommended measures are more restrictive than necessary for ESA compliance.

NMFS consulted on the effects of the ocean salmon fisheries on the ESA-listed SRKW DPS in 2009. As discussed above, NMFS reinitiated consultation on the effects of the ocean salmon fisheries on SRKW on April 12, 2019. NMFS has assessed the potential impacts of the 2020 management measures to SRKW in a biological opinion, and has made a determination under ESA section 7(a)(2) that the 2020 fisheries are not likely to jeopardize the continued existence of the SRKW DPS or destroy or adversely modify its designated critical or proposed habitat.

This final rule was developed after meaningful collaboration with the affected tribes. The tribal representative on the Council made the motion for the regulations that apply to the tribal fisheries.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 5, 2020.

Samuel D. Rauch III,

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

[FR Doc. 2020–09903 Filed 5–6–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 90
Friday, May 8, 2020

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

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0065]

Transfer of Very Low-Level Waste To Exempt Persons for Disposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed interpretive rule; additional method to provide comments.

SUMMARY: On April 9, 2020, the U.S. Nuclear Regulatory Commission (NRC) extended the comment period on a proposed interpretation of its low-level radioactive waste disposal regulations that would permit licensees to dispose of waste by transfer to persons who hold specific exemptions for the purpose of disposal. The public comment period now closes on July 20, 2020. The NRC has decided to provide an additional method for members of the public to submit their comments via an email address established for this purpose.

DATES: The due date of comments requested in the document published on March 6, 2020 (85 FR 13076) ends on July 20, 2020. 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 before this date. The NRC staff will continue to monitor the current public health emergency to determine if an additional extension may be warranted.

ADDRESSES: You may submit comments by any of the methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0065. 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.
- *Email comments to: VLLWTransferComments.Resource@nrc.gov.* This email account will be available to accept public comments on the proposed interpretive rule until the close of the comment period, July 20, 2020.

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: Marlayna Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178; email: *Marlayna.Doell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0065 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0065.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document 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.

B. Submitting Comments

Please include Docket ID NRC–2020–0065 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. Discussion

On March 6, 2020, the NRC solicited comments on a proposed interpretation of its low-level radioactive waste disposal regulations that would permit licensees to dispose of waste by transfer to persons who hold specific exemptions for the purpose of disposal. The public comment period was originally scheduled to close on April 20, 2020, but has been extended to July 20, 2020. The NRC has decided to provide an additional method for members of the public to submit their comments via an email address (*VLLWTransferComments.Resource@nrc.gov*) established for this purpose. All other options for submitting comments discussed in this notice remain available; comments received via email will be aggregated with comments already received via other methods, as well as any future comments.

Dated: April 23, 2020.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–09055 Filed 5–7–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0398; Airspace Docket No. 20–ACE–8]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Webster City Municipal Airport, Webster City, IA. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Webster City non-directional beacon (NDB) which provided navigation information to the instrument procedures at this airport. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautic database.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0398/Airspace Docket No. 20–ACE–8 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Webster City Municipal Airport, Webster City, IA, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0398/Airspace Docket No. 20–ACE–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface of Webster City Municipal Airport, Webster City, IA, by removing the Webster City NDB and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review due to the decommissioning of the Webster City NDB which provided navigation information to the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ACE IA E5 Webster City, IA [Amended]

Webster City Municipal Airport, IA
(Lat, 42°26′11″ N, long. 93°52′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Webster City Municipal Airport.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09818 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0396; Airspace Docket No. 20–AGL–21]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace, Revocation of Class E Airspace, and Establishment of Class E Airspace; Multiple Ohio Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D airspace and Class E surface airspace at Wright-Patterson AFB, Dayton, OH, and Wilmington Air Park, Wilmington, OH; revoke the Class E airspace designated as an extension to Class D and Class E surface area at Wilmington Air Park; and amend the Class E airspace extending upward from 700 feet above the surface at Dayton-Phillipsburg Airport, Dayton, OH; Dayton-Wright Brothers Airport, Dayton, OH; Greene County-Lewis A. Jackson Regional Airport, Dayton, OH; James M. Cox Dayton International Airport, Dayton, OH; Wright-Patterson AFB; Grimes Field, Urbana, OH; and Wilmington Air Park; and establish Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH. The FAA is proposing this action as the result of airspace reviews caused by the decommissioning of the Springfield VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures these airports, as part of the VOR Minimum Operational Network (MON) Program, and the decommissioning of the Springfield localizer and glideslope which provided navigation information for the instrument procedures at Springfield-Beckley Municipal Airport. The names of Dayton-Phillipsburg Airport, Dayton-Wright Brothers Airport, and Greene County-Lewis A. Jackson Regional Airport, and the geographic coordinates of Wright Patterson AFB, Dayton-Wright Brothers Airport, Greene County-Lewis A. Jackson Regional Airport, and Grimes Field would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0396/Airspace Docket No. 20–AGL–21, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace and Class E surface airspace at Wright-Patterson AFB, Dayton, OH, and Wilmington Air Park, Wilmington, OH; revoke the Class E airspace designated as an extension to Class D and Class E surface area at Wilmington Air Park; and amend the Class E airspace extending upward from 700 feet above the surface at Dayton-Phillipsburg Airport, Dayton, OH; Dayton-Wright Brothers Airport, Dayton, OH; Greene County-Lewis A. Jackson Regional Airport, Dayton, OH; James M. Cox Dayton International Airport, Dayton, OH; Wright-Patterson AFB; Grimes Field, Urbana, OH; and Wilmington Air Park; and establish Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0396/Airspace Docket No. 20–AGL–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class D airspace at Wright-Patterson AFB, Dayton, OH, by removing the Patterson VORTAC and the associated extension as they are no longer required; adding an extension 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport; adding an extension 1.2 miles each side of the 228° bearing form the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport; updating the header of the airspace legal description to Dayton, OH, (previously Dayton, Wright-Patterson AFB, OH) to coincide with the FAA's aeronautical database; removing the city name associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Amending the Class D airspace to within a 4.5-mile (increased from a 4.2-mile) radius of Wilmington Air Park, Wilmington, OH; removing the cities associated with the airports in the airspace legal description to comply with changes to FAA Order 7400.2M; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Amending the Class E surface airspace at Wright-Patterson AFB, Dayton, OH, by removing the Patterson VORTAC and the associated extension as they are no longer required; adding an extension 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport; adding an extension 1.2 miles each side of the 228° bearing form the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport; updating the header of the airspace legal description to Dayton, OH, (previously Dayton, Wright-Patterson AFB, OH) to coincide with the FAA's aeronautical database; removing the city name associated with the airport to comply with changes to FAA Order 7400.2M; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Amending the Class E surface airspace to within a 4.5-mile (increased from a 4.2-mile) radius of Wilmington Air Park, Wilmington, OH; removing the extensions southwest and northeast of the airport as they are no longer needed; removing the cities associated with the airports in the airspace legal description to comply with changes to FAA Order 7400.2M; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement;''

Removing the Class E airspace designated as an extension to Class D and Class E surface areas at Wilmington Air Park, Wilmington, OH, as it is no longer needed;

Amending the Class E airspace extending upward from 700 feet above the surface at Dayton-Phillipsburg Airport (previously Phillipsburg Airport), Dayton, OH by updating the name of the airport to coincide with the FAA's aeronautical database; updating the header of the airspace legal description to Dayton, OH, (previously Phillipsburg, OH) to coincide with the FAA's aeronautical database; and removing the exclusionary language as it is no longer required;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 6.6-mile) radius at Dayton-Wright Brothers Airport,

Dayton, OH; removing the extension northeast of the airport associated with the Runway 20 Localizer as it is no longer required; removing the exclusionary language as it is no longer required; adding an extension within 1.6 miles each side of the 261° bearing from the Onida NDB extending from the 6.5-mile radius of the airport to 9.1 miles west of the airport; and updating the name and the geographic coordinates of Dayton-Wright Brothers Airport (previously Dayton General Airport South) to coincide with the FAA's aeronautical database;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (increased from a 6.3-mile) radius at Greene County-Lewis A. Jackson Regional Airport, Dayton, OH; removing the extension northeast of the airport as it is no longer needed; adding an extension within 1 mile each side of the 243° bearing from the airport extending from the 6.5-mile radius to 8.1 miles southwest of the airport; removing the exclusionary language as it is no longer required; updating the header of the airspace legal description to Dayton, OH, (previously Dayton, Greene County Airport, OH) to coincide with the FAA's aeronautical database; removing the city associated with the airport to comply with changes to FAA Order 7400.2M; and updating the name and geographic coordinates of the Greene County-Lewis A. Jackson Regional Airport (previously Greene County Airport) to coincide with the FAA's aeronautical database;

Amending the Class E airspace extending upward from 700 feet above the surface at Dayton, OH, by removing the bounded area of ''. . . bounded by a line beginning at lat. 39°59′00″ N, long. 83°40′00″ W; to lat 39°55′00″ N, long. 83°37′00″ W; to lat. 39°45′00″ N, long. 83°43′00″ W; to lat. 39°39′00″ N, long. 84°07′00″ W; to lat. 39°45′00″ N, long. 84°24′00″ W; to lat. 39°49′00″ N, long. 84°27′00″ W; to lat. 40°04′06″ N, long. 84°17′45″ W; to the point of beginning'' and replacing it as follows: within a 7.5-mile radius of James M. Cox Dayton International Airport, Dayton, OH; and within 3 miles each side of the 235° bearing from James M. Cox Dayton International Airport: RWY 24R–LOC extending from the 7.5-mile radius of James M. Cox Dayton International Airport to 13.2 miles southwest of the James M. Cox Dayton International Airport: RWY 24R–LOC; and within a 7.1-mile radius of Wright Patterson-AFB, Dayton, OH;

Establishing Class E airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Springfield-Beckley Municipal Airport, Springfield, OH (This airspace was previously covered by the Dayton, OH, Class E airspace extending upward from 700 feet above the surface, but the airspace legal descriptions are being separated to comply with FAA Order 7400.2M and the FAA's aeronautical database.); and within 4 miles each side of the 056° bearing from the Clark County NDB extending from the 6.9-mile radius of the airport to 10.7 miles northeast of the Clark County NDB;

Amending the Class E airspace extending upward from 700 feet above the surface within a 6.5-mile (decreased from an 8.2-mile) radius of Grimes Field, Urbana, OH; removing the city associated with the airport to comply with changes to FAA Order 7400.2M; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removing the exclusionary language as it is no longer needed;

And amending the Class E airspace extending upward from 700 feet above the surface at Wilmington Air Park by removing the Midwest VOR/DME and associated extensions from the airspace legal description as they are no longer needed; and adding an extension within 4 miles each side of the 037° bearing from the airport extending from the 7-mile radius to 10.3 miles northeast of the airport; and removing the city associated with the airport to comply with changes to FAA Order 7400.2M.

This action is the result of airspace reviews caused by the decommissioning of the Springfield VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program, and the decommissioning of the Springfield localizer and glideslope which provided navigation information for the instrument procedures at Springfield-Beckley Municipal Airport.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Dayton, OH [Amended]

Wright-Patterson AFB, OH
(Lat. 39°49′33″ N, long. 84°02′46″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.6-mile radius of Wright-Patterson AFB, and within 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport, and within 1.2 miles each side of the 228° bearing from the airport extending

from the 4.6-mile radius to 4.8 miles southwest of the airport excluding that airspace within the Dayton, James M. Cox-Dayton International Airport, OH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

AGL OH D Wilmington, OH [Amended]

Wilmington Air Park, OH
(Lat. 39°25′41″ N, long. 083°47′32″ W)
Hollister Field Airport, OH
(Lat. 39°26′15″ N, long. 083°42′30″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.5-mile radius of the Wilmington Air Park, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL OH E2 Dayton, OH [Amended]

Wright-Patterson AFB, OH
(Lat. 39°49′33″ N, long. 84°02′46″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.6-mile radius of Wright-Patterson AFB, and within 1.2 miles each side of the 046° bearing from the airport extending from the 4.6-mile radius to 5.2 miles northeast of the airport, and within 1.2 miles each side of the 228° bearing from the airport extending from the 4.6-mile radius to 4.8 miles southwest of the airport excluding that airspace within the Dayton, James M. Cox-Dayton International Airport, OH, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

AGL OH E2 Wilmington, OH [Amended]

Wilmington Air Park, OH
(Lat. 39°25′41″ N, long. 083°47′32″ W)
Hollister Field Airport, OH
(Lat. 39°26′15″ N, long. 083°42′30″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.5-mile radius of the Wilmington Air Park, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL OH E4 Wilmington, OH [Removed]

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

* * * * *

AGL OH E5 Dayton, OH [Amended]

Dayton-Phillipsburg Airport, OH
(Lat. 39°54′48″ N, long. 84°24′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Dayton-Phillipsburg Airport.

AGL OH E5 Dayton, OH [Amended]

Dayton-Wright Brothers Airport, OH
(Lat. 39°35′20″ N, long. 84°13′30″ W)
Onida NDB
(Lat. 39°34′41″ N, long. 84°19′24″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Dayton-Wright Brothers Airport, and within 1.6 miles each side of the 261° bearing from the Onida NDB extending from the 6.5-mile radius of the airport to 9.1 miles west of the airport.

AGL OH E5 Dayton, OH [Amended]

Greene County-Lewis A. Jackson Regional Airport, OH
(Lat. 39°41′27″ N, long. 83°59′34″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Greene County-Lewis A. Jackson Regional Airport, and within 1 mile either side of the 243° bearing from the airport extending from the 6.5-mile radius to 8.1 miles southwest of the airport.

AGL OH E5 Dayton, OH [Amended]

James M. Cox Dayton International Airport, OH
(Lat. 39°54′08″ N, long. 84°13′10″ W)
Wright-Patterson AFB, OH
(Lat. 39°49′33″ N, long. 84°02′46″ W)
James M. Cox Dayton International Airport: RWY 24R–LOC
(Lat. 39°53′37″ N, long. 84°14′57″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of James M. Cox Dayton International Airport, and within 3 miles each side of the 235° bearing from the James M. Cox Dayton International Airport: RWY 24R–LOC extending from the 7.5-mile radius of James M. Cox Dayton International Airport to 13.2 miles southwest of the James M. Cox Dayton International Airport: RWY 24R–LOC, and within a 7.1-mile radius of Wright Patterson AFB.

* * * * *

AGL OH E5 Springfield, OH [Establish]

Springfield-Beckley Municipal Airport, OH
(Lat. 39°50′25″ N, long. 83°50′25″ W)
Clark County NDB
(Lat. 39°52′25″ N, long. 83°46′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Springfield-Beckley Municipal Airport, and within 4 miles each side of the 056° bearing from the Clark County NDB extending from the 6.9-mile radius of the Springfield-Beckley Municipal Airport to 10.7 miles from the Clark County NDB.

* * * * *

AGL OH E5 Urbana, OH [Amended]

Grimes Field, OH
(Lat. 40°07′57″ N, long. 83°45′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grimes Field.

* * * * *

AGL OH E5 Wilmington, OH [Amended]

Wilmington Air Park, OH
(Lat. 39°25′41″ N, long. 083°47′32″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Wilmington Air Park, and within 4 miles each side of the 037° bearing from the airport extending from the 7-mile radius to 10.3 miles northeast of the airport.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09822 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0362; Airspace Docket No. 20–AGL–19]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Baudette, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Baudette International Airport, Baudette, MN. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Baudette VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of

Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0362/Airspace Docket No. 20–AGL–19, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Baudette International Airport, Baudette, MN, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0362/Airspace Docket No. 20–AGL–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface within a 6.6-mile (decreased from a 7.4-mile) radius of Baudette International Airport, Baudette, MN; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Baudette VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and

Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

AGL MN E5 Baudette, MN [Amended]

Baudette International Airport, MN
(Lat. 48°43′49″ N, long. 94°36′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Baudette International Airport, excluding that airspace outside of the United States.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09821 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0377; Airspace Docket No. 20–AGL–20]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Winner, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Winner Regional Airport, Winner, SD. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Winner VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures this airport, as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0377/Airspace Docket No. 20–AGL–20, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Winner Regional Airport, Winner, SD, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0377/Airspace Docket No. 20–AGL–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the

ADDRESSES section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface by removing the Winner VOR and all associated extensions associated with the Winner Regional Airport, Winner, SD, from the airspace legal description; removing the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and updating the name and geographic coordinates of the Winner Regional Airport (previously Bob Wiley Field) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Winner VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

AGL SD E5 Winner, SD [Amended]

Winner Regional Airport, SD
(Lat. 43°23′22″ N, long. 99°50′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Winner Regional Airport.

Issued in Fort Worth, Texas, on May 4, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09823 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2020–C–1309]

GNT USA, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by GNT USA, Inc. (GNT), proposing that the color additive regulations be amended to expand the safe use of spirulina (*Arthrospira platensis*) extract at levels consistent with good manufacturing practice.

DATES: The color additive petition was filed on February 21, 2020.

ADDRESSES: For access to the docket to read background documents or 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: Stephanie A. Hice, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 301–348–1740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act section 721(d)(1) (21 U.S.C. 379e(d)(1))), we are giving notice that we have filed a color additive petition (CAP 0C0316), submitted by GNT, c/o Hogan Lovells US LLP, 555 13th St. NW, Washington, DC 20004. The petition proposes to amend the color additive regulations in 21 CFR 73.530 *Spirulina extract* to expand the use of spirulina (*Arthrospira platensis*) extract to include alcoholic beverages, non-alcoholic beverages, condiments and sauces, dips, plant-based products, salad dressings, and seasoning mixes at levels consistent with good manufacturing practice.

We have determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 28, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–09311 Filed 5–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0222]

RIN 1625–AA08

Special Local Regulation; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for all navigable waters of the Ohio River from mile marker (MM) 597.0–605. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY, during a steamboat race. Entry into, transiting through, or anchoring within this regulated area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 8, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0222 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST3 Riley Jackson, Waterways Department Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *SECOHV–WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port Sector Ohio Valley
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, Purpose, and Legal Basis

Due to COVID–19, the Kentucky Derby Festival notified the Coast Guard that it will be conducting the Great Steamboat Race from 5:30 p.m. to 8 p.m. on September 2, 2020. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the race would be a safety concern for anyone within the regulated area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within an 8-mile stretch of the Ohio River, before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041(a).

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary special local regulation from 5:30 p.m. to 8 p.m. on September 2, 2020. The temporary special local regulation would cover all navigable waters from Mile Marker 597.0 through MM 605.0. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the steamboat race. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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 the size, location, and duration of the special local regulation. The special local regulation would only be in effect for 2.5 hours and limit access to an eight-mile stretch of the Ohio River. The Coast Guard expects minimum adverse impact to mariners. Also, mariners would be permitted to request authorization from the COTP or a designated representative to transit the regulated area.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a safety zone lasting 2.5 hours that would prohibit entry within an 8-mile stretch of the Ohio River. Normally such actions are categorically excluded from further review under paragraph L(61) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 proposes to amend 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 § 100.35T08–0222 to read as follows:

§ 100.35T08–0222 Special Local Regulation; Ohio River, Louisville, KY.

(a) *Regulated Area.* All navigable waters of the Ohio River from mile marker (MM) 597.0–605.0 in Louisville, KY.

(b) *Enforcement period.* This section will be enforced from 5:30 p.m. to 8 p.m. on September 2, 2020. The Captain of the Port Sector Ohio Valley (COTP) or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the special local regulation.

(c) *Special local regulations.*

(1) In accordance with the general regulations in § 100 of this part, entry into this area is prohibited unless authorized by the COTP or a designated representative.

(2) The COTP may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(3) All other persons or vessels desiring entry into or passage through the area must request permission from the COTP or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

Dated: April 23, 2020.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2020–09161 Filed 5–7–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2020–0216]

Anchorage Ground; Cape Fear River Approach, North Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notification of inquiry; request for comments.

SUMMARY: The Coast Guard is considering establishing an anchorage ground offshore in the approaches to the Cape Fear River, NC, and removing, relocating or otherwise modifying the existing Lockwoods Folly Inlet explosives anchorage ground. We are considering establishing an offshore anchorage ground in response to requests suggesting an anchorage ground is necessary to accommodate current and future vessel traffic, improve navigation safety, and because traditional anchorage areas may be impacted by offshore renewable energy development. Our consideration of changing or removing the explosives anchorage grounds is based on growth in both the size and draft of vessels that call on the Port of Wilmington and Military Ocean Terminal Sunny Point. We invite your comments on whether we should initiate a rulemaking to address these issues or maintain the status quo.

DATES: Your comments and related material must reach the Coast Guard on or before July 7, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0216 using the Federal portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of inquiry, call or email Marine Science Technician First Class (MST1) Matthew Tyson, Sector North Carolina, U.S. Coast Guard; telephone (910) 772–2221, email *Matthew.I.Tyson@uscg.mil;* or Mr. Jerry Barnes, Waterways Management Branch, Fifth Coast Guard District, U.S. Coast Guard; telephone (757) 398–6230, email *Jerry.R.Barnes@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NM Nautical Miles
U.S.C. United States Code
WGS84 World Geodetic System 84

II. Background and Purpose

The Coast Guard is considering amending its regulations to establish an anchorage ground offshore in the approaches to the Cape Fear River, NC, and disestablish, relocate or otherwise modify the existing Lockwoods Folly Inlet explosives anchorage. *Our authority to define and establish anchorage grounds comes from 33 U.S.C 471.*

The Cape Fear River supports a diverse marine transportation system which includes Military Ocean Terminal Sunny Point, North Carolina State Port of Wilmington, and several oil terminals and bulk-handling facilities for cement, asphalt products, molasses, liquid chemicals, sulfur, fertilizers and liquid sugar. Military Ocean Terminal Sunny Point is a Department of Defense facility that stores and ships ammunition, dangerous cargo and explosives for United States forces worldwide.

A federal navigation project provides for a channel 44 feet deep from the ocean to a point just south of Southport, NC, and 42 feet to the Lower Anchorage Basin and Turning Basin at Wilmington, NC. In support of continued port growth and growth in both size and volume of vessel traffic, the U.S. Army Corps of Engineers is considering the need for major channel depth, width, and alignment changes. These include deepening the existing federal navigation channel to the Port of Wilmington, extending the ocean entrance channel farther offshore, and widening channels in the Cape Fear River where needed.[1]

At the same time, the demand for offshore wind energy is increasing. Plummeting costs, technological advancements, increasing demand and great economic potential have combined to make offshore wind a promising avenue for adding to a diversified national energy portfolio. In 2018, the Bureau of Ocean Energy Management (BOEM) developed and sought feedback on a Proposed Path Forward for Future Offshore Renewable Energy Leasing on the Atlantic OCS (83 FR 14881, April 6, 2018). Offshore the Carolinas, BOEM has identified several wind energy lease and call areas and intends to work with the states of North Carolina and South Carolina using a regional model to plan and analyze these areas for potential future offshore wind leases.[2]

Traditionally, vessels awaiting entrance to the Cape Fear River anchor outside the traffic separation scheme west of the sea buoy (Cape Fear River Entrance Lighted Whistle Buoy CF). The Coast Guard has concerns that as wind energy areas are developed and electrical export cables installed, vessel traffic may be displaced or funneled into smaller areas, and areas traditionally used for anchoring may be impacted. Establishing an adequate and dedicated offshore anchorage will preserve areas traditionally used for anchoring and alleviate potential hazardous conditions of vessels anchoring in the common approaches to the Cape Fear River.

Notionally, the Cape Fear River Approach anchorage ground would be located west of the pilot boarding area, near existing traffic lanes, and in naturally deep water with charted depths between 40 and 52 feet. The anchorage ground as contemplated is located approximately 8 nautical miles (NM) southwest of the Oak Island Light and includes the waters bounded by a line connecting the following points:

Latitude	Longitude
33°47′59.09″ N	78°17′49.00″ W.
33°47′59.09″ N	78°06′24.74″ W.
33°46′01.22″ N	78°06′24.74″ W.
33°46′01.22″ N	78°17′49.00″ W.

(DATUM: WGS84)

We are considering amending our regulations to establish this notional anchorage. You may find an illustration of the anchorage in the docket where indicated under **ADDRESSES**. Additionally, the notional anchorage is available on the Mid-Atlantic Ocean Data Portal at *http://portal.midatlanticocean.org/visualize/.* See ''USCG Proposed Areas and Studies'' under the ''Maritime'' portion of the Data Layers section.

[1] 84 FR 48132, Sept. 12, 2019 (U.S. Army Corps of Engineers ''Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Wilmington Harbor Navigation Improvement Project Integrated Feasibility Study and Environmental Report, New Hanover and Brunswick Counties, NC'').

[2] See *https://www.boem.gov/renewable-energy/state-activities/south-carolina-activities* and *https://www.boem.gov/renewable-energy/state-activities/north-carolina-activities.*

On January 18, 1969, regulations for the Lockwoods Folly Inlet explosives anchorage were published (34 FR 839) outlining the area as an anchorage reserved for the exclusive use of vessels carrying explosives.[3] The anchorage is located within 3 NM from shore and in water with charted depths between 32 and 37 feet. The Coast Guard is concerned that the anchorage may not meet the needs of safe navigation due to the increased drafts of vessels that call on the Port of Wilmington and Military Ocean Terminal Sunny Point, and a better location may be possible in the interest of navigation and public safety.[4]

III. Information Requested

We seek your comments on whether we should consider a proposed rulemaking to establish a regulated anchorage ground offshore in the approaches to the Cape Fear River, NC. In particular, the Coast Guard requests your input to determine to what extent the notional anchorage ground would accommodate current and future vessel traffic, improve navigation safety, and facilitate continued growth of Cape Fear River's ports and facilities, offshore renewable energy development and associated economic activity; or if the status quo should be maintained, or other actions should be considered.

Additionally, we seek your comments on whether we should consider a proposed rulemaking to disestablish, relocate or otherwise modify the Lockwoods Folly Inlet explosives anchorage. In particular, the Coast Guard requests your input to determine if there remains a need for an explosive anchorage in this area, and if so, to what extent and for what purpose; if a reduction in size or a shift in location of the anchorage would meet current and anticipated industry needs; or if other options should be considered, such as designating a portion of the notional Cape Fear River Approach anchorage for the exclusive use of vessels carrying explosives.

IV. Public Participation and Request for Comments

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

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions.

Dated: April 29, 2020.

Keith M. Smith,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2020–09604 Filed 5–7–20; 8:45 am]

BILLING CODE 9110–04–P

[3] 33 CFR 110.170.

[4] Sec. 301 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) amended 33 U.S.C. 471 and extended the Coast Guard's authority to establish anchorage grounds for vessels from 3 NM to 12 NM.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0180; FRL–10008–03–Region 9]

Air Plan Approval; California; Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Feather River Air Quality Management District (FRAQMD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from vehicle and mobile equipment coating operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the ''Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before June 8, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. is EPA–R09–OAR–2020–0180 at *https://www.regulations.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.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4125 or by email at *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
FRAQMD	3.19	Vehicle and Mobile Equipment Coating Operations	08/01/16	01/24/17

On April 17, 2017, the EPA determined that the submittal for FRAQMD Rule 3.19 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 3.19 into the SIP on June 11, 2015 (80 FR 33195). The FRAQMD adopted revisions to the SIP-approved version on August 1, 2016, and CARB submitted them to us on January 24, 2017.

C. What is the purpose of the submitted rule revision?

Emissions of VOCs contribute to the production of ground-level ozone, (or ''smog'') and PM, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Rule 3.19 was revised to be consistent with the CARB Suggested Control Measure (SCM) for Automotive Coatings and Components by simplifying coating categories, lowering VOC limits and modifying recordkeeping and labeling requirements. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The FRAQMD regulates an ozone nonattainment area classified as Severe nonattainment. The District is a bi-county agency that administers local, state, and federal air quality management programs for Yuba and Sutter Counties. Portions of the District have been designated as Moderate or above nonattainment for failure to meet the federal 8-hour ground-level ozone standard. However, according to the FRAQMD, ''the District does not have any major sources located within the nonattainment area and does not anticipate any major sources or sources subject to a CTG in the future.'' Therefore, Rule 3.19 need not be as stringent as RACT. Despite this, we believe it is helpful, for informational purposes, to compare Rule 3.19 to the CARB SCM and other RACT rules in effect in other California districts. This comparison is set forth in our TSD and we believe Rule 3.19 contains RACT-level control requirements.

CAA Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, 40 CFR part 59, subpart B.

B. Does the rule meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. The TSD has more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Rule

The TSD include recommendations for the next time local agency modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until June 8, 2020. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this proposed rule, the 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, the EPA is proposing to incorporate by reference the FRAQMD Rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 1, 2020.

John Busterud,

Regional Administrator, EPA Region IX.

[FR Doc. 2020–09733 Filed 5–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0053; FRL–10008–38]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 8, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR [part 174 and/or part 180] for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before

responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 0F8822. (EPA–HQ–OPP–2020–0145). Spring Regulatory Sciences on behalf of FB Sciences, Inc., 153 N. Main St., Ste. 100, Collierville, TN 38017 requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1321 for residues of the plant growth regulator Complex Polymeric Polyhydroxy Acids (CPPA) in or on all food commodities when applied a to foliage, soil and as a seed treatment to include use as a nematicide when applied to foliage, soil, and as a seed treatment in accordance with good agricultural practices. The petitioner believes no analytical method is needed because CPPA is exempt from the requirement of a tolerance based upon the information provided in this petition. *Contact:* BPPD,

B. Amended Tolerances for Non-Inerts

PP 9E8803. (EPA–HQ–OPP–2019–0665). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes upon establishment of tolerances referenced in this document under ''New Tolerances'' for *PP9E8803,* to remove existing tolerances in 40 CFR 180.441 for residues of the herbicide quizalofop ethyl, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring only those quizalofop ethyl residues convertible to 2-methoxy-6-chloroquinoxaline, expressed as the stoichiometric equivalent of quizalofop ethyl in or on Cotton, undelinted seed at 0.1 parts per million (ppm); Sunflower, seed at 1.9 ppm. *Contact:* RD.

C. New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN–11370.* (EPA–HQ–OPP–2020–0112). SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192) on behalf of Valagro S.p.A. (Zona Industriale, Via Cagliari, 1, 66041 Atessa (CH), Italy) requests to establish an exemption from the requirement of a tolerance for residues of vitamin B1 (CAS Reg. No. 532–43–4) when used as an inert ingredient (enzymatic cofactor) in pesticide formulations applied to growing crops pre-harvest under 40 CFR 180.920, limited to 0.1% (by weight) in pesticide formulations. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN–11371.* (EPA–HQ–OPP–2020–0117). SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192) on behalf of Valagro S.p.A. (Zona Industriale, Via Cagliari, 1, 66041 Atessa (CH), Italy) requests to establish an exemption from the requirement of a tolerance for residues of vitamin B5 (CAS Reg. No. 137–08–6) when used as an inert ingredient (enzymatic cofactor) in pesticide formulations applied to growing crops pre-harvest under 40 CFR 180.920, limited to 0.1% (by weight) in pesticide formulations. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

D. New Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 9F8742. (EPA–HQ–OPP–2019–0169). J.R. Simplot Company, PO Box 27, Boise, ID 83707, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180.1019 for residues of the desiccant sulfuric acid in or on Hop Vines. The petitioner believes no analytical method is needed because the agency is establishing an exemption from the requirement of a tolerance without numerical limitation. *Contact:* RD.

E. New Tolerances for Non-Inerts

1. *PP 7F8634.* (EPA–HQ–OPP–2018–0038). Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide inpyrfluxam, S–2399, in or on corn, sweet, stover at 0.02 ppm; corn, sweet, forage at 0.02 ppm; cattle, fat at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.01 ppm; eggs at 0.01 ppm; goat, fat at 0.01 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.01 ppm; hog, fat at 0.01 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; horse, fat at 0.01 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.01 ppm; milk at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts at 0.01 ppm. The HPLC–MS/MS method is used to measure and evaluate the chemical inpyrfluxam. *Contact:* RD.

2. *PP 9E8800.* (EPA–HQ–OPP–2019–0652). Interregional Research Project No. 4 (IR–4), Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180.368 for residues of s-metolachlor, including its metabolites and degradates, S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor in or on dillweed at 5 ppm; dillweed, dried leaves at 9 ppm; dill, seed at 15 ppm; rosemary, dried leaves at 2 ppm; and rosemary, fresh leaves 1.5 ppm. A gas chromatography-nitrogen phosphorus detection (GC/NPD) method has been submitted to the Agency for determining residues in/on crop commodities and is published in PAM Vol. II, Method I. A gas chromatography-mass selective detection (GC/MSD) method has been submitted to the Agency for determining residues in livestock commodities and is published in PAM Vol. II, Method II is used to measure and evaluate the chemical. *Contact:* RD.

3. *PP 9E8803.* (EPA–HQ–OPP–2019–0665). IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180.441 for residues of the herbicide quizalofop ethyl, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring only those quizalofop ethyl residues convertible to 2-methoxy-6-

chloroquinoxaline, expressed as the stoichiometric equivalent of quizalofop ethyl in or on carinata at 1.5 ppm; cottonseed subgroup 20C at 0.1 ppm; fruit, pome, group 11–10 at 0.1 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.1 ppm; fruit, stone, group 12–12 at 0.1 ppm; pennycress, meal at 2 ppm; pennycress, seed at 1.5 ppm; and sunflower subgroup 20B at 3 ppm. The high-pressure liquid chromatography using either ultraviolet or fluorescence detection is used to measure and evaluate the chemical. *Contact:* RD.

4. *PP 9E8807.* (EPA–HQ–OPP–2020–0067). IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180.675 for residues of the insecticide tolfenpyrad, (4-chloro-3-ethyl-1-methyl-N-[[4-(4-methylphenoxy)phenyl]methyl]-1H-pyrazole-5-carboxamide in or on artichoke, globe at 5 ppm. The acceptable high-performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS) is used to measure and evaluate the chemical. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: April 13, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–09165 Filed 5–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R09–RCRA–2018–0568; FRL–10007–02–Region 9]

Tentative Determination To Approve Site Specific Flexibility for the Cocopah Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a tentative determination to approve two Site Specific Flexibility Requests (SSFRs) from Cocopah Landfill, Inc. (CLI), a Republic Services (Republic) company, to close and monitor the Cocopah Landfill. The Cocopah Landfill is located within Indian Country on the Cocopah Indian Reservation near Somerton, Arizona and was operated by Republic and its predecessors from the 1960's to the present. Republic is seeking approval from EPA for an alternative final cover and an alternative location for the storage of facility records. EPA is now seeking public comment on EPA's tentative determination to approve the SSFRs. EPA will consider timely comments before making a final determination.

DATES: Comments must be received on or before June 8, 2020. If sufficient public interest is expressed by May 26, 2020, EPA will hold a virtual public hearing on June 8, 2020 from 6:00 p.m. to 8:00 p.m. If by May 26, 2020 EPA does not receive information indicating sufficient public interest for a public hearing, EPA will cancel the public hearing and provide notice of the cancelled public hearing on *http://www.regulations.gov* under Docket ID No. EPA–R09–RCRA–2018–0568. If there is sufficient public interest for a public meeting EPA will announce further details on *http://www.regulations.gov* under Docket ID No. EPA–R09–RCRA–2018–0568 in advance of the hearing. If you are interested in attending the public hearing, contact Steve Wall at (415) 972–3381 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–RCRA–2018–0568 at *http://www.regulations.gov,* or via email to *R9LandSubmit@epa.gov.* Due to COVID–19, we are not providing facsimile or regular mail options, because those are not viable at this time. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Steve Wall, EPA Region IX, (415) 972–3381, *wall.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' refer to the EPA.

Table of Contents

I. Legal Authority for This Proposal

Under sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.,* Congress required EPA to establish revised minimum federal criteria for Municipal Solid Waste Landfills (MSWLFs), including landfill location restrictions, operating standards, design standards, and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators of hazardous waste, and EPA is to determine whether the state's program is adequate to ensure that facilities will comply with the revised federal criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR part 258. These regulations are prescriptive, self-implementing and apply directly to owners and operators of MSWLFs. Many of these criteria include a flexible performance standard as an alternative to the prescriptive, self-implementing regulation. The flexible standard is not self-implementing and requires approval by the Director of an EPA-approved state MSWLF permitting program.

However, EPA's approval of a state program generally does not extend to Indian Country because states generally do not have authority over Indian Country. For this reason, owners and operators of MSWLF units located in Indian Country cannot take advantage of the flexibilities available to those facilities that are within the jurisdiction of an EPA-approved state program.

However, the EPA has the authority under sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules to enable such owners and operators to use the flexible standards. See *Yankton Sioux Tribe* v. *EPA,* 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps* v. *EPA,* 100 F.3d 147 (D.C. Cir. 1996). EPA refers to such rules as ''Site Specific Flexibility Determinations'' and has developed draft guidance for owners and operators on preparing a request for such a site-specific rule, entitled ''Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance,'' EPA530–R–97–016 (August 1997) (Draft Guidance).

II. Background

The Cocopah Landfill is located on the Cocopah Indian Reservation on property owned by the Cocopah Indian Tribe (Tribe) and is located near Somerton, Arizona. The Cocopah Landfill is a commercial MSWLF operated by Republic and its predecessors from the 1960's to the present. Waste was last received at the Site on June 30, 2000 and interim closure construction was completed in 2003 with an interim 3-foot-thick monolithic soil cover. The Cocopah Landfill property encompasses an area of 192 acres of which approximately 138 acres were used for placement of waste materials. Disposal operations were restricted to two separate units of 105 acres and 33 acres each, designated as the North Fill Area and the South Fill Area, respectively. A combined total of approximately 2.5 million tons of waste are known to have been deposited in the two disposal units.

Between 2010 and 2016, EPA worked with the Tribe and Republic to develop and reach agreement on an overall landfill closure plan. During this time, EPA also reviewed the SSFRs to determine whether they met technical and regulatory requirements. On September 5, 2017, the Tribe submitted Republic's ''Final Closure and Post-Closure Maintenance Plan and Site-Specific Flexibility Requests for the Cocopah Landfill'' (Final Closure Plan) to EPA, requesting that EPA take appropriate action to ensure that the Final Closure Plan and accompanying SSFRs satisfy U.S. EPA's requirements. EPA provided final comments on the Plan on April 26, 2019, which Republic addressed in an updated Final Closure Plan dated November 2019. The Final Closure Plan submitted to EPA includes two SSFRs. The requests seek EPA approval to use an alternative final cover meeting the performance requirements of 40 CFR 258.60(a), and approval to use an alternative location for the storage of facility records pursuant to 40 CFR 258.29(a).

III. Basis for Proposal

EPA is basing its tentative determination to approve the SSFRs on the Tribe's concurrence, dated September 5, 2017, on the SSFRs as included in the Closure Plan, as well as EPA's determination that the SSFRs meet the requirements in 40 CFR part 258, and on EPA's independent review of the Final Closure Plan.

A. Alternative Final Cover SSFR: Alternative Final Cover System

The regulations require the installation of a final cover system specified in 40 CFR 258.60(a), which consists of an infiltration layer with a minimum of 18 inches of compacted clay with a permeability of 1×10^{-5} cm/sec, covered by an erosion layer with a minimum six inches of topsoil. Republic seeks approval for an alternative final cover designed to satisfy the performance criteria specified in 40 CFR 258.60(b); Republic proposes an alternative cover, called an evapotranspiration cover, which would consist of two and a half feet of native soil to control infiltration covered by six inches of a soil gravel mixture to control erosion.

EPA is basing its tentative determination on a number of factors, including: (1) Research showing that the prescriptive, self-implementing requirements for final covers, comprised of low permeability compacted clay, do not perform well in the arid west. The clay dries out and cracks, which allows increased infiltration along the cracks; (2) Research showing that in arid environments thick soil covers comprised of native soil can perform as well or better than the prescriptive cover; and (3) Republic's analysis demonstrating, based on site-specific climatic conditions and soil properties, that the proposed alternative soil final cover will achieve equivalent reduction in infiltration as the prescriptive cover design and that the proposed erosion layer provides equivalent protection from wind and water erosion. This analysis is provided in Appendix A, B, C and M of the Final Closure Plan for the Cocopah Landfill dated November 2019.

B. Records Storage SSFR: Alternative Location for the Storage of Facility Records

The regulations at 40 CFR 258.29(a) require that the owner or operator of a MSWLF unit must record and retain operating records at or near the facility or at an approved alternative location. Republic does not have administrative facilities at the Cocopah Landfill where records can be maintained. As a result, Republic requested approval to store all required documentation relating to the operating record of the Cocopah Landfill at the Copper Mountain Landfill (CML), which is Republic's closest operating facility to the Cocopah Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356, which is 36 miles from the Cocopah Landfill.

EPA is basing its tentative determination on factors including: (1) The Cocopah Landfill is no longer operational, and Republic does not have administrative facilities there; and (2) Republic's proposed alternative records storage location, the Copper Mountain Landfill, is only 36 miles away.

IV. Additional Findings

In order to comply with the National Historic Preservation Act, 54 U.S.C. 100101 *et seq.,* Republic will coordinate with the Tribe to arrange for a qualified Native American monitor to be present during any work. If buried or previously unidentified cultural resources are encountered during project activities, all work within the vicinity of the find will cease, and the provisions pursuant to 36 CFR 800.13(b) will be implemented. If, during the Landfill closure activities, previously undocumented archaeological material or human remains are encountered, all work shall cease in the immediate area and a qualified archaeologist shall be retained to evaluate the significance of the find and recommend further management actions.

Though no known threatened or endangered species or their habitat exist on the site, a preconstruction survey will be conducted prior to cover installation to ensure no threatened or endangered species are present. Following closure and vegetation restoration activities, the Site may become suitable for threatened and endangered species. This would be a beneficial effect.

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in Section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by Republic's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section three of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' *See* also ''EPA Policy for the Administration of Environmental Programs on Indian Reservations,'' (November 8, 1984) and ''EPA Policy on Consultation and Coordination with Indian Tribes,'' (May 4, 2011). EPA consulted with the Tribe throughout Republic's development of its Final Closure Plan for the Cocopah Landfill. EPA specifically solicits any additional comment on this tentative determination from officials of the Tribe.

List of Subjects in 40 CFR Part 258

Environmental protection, Municipal landfills, Final cover, Post-closure care, Groundwater monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: April 23, 2020.

Jeffrey Scott

Director,Land, Chemicals and Redevelopment Division,Region IX.

For the reasons stated in the preamble, 40 CFR part 258, is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

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

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart F—Closure and Post-Closure Care

■ 2. Section 258.62 is amended by adding paragraph (d) to read as follows:

§ 258.62 Approval of Site-specific flexibility requests in Indian Country.

* * * * *

(d) *Cocopah Municipal Solid Waste Landfill—Alternative final cover and alternative location for the storage of facility records.* This paragraph (d) applies to the Cocopah Landfill, a Municipal Solid Waste landfill operated by Republic on the Cocopah Indian Reservation near Somerton, Arizona.

(1) In accordance with 40 CFR 258.60(b), the owner or operator may replace the prescriptive final cover set forth in 40 CFR 258.60(a), with an alternative final cover as follows:

(i) The owner or operator may install an evapotranspiration cover system as an alternative final cover for the 135-acre site.

(ii) The alternative final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in § 258.60(a)(1) and (2) and provide an equivalent protection from wind and water erosion as the erosion layer specified in § 258.60(a)(3). Top-deck cover slopes shall have a minimum slope of 2%. All side slopes in the South Fill Area shall be regraded to a maximum 3 horizontal to 1 vertical (3H:1V). The existing side slope of 2.5H:1V in the North Fill Area will remain; however, drainage benches shall be installed on portions of the slope where the vertical height exceeds 50 feet.

(iii) The final cover system shall consist of a minimum three-feet-thick multi-layer cover system comprised, from bottom to top, of:

(A) A minimum 30-inch thick infiltration layer consisting of:

(*1*) Existing intermediate cover; and

(*2*) Additional cover soil from on-site sources, which, prior to placement, shall be wetted to optimal moisture and thoroughly mixed to near uniform condition, and the material shall then be placed in lifts with an uncompacted thickness of six to eight inches, spread evenly and compacted to 90 percent of the maximum dry density, and shall:

(*i*) Exhibit a grain size distribution that excludes particles in excess of three inches in diameter;

(*ii*) Have a minimum fines content (percent by weight passing U.S. No. 200 Sieve) of 12 percent for the average of ten consecutive tests; and

(*iii*) Have a grain size distribution with a minimum of six percent finer than five microns for the average of ten consecutive tests; and

(B) A surface erosion layer comprised of a rock/soil admixture for top deck slopes and rock armoring for side slopes. The surface erosion layer requirements for top-deck slopes and side slopes are detailed below:

(*1*) Top deck slope surface erosion layer requirements: The top deck slope surface erosion layer shall be a minimum six-inch surface erosion layer comprised of a rock/soil admixture. The top deck surface erosion layer shall achieve the following gradation specification:

(i) Exclude particles in excess of three inches in diameter;

(ii) 40% to 75% passing No. 4 sieve

(iii) 10% to 50% passing No. 40 sieve

(iv) Less than or equal to 15% passing No. 200 sieve

(*2*) Side slope surface erosion layer: The side slope surfaces erosion layer shall consist of a 4-inch thick rock armor underlain by an 8 ounce per square yard (oz/sy) non-woven geotextile filter fabric. The side slope surface erosion rock armor layer shall achieve the following gradation specification:

(i) Exclude particles in excess of three inches in diameter;

(ii) 10% to 40% passing No. 4 sieve

(iii) 0% to 10% passing No. 40 sieve

(2) In accordance with 40 CFR 258.29(a), the owner operator may retain

all required documentation relating to the operating record of the Cocopah Landfill at the administrative offices of Copper Mountain Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356.

(3) The owner or operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(4) All other applicable provisions of 40 CFR part 258 remain in effect.

[FR Doc. 2020–09241 Filed 5–7–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 90
Friday, May 8, 2020

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Request for Nominations of Members for the National Agricultural Research, Extension, Education, and Economics Advisory Board, Specialty Crop Committee, Citrus Disease Subcommittee, and National Genetic Resources Advisory Council

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Department of Agriculture (USDA) announces the opening of the solicitation for nominations to fill vacancies on the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board and its subcommittees. There are fourteen vacancies on the NAREEE Advisory Board; four vacancies on the National Genetic Resources Advisory Council; three vacancies on the Specialty Crop Committee; and three vacancies on the Citrus Disease Subcommittee.

DATES: USDA will consider nominations received by July 31, 2020.

ADDRESSES: To ensure receipt of nomination packages, please email the nominee's name, resume or CV, completed and signed Form AD–755, and any letters of support to *nareeeab@ars.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Michele Esch, Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue SW, Room 332A, The Whitten Building, Washington, DC 20250–2255; telephone: 202–720–3684 or email: *nareeeab@ars.usda.gov.* Committee website: *https://nareeeab.ree.usda.gov/.*

SUPPLEMENTARY INFORMATION:

Instructions for Nominations: Nominations are solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country.

Nominees may be considered for the NAREEE Advisory Board and or a subcommittee and may be considered for more than one category and/or subcommittee dependent on the nominee's qualifications. Each nominee must submit a signed form AD–755, ''Advisory Committee Membership Background Information,'' which can be obtained from the contact person above or from: *https://www.ocio.usda.gov/sites/default/files/docs/2012/AD-755%20-%20Approved%20Master%202015.pdf*). A resume or CV should also be submitted. Letters of nomination or support are encouraged. Nomination letters must indicate whether they are applying for a NAREEE Board position or a subcommittee AND include the category(s) for which the nominee is applying.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure the recommendation of the Advisory Board takes into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

Please note, individuals may not serve on more than one USDA Federal Advisory Committee. Individuals, who are lobbyists, appointed to committees to exercise their own individual best judgment on behalf of the government (*e.g.* as Special Government Employees) are ineligible to serve.

All nominees will be carefully reviewed for their expertise, leadership, and relevance. Appointed members will serve two-, or three-year terms in order to properly stagger term rotation. All nominees will be vetted before selection. Appointments to the NAREEE Advisory Board and its subcommittees will be made by the Secretary of Agriculture.

National Agricultural Research, Extension, Education and Economics Advisory Board

The NAREEE Advisory Board was established in 1996 via Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) to provide advice to the Secretary of Agriculture and land-grant colleges and universities on top priorities and policies for food and agricultural research, education, extension, and economics. Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 was amended by the Farm Security and Rural Investment Act of 2002 to reduce the number of members on the NAREEE Advisory Board to 25 members and required the Board to also provide advice to the Committee on Agriculture of the House of Representatives; the Committee on Agriculture, Nutrition, and Forestry of the Senate; the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies of the Committee on Appropriations of the House of Representatives; and the Subcommittee on Agriculture, Rural Development and Related Agencies of the Committee on Appropriations of the Senate. Subsequently, Section 1408 of the Agricultural Improvement Act of 2018 further reduced the number of members from 25 to 15 and changed the categories of membership for the advisory board. Each member of the Board represents a specific category including: National Farm or Producer Organizations; Academic or Research Societies; Agricultural Research, Extension and Education; or Industry, Consumer or Rural Interests.

Nominations are being sought for the following categories:

- Three members to represent National Farm or Produce Organizations, which may include members representing:
  - farm cooperatives;
  - food animal commodity producers;
  - plant commodity producers; or
  - aquaculture producers.
- Two members to represent Academic or Research Societies, which may include members representing:
  - National food animal science society;
  - national crop, soil, agronomy, horticulture, plant pathology, or weed science society;

○ national food science organization;
○ national human health association; or
○ national nutritional science society.

• four members to represent Agricultural Research, Extension and Education, which *shall* include members representing:
○ 1 member representing the 1862 land-grant colleges and universities.
○ 1 member representing the 1890 land-grant colleges and universities, including Tuskegee University.
○ 1 member representing the 1994 Equity in Education land-grant institution
○ 1 member representing American colleges of veterinary medicine

• five members to represent Industry, Consumer or Rural Interests, which may include members representing:
○ Transportation of food and agricultural products to domestic and foreign markets;
○ food retailing and marketing interests;
○ food and fiber processors;
○ rural economic development interests;
○ a national consumer interest group;
○ a national forestry group;
○ a national conservation or natural resource group;
○ a national social science association;
○ private sector organizations involved in international development; or
○ a national association of agricultural economists.

All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

National Genetic Resources Advisory Council

The National Genetic Resources Advisory Council was originally established in March, 1992 via section 1634 (7 U.S.C. 5843) of the Food, Agriculture, Conservation and Trade Act of 1990 to formulate recommendations on actions and policies for the collection, maintenance, and utilization of genetic resources; to make recommendations for coordination of genetic resources plans of several domestic and international organizations; and to advise the Secretary of Agriculture and the National Genetic Resources Program, part of the Agricultural Research Service, of new and innovative approaches to genetic resources conservation. It was subsequently re-established in 2012 as a permanent subcommittee of the NAREEE Advisory Board. The Agricultural Improvement Act of 2018 further expanded the responsibilities of the Council to include recommendations on cultivar development and increased the number of members from 9 to 13. The membership is required to have 6 members from scientific disciplines relevant to the National Genetic Resources Program, including agricultural sciences, economics and policy, environmental sciences, natural resource sciences, health sciences, and nutritional sciences; 3 members from the general public and shall include leaders in fields of public policy, community development, trade, international development, law, or management; and 4 members with expertise in cultivar development and animal breed development. In addition, 4 of the members of the NGRAC shall be appointed from among individuals representing: 1862 land-grant colleges and universities; 1890 land-grant colleges and universities; Hispanic-serving institutions; or 1994 Equity in Education land-grant institutions.

Nominations are being sought for the following categories:

• Three members to represent the scientific disciplines, and
• one member to represent the general public.

All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

Specialty Crop Committee

The Specialty Crop Committee was created as a subcommittee of the NAREEE Advisory Board in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108–465. The committee was formulated to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The legislation defines ''specialty crops'' as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture). The Agricultural Act of 2014 further expanded the scope of the Specialty Crop Committee to provide advice to the Secretary of Agriculture on the relevancy review process of the Specialty Crop Research Initiative, a grant program of the National Institute of Food and Agriculture.

Members should represent the breadth of the specialty crop industry. Three members of the Specialty Crop Committee are also members of the NAREEE Advisory Board, and six members represent various disciplines of the specialty crop industry. The terms of three members expired on September 30, 2020. The Specialty Crop Committee is soliciting nominations to fill three vacant positions to represent the specialty crop industry. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

Citrus Disease Subcommittee: The Citrus Disease Subcommittee was established by the Agricultural Act of 2014 (Sec. 7103) to advise the Secretary of Agriculture on citrus research, extension, and development needs, engage in regular consultation and collaboration with USDA and other organizations involved in citrus, and provide recommendations for research and extension activities related to citrus disease. The Citrus Disease Subcommittee will also advise the Department on the research and extension agenda of the Emergency Citrus Disease Research and Extension Program, a grant program of the National Institute of Food and Agriculture.

Section 1408(a)(2) of the Agricultural Improvement Act of 2018 amended the membership of the Citrus Disease Subcommittee to increase the number of members from 9 members to 11. Members must be a producer of citrus with representation from the following States: five members from Arizona or California, five members from Florida, and one member from Texas.

The Citrus Disease Subcommittee is soliciting nominations to fill three vacant positions for membership:

• Two positions to represent Florida, and
• one position to represent California or Arizona.

All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

Done at Washington, DC, this day of April 13, 2020.

Cikena Reid,

Committee Management Officer, U.S. Department of Agriculture.

[FR Doc. 2020–09931 Filed 5–7–20; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0021]

Bayer/Monsanto; Availability of Petition for Determination of Nonregulated Status of Maize Genetically Engineered for Dicamba, Glufosinate, Quizalofop, and 2,4-Dichlorophenoxyacetic Acid Tolerance With Tissue-Specific Glyphosate Tolerance Facilitating the Production of Hybrid Maize Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Bayer/Monsanto seeking a determination of nonregulated status of maize genetically engineered for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid tolerance with tissue-specific glyphosate tolerance facilitating the production of hybrid maize seed. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before July 7, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0021.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The petition and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0021* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

The petition is also available on the APHIS website at: *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status* under APHIS petition 19–316–01p.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3892; email: *cynthia.a.eck@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 19–316–01p) from Bayer/Monsanto, seeking a determination of nonregulated status maize genetically engineered for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid tolerance with tissue-specific glyphosate tolerance facilitating the production of hybrid maize seed. The Bayer/Monsanto petition states that the maize is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

Data were gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review and comment, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. Any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decision-making documents. As part of our decision-making process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment.

Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of May 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–09834 Filed 5–7–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet in Petersburg, Alaska and Wrangell, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *Wrangell-Petersburg RAC.*

DATES: The meeting will be held on Wednesday and Thursday, May 27 and 28, 2020, from 6:30 p.m. to 9:00 p.m. each night, or until business is concluded.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually and by teleconference.

Interested persons may attend by teleconference. For anyone who would like to attend by teleconference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District Office or the Wrangell Ranger District Office, Monday through Friday at 8:00 a.m. to 4:30 p.m. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Linda Slaght, RAC Coordinator, by phone at 907–772–5948 or via email at *linda.slaght@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review progress of previously funded projects;

2. Review new project proposals; and

3. Make recommendations for allocation of Title II funding to projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, May 22, 2020 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments may be sent to Linda Slaght, RAC Coordinator, P.O. Box 1328, Petersburg, Alaska 99833; by email to *linda.slaght@usda.gov* or via facsimile to 907–772–5995.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: March 4, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–09851 Filed 5–7–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Livestock Slaughter Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by July 7, 2020 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0005, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Livestock Slaughter Survey.

OMB Control Number: 0535–0005.

Expiration Date of Approval: November 30, 2020.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service

is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. Livestock slaughter data are used to estimate U.S. red meat production and reconcile inventory estimates which provide producers and the rest of the industry with current and future information on market supplies. This data is also used in preparing production, disposition, and income statistics which facilitate more orderly production, marketing, and processing of livestock and livestock products. NASS compiles data from both Federally Inspected and Non-Federally Inspected Slaughter Plants.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: The Livestock Slaughter Survey includes a weekly survey of approximately 900 Federally Inspected (FI) slaughter plants and a monthly survey of approximately 1,100 State Inspected (SI) slaughter plants. Slaughter data is compiled by the Federal and State inspectors, therefore NASS does not contact these operations. NASS collects data only from the smaller independent plants and combines this data with the FI and SI data to create a national report. The smaller, independent operations (approximately 1,000 operations) are contacted either monthly, quarterly, or annually. Public reporting burden for this collection of information is estimated to average 15 minutes per response for an estimated annual burden of 1,800 hours. (The USDA and State inspectors are not included in the calculation of total burden, since they are performing this task as a part of their job functions.)

Respondents: Farmers and custom/state inspected slaughter plants.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden on Respondents: 1,800 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) 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 appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 23, 2020.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2020–09871 Filed 5–7–20; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Tuesday, May 19, 2020 at 12:00 p.m. (EDT). The purpose of the web conference is to hear from advocates and others on water issues in Massachusetts.

DATES: Tuesday, May 19, 2020, at 12:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–866–575–6539 and conference ID: 3059676.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–866–575–6539 and conference ID: 3059676. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–866–575–6539 and conference ID: 3059676.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzllAAA,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Tuesday, May 19, 2020 at 12:00 p.m. (EDT)

1. Roll Call
2. Web Briefing on Water Project
3. Next Steps
4. Open Comment
5. Adjourn

Dated: May 4, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09816 Filed 5–7–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee To Discuss a Report on Barriers to Voting in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Thursday, May 14, 2020, at 1:00 p.m. (Central) for the purpose discussing edits to the final draft of the Voting Rights report. Additionally, the Committee may discuss future topics of study.

DATES: The meeting will be held on Thursday, May 14, 2020, at 1:00 p.m. (Central).

Public Call Information: Dial: 800–367–2403, Conference ID: 1077617.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID: 1077617. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*https://www.facadatabase.gov/FACA/FACAPublicCommittee?id=a10t0000001gzlLAAQ*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of Edits to the Barriers to Voting Report
Committee Vote on Report
Next Steps
Public Comment
Adjournment

Dated: May 5, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09883 Filed 5–7–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Colorado Advisory Committee to the Commission will convene by conference call at Tuesday, May 19, 2020 (MDT) on 12:00 p.m.. The purpose of the meeting is for information gathering on maternal health disparities.

DATES: Tuesday, May 19, 2020, at 12:00 p.m. (MDT).

Public Call-In Information: Conference call number: 1–866–575–6539 and conference call ID: 3059676.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov* or by phone at 202–381–8915.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–866–575–6539 and conference call ID: 3059676.

Please be advised that, before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number provided.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–866–575–6539 and conference call 3059676.

Members of the public are invited to make statements during the open comment period of the meeting or email written comments. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov* approximately 30 days after each scheduled meeting. Persons who desire additional information may also contact Evelyn Bohor at (202) 381–8915.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzksAAA;* click the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact Evelyn Bohor at the above phone number or email address.

Agenda

Tuesday, May 19, 2020; 12:00 p.m. (MDT)

I. Roll Call
II. Information Gathering on Maternal Disparities
III. Next Steps
IV. Other Business
V. Open Comment

VI. Adjournment

Dated: May 4, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09844 Filed 5–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

RIN 0691–XC111

American Workforce Policy Advisory Board; Meeting

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Office of the Under Secretary for Economic Affairs announces the fifth meeting of the American Workforce Policy Advisory Board (Advisory Board) for May 19, 2020, between 1 p.m. and 2 p.m. (EDT). The meeting will be conducted via teleconference; consistent with prior meetings, the public will be able to listen to the proceedings via teleconference. The Advisory Board will discuss workforce policy recommendations to encourage leaders in government, the private sector, and educational institutions to accelerate the re-employment of American workers and the Nation's economic recovery.

DATES: The Advisory Board will meet on May 19, 2020; the meeting will begin at 1 p.m. (EDT) and end at approximately 2 p.m. (EDT).

ADDRESSES: The meeting will be conducted virtually. The meeting is open to the public via audio conference technology. Audio instructions will be prominently posted on the Advisory Board homepage at: *https://www.commerce.gov/americanworker/american-workforce-policy-advisory-board.* Please note: The Advisory Board website will maintain the most current information on the meeting agenda, schedule, and location. These items may be updated without further notice in the **Federal Register**.

The public may also submit statements or questions via the Advisory Board email address, *AmericanWorkforcePolicyAdvisoryBoard@doc.gov* (please use the subject line ''May 2020 Advisory Board Meeting Public Comment''), or by letter to Sabrina Montes, c/o Office of Under Secretary for Economic Affairs, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. If you wish the Advisory Board to consider your statement or question during the meeting, we must receive your written statement or question no later than 5 p.m. (EDT) two business days prior to the meeting. We will provide all statements or questions received after the deadline to the members; however, they may not consider them during the meeting.

FOR FURTHER INFORMATION CONTACT: Sabrina Montes, c/o Office of Under Secretary for Economic Affairs, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, (301) 278–9268, or *sabrina.montes@bea.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Commerce and the Advisor to the President overseeing the Office of Economic Initiatives serve as the co-chairs of the Advisory Board. In addition to the co-chairs, the Advisory Board comprises 25 members that represent various sectors of the economy. The Board advises the National Council for the American Worker.

Exceptional Circumstances: Pursuant to 41 CFR 102–3.150(b), the notice for this meeting is given less than 15 calendar days prior to the meeting due to the exceptional circumstances caused by the novel COVID–19 outbreak, resulting in the proclamation of a national emergency by the President on March 13, 2020. This quick turnaround meeting is necessary to enable the American Workforce Policy Advisory Board to leverage the experience and knowledge of the Board Members to provide immediate workforce policy recommendations to the President's National Council for the American Worker to accelerate the re-employment of American workers and the Nation's economic recovery.

Sabrina L. Montes,

Designated Federal Official, American Workforce Policy Advisory Board, Bureau of Economic Analysis.

[FR Doc. 2020–09863 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–MN–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/21/2020 through 5/4/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Unique Automation, LLC	612 East Main Street, Palmyra, NY 14522.	4/25/2020	The firm manufactures hydraulic and pneumatic power systems for industrial equipment.
Chesaning Manufacturing Company, Inc. d/b/a Jetool.	307 South 4th Street, Chesaning, MI 48616.	5/4/2020	The firm manufactures hand tools for aircraft maintenance.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2020–09891 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that S.C. Silcotub S.A. (Silcotub), a producer/exporter of certain small diameter carbon and alloy seamless standard, line and pressure pipe (small diameter seamless pipe) from Romania, did not sell subject merchandise at prices below normal value (NV) during the period of review (POR) August 1, 2018 through July 31, 2019. In addition, Commerce preliminarily determines that ArcelorMittal Tubular Products Roman S.A. (ArcelorMittal) had no shipments of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable May 8, 2020.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2019, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of an administrative review of the antidumping duty order on small diameter seamless pipe from Romania covering four producers/exporters.[1] On October 15, 2019, United States Steel Corporation (the petitioner) withdrew its request for administrative review of SC TMK-Artrom S.A. (TMK-Artrom) and SC Tubinox S.A. (Tubinox).[2] Based on this request, we rescinded this review with respect to TMK-Artrom and Tubinox, in accordance with 19 CFR 351.213(d)(1).[3] The administrative review remains active with respect to the two remaining companies for which a review was initiated, *i.e.,* ArcelorMittal and Silcotub.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020.[4]

Scope of the Order

The merchandise covered by the *Order*[5] is small diameter seamless pipe from Romania. The product is currently classified under subheadings 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of merchandise subject to the scope is dispositive. For a full description of the Scope of the *Order,* see the Preliminary Decision Memorandum.[6]

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). Constructed export price (CEP) 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 *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* 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

We preliminarily determine that ArcelorMittal had no shipments of the subject merchandise to the United States during the POR.[7] Consistent with its practice, Commerce finds that it is not appropriate to preliminarily rescind the review with respect to ArcelorMittal, but rather to complete the review and issue appropriate instructions to CBP based on the final results of this review.

Preliminary Results of Review

As a result of this review, Commerce preliminarily determines that the following weighted-average dumping margin exists for the period August 1, 2018 through July 31, 2019:

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

[2] *See* Petitioner's Letter,'' Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4.5 Inches) from Romania: Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,'' dated October 15, 2019.

[3] See *Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) from Romania: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 84 FR 58684 (November 1, 2019).

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania,* 65 FR 48963 (August 10, 2000) (*Order*).

[6] *See* Memorandum, ''Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *Id.*

Producer/exporter	Weighted-average dumping margin percent)
S.C. Silcotub S.A	0.00

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 in accordance with 19 CFR 351.224(b).

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 seven days after the date for filing case briefs.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), 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.

All submissions to Commerce must be filed electronically using Enforcement and Compliance's electronic records system, ACCESS,[11] and must also be served on interested parties.[12] An electronically filed document must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due.

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, using ACCESS within 30 days of publication of this notice.[13] 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 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 time and date to be determined. Parties should confirm by telephone the date, time and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), 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.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14]

If Silcotub's calculated weighted-average dumping margin is above *de minimis* (*i.e.,* greater than or equal to 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer, and we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. If Silcotub's weighted-average dumping margin continues to be zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[15]

In accordance with the Department's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Silcotub for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[16]

If we continue to find in the final results that ArcelorMittal had no shipments of subject merchandise, for entries of subject merchandise during the POR produced by ArcelorMittal for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of small diameter seamless pipe from Romania 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 Silcotub will be the rate established in the final results of this administrative review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1) (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers 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; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, then the cash deposit rate will be the rate established for the most recently-completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 13.06 percent, the all-others rate established in the less-than-fair-value investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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, and 19 CFR 351.221(b)(4).

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d); *see also* Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19, 85 FR 17006 (March 26, 2020) (*Temporary Rule*) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).'').

[10] *See Temporary Rule.*

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.303(f).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.212(b)(1).

[15] *See* 19 CFR 351.106(c)(2).

[16] For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Order,* 65 FR at 48965.

Dated: May 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–09905 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Stilbenic Optical Brightening Agents From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Teh Fong Min International Co., Ltd. (TFM), the sole producer and/or exporter subject to this administrative review, made sales of subject merchandise at less than normal value. Interested parties are invited to comment on the preliminary results of this review.

DATES: Applicable May 8, 2020.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3683.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2019, Commerce initiated the administrative review of the antidumping duty order on stilbenic optical brightening agents (OBAs) from Taiwan.[1] The period of review is May 1, 2018 through April 30, 2019.

On January 14, 2020, we extended the due date for the preliminary results of this review from January 31, 2020 to May 22, 2020. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 13, 2020.[2]

Scope of the Order

The merchandise subject to the *Order*[3] is OBAs and is currently classifiable under subheadings 3204.20.8000, 2933.69.6050, 2921.59.4000 and 2921.59.8090 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS numbers are provided for convenience and customs purposes, the written product description is dispositive. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this review in accordance with section 751 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. Normal value 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. A list of the topics included in the Preliminary Decision Memorandum is included in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Preliminary Results of the Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for TFM for the period May 1, 2018 through April 30, 2019:

Producer/exporter	Weighted-average dumping margin (percent)
Teh Fong Min International Co., Ltd	4.61

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[5] 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.[6] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[7]

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 ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, no later than 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[8] 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 those raised in the respective case briefs. Commerce intends to issue the final

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739, 33743 (July 15, 2019) (*Initiation Notice*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020. Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). We note that 50 days after May 22, 2020 is July 11, 2020. However, because that date is a Saturday, the current deadline is Monday, July 13, 2020.

[3] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (*Order*).

[4] *See* ''Certain Stilbenic Optical Brightening Agents from Taiwan: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[8] *See* 19 CFR 351.310(c).

results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

If TFM's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[9] If TFM's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate the appropriate entries without regard to antidumping duties in accordance with the *Final Modification for Reviews.*[10] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the period of review produced by TFM for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of OBAs from Taiwan 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 companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty 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 period of review. 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) of the Act and 19 CFR 351.221(b)(4).

Dated: May 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–09907 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–DS–P

[9] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[10] *See Final Modification for Reviews,* 77 FR at 8103; *see also* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: On December 18, 2019, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). Based on our analysis of the comments received, we continue to find that subject merchandise has been sold at less than normal value.

DATES: Applicable May 8, 2020.

FOR FURTHER INFORMATION CONTACT: Allison Hollander or Michael A. Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805 or (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 2019, Commerce published the *Preliminary Results* of this administrative review.[1] The period of review (POR) is February 1, 2018 through January 31, 2019. We invited interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties.[2]

Commerce exercised its discretion to toll all deadlines affected by the partial

[1] *See Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 84 FR 69360 (December 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Dongkuk Steel Mill Co., Ltd.'s (Dongkuk's) Case Brief, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Case Brief,'' dated January 17, 2020; Hyundai Steel Company's (Hyundai Steel's) Case Brief, ''Certain Cut-to-Length Carbon-Quality Steel Plate from Korea: Case Brief,'' dated January 17, 2020; and Nucor Corporation's (the petitioner's) Case Brief, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief,'' dated January 17, 2020; *see also* Petitioner's Rebuttal Brief ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Brief,'' dated January 27, 2020; and Dongkuk's Rebuttal Brief, ''Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Rebuttal Brief,'' dated January 27, 2020.

federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019, including the *Preliminary Results*.[3] On April 8, 2020, we extended the deadline for these results until April 30, 2020.[4] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 19, 2020.[5]

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are certain CTL plate from Korea. For a full description of the scope of the order, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we revised the preliminary margin calculation for Dongkuk and Hyundai Steel. These revisions resulted in changes to the margins for Dongkuk, Hyundai Steel, and the respondents not selected for individual examination for the final results of this review.[7]

Final Results of the Administrative Review

We determine that the following weighted-average dumping margins exist for the respondents for the period February 1, 2018 through January 31, 2019:

Producer/exporter	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd	2.26
Hyundai Steel Company	2.49
BDP International	2.43
Sung Jin Steel Co., Ltd	2.43

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the final results in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Dongkuk and Hyundai Steel, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[8] For entries of subject merchandise during the POR produced by Dongkuk or Hyundai Steel for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For the companies which were not selected for individual examination, BDP International and Sung Jin Steel Co., Ltd., we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by these firms. We intend to issue liquidation instructions to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice for all shipments of CTL plate from Korea 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 the companies listed above will be equal to the weighted-average dumping margins 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 completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the producer has been covered in a prior complete segment of this proceeding, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 0.98 percent,[9] the all-others rate determined in the LTFV investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a

[3] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding were affected by the partial federal government closure and were extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[4] *See* Memorandum, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Final Results of the Antidumping Duty Administrative Review,'' dated April 8, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See* Issues and Decision Memorandum for further details on the changes we made for these final results; *see also* Memoranda, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Analysis Memorandum for Dongkuk Steel Mill Co., Ltd.,'' and ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Analysis Memorandum for Hyundai Steel Company,'' both dated concurrently with this notice; *see also* Memorandum, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Calculation of the Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

[8] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[9] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32629, 32630 (July 13, 2018).

certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[10]

Dated: May 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–09889 Filed 5–7–20; 8:45 am]

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[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA166]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, May 26, 2020 at 9 a.m.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://attendee.gotowebinar.com/register/6278612023450284812.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel plan to develop research recommendations for the 2021/22 Scallop Research Set-Aside (RSA) federal funding announcement.

The panel will discuss the impacts of COVID–19: timing and outlook for 2020 surveys and 2021/22 specifications process. They will also receive an update from NMFS on status of Council's emergency action request. Other business may be discussed, as necessary. Brief review of NROC/MARCO/RODA fishery dependent data project and request for feedback.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 5, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–09882 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA165]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Wednesday, May 27, 2020, starting at 1 p.m. and continuing until approximately 4 p.m.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the EWG to discuss revisions to Chapter 3 of the Fishery Ecosystem Plan as part of the five-year review of the document. In

March 2020 the Council directed the EWG to submit, for the September 2020 advanced briefing book, draft revisions to Chapter 3. The EWG also may discuss ongoing work associated with the Fishery Ecosystem Plan Climate and Communities Initiative and may develop recommendations on administrative items for the Council's June 2020 meeting, particularly future meeting planning.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least ten days prior to the meeting date.

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

Dated: May 5, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–09884 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA123]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of Two Liquefied Natural Gas Terminals, Texas

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received requests from Rio Grande LNG, LLC (Rio Grande) and, separately, Annova LNG Common Infrastructure (Annova) for authorization to take marine mammals incidental to pile driving and removal associated with the construction of two separate LNG terminals in the Brownsville Ship Channel (BSC), Cameron County, Texas. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two separate incidental harassment authorizations (IHAs; one to Rio Grande and one to Annova) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-year renewals 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 decisions.

DATES: Comments and information must be received no later than June 8, 2020.

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 may be provided to the public for review.

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 the 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 the 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.

These actions are 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 IHAs 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 final decisions on the IHA requests.

Summary of Request

On August 20, 2019, NMFS received a request from Rio Grande for an IHA to take marine mammals incidental to pile driving associated with the construction of a LNG terminal in the BSC. Rio Grande submitted a revised application on November 21, 2019 that was deemed adequate and complete on December 19, 2019. Rio Grande's request is for take of a small number of three species of marine mammals, by Level B harassment only. Rio Grande, Annova and NMFS do not expect serious injury or mortality to result from these activities and, therefore, an IHA is appropriate.

Separately, on June 27, 2019, NMFS received a request from Annova for an IHA to take marine mammals incidental to pile driving associated with the construction of a LNG terminal in the BSC. Annova submitted a revised application on February 28, 2020 that was deemed adequate and complete on March 2, 2020. Annova's request is for take of a small number of three species of marine mammals, by Level B harassment only. Neither Annova nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Given the two projects and potential impacts are nearly identical in scope, the projects are located in the same waterway (the BSC), and the same species/stocks are potentially affected, we are utilizing this single **Federal Register** notice to notify the public of our proposed issuance of the two separate authorizations.

Description of Proposed Activity

Overview

Rio Grande and Annova are each proposing to construct an LNG terminal in the Brownsville Ship Channel, Texas. The purpose of each project is to construct and operate an LNG terminal for purposes of international export. The LNG terminals would be located across from each other on opposite banks of the BSC. Both projects require pile driving and removal. Rio Grande proposes to install 12 42–48-inch (in) piles and remove 5 small timber piles over 9 days. Annova proposes to install and remove 16 24-in temporary piles and install 4 96 impermanent breasting dolphin piles over 16 days. Due to the nature of the activities and potential presence of dolphins in the BSC, both applicants have requested authorization for the take of marine mammals incidental to pile driving and removal. Rio Grande's proposed IHA would be valid July 1, 2020 through June 30, 2021. Annova's proposed IHA would be valid March 1, 2021 through February 28, 2021.

Dates and Duration

Rio Grande has indicated pile driving activities could occur starting in July 1, 2020, but actual start dates will be based on receipt of all certifications, authorizations, and necessary permits. Rio Grande has indicated pile driving would be limited to daylight hours; however, dredging may occur at any time. Pile driving and removal would occur for no more than 8 days (note the application states 12 days; however, the applicant clarified removal of the five timber navigation piles would occur in one day, not five).

Annova pile driving would occur beginning in 2021, contingent upon receipt of all certifications, authorizations, and necessary permits. Annova has requested the proposed IHA would be valid for one-year starting March 1, 2021. Annova has indicated pile driving would be limited to daylight hours; however, dredging may occur at any time. Pile driving and removal would occur for no more than 16 days.

Specific Geographic Region

The Laguna Madre system is a long (109 kilometers (km)) backwater bay separated from the Gulf of Mexico by Padre Island. The waters of Laguna Madre are approximately 439 square miles (mi^2) and are hypersaline (saltier than typical sea water) due to the shallow water, limited freshwater inflow, and limited surface water exchange with the Gulf of Mexico (USACE 2014). It is subdivided into two lagoons referred to as the Upper Laguna Madre (approximately 40 mi long) and the Lower Laguna Madre (approximately 60 mi long). Substrate includes hard rock reefs, sand, mudflats, and extensive sea grass beds with an average depth of one meter (m), excluding dredged shipping channels that extend up to approximately 3.7 m in depth.

The BSC is located within the southernmost portion of Lower Laguna Madre. Both projects would be constructed in the BSC. The BSC is a man-made, marine navigation channel that connects to the Gulf of Mexico and forms the western terminus of the Gulf Intracoastal Waterway system. The BSC is a deep-draft navigation channel connecting the deepwater Port of Brownsville to the Gulf of Mexico via the Brazos Santiago Pass and is an established shipping corridor between the Texas mainland and South Padre Island. The BSC is approximately 12.8 m (42 feet (ft)) deep and 27.4 km (17 miles (mi)) long. At the terminal sites, it is approximately 300 m wide. A turning basin located at the western terminus of the BSC is approximately 11 m (36 ft) deep and 365.8 m (1,200 ft) wide (Port of Brownsville 2019a).

The Rio Grande terminal site would be located on the northern shore of the BSC. The site is comprised of a shallow estuarine open water lagoon with estuarine emergent marsh and mudflats around its perimeter. The western boundary of the Terminal site is the Bahia Grande Channel, which was constructed in 2005 to connect the BSC and the Bahia Grande to restore tidal exchange to the Bahia Grande (USFWS 2015). As part of a comprehensive restoration plan, channels were constructed between the basins in the Bahia Grande system, and future plans include widening the Bahia Grande Channel from approximately 10.4 m (34 ft) to 76.3 m (250 ft) to increase tidal exchange via the BSC (Ocean Trust 2009; USFWS 2010).

The Annova terminal would be located opposite and slightly west of the Rio Grande terminal. The bank of the BSC at the site is non-vegetated; the channel is a poor habitat for seagrass due to disturbance from drawdowns and return surges associated with normal tidal movement and human-induced actions such as vessel traffic.

Fishing in the BSC is diverse. Anglers can reasonably expect to encounter snook, mangrove snapper, ladyfish, speckled trout, redfish, black drum, sheepshead, jack crevalle, lookdowns, etc. The shrimp fishery fleet docks at the terminus of the BSC and actively fishes the BSC. The vessels transit past both terminal sites inbound to the marina and dolphins have been observed following these shrimp boats, likely foraging on discarded bycatch (Ronje *et al.,* 2018, Piwetz and Whitehead, 2019).

Detailed Description of Specific Activity

Rio Grande

Rio Grande proposes to construct a natural gas liquefaction facility and liquefied natural gas (LNG) export terminal (Terminal) in Cameron County,

Texas, along the north embankment of the Brownsville Ship Channel (BSC)(Figure 1). The purpose of the project is to develop, own, operate, and maintain a natural gas pipeline system to access natural gas from the Agua Dulce Hub and an LNG export facility in south Texas to export 24.5 million metric tons (27 million U.S. tons) per annum of natural gas that provides an additional source of firm, long-term, and competitively priced LNG to the global market.

Figure 1. Rio Grande LNG Terminal Location.

The terminal would be located on approximately 3.04 square kilometers (km^2) (750.4 acres) of a 3.98-km2 (984.2-acre) parcel of land along the northern shore of the BSC in Cameron County, Texas, approximately 16 km (9.8 statute miles) east of Brownsville and about 3.5 km (2.2 mi) west of Port Isabel (see Figure 1). The Terminal, which is currently expected to begin operations in late 2023, would have a minimum 20-year life span (which could be extended to a 50-year life span). It would receive natural gas via a proposed Pipeline System, which would connect the Terminal to the existing infrastructure near the natural gas Agua Dulce hub interconnection in Nueces County. All pipeline work is conducted on land and there are no potential impacts on marine mammals from this work; therefore, pipeline work will not be discussed further.

The terminal site includes the following major facilities: six liquefaction trains; four full-containment LNG storage tanks; docking facilities for two LNG vessels, turning basin, and material offloading facility (MOF); LNG truck loading facilities with four loading bays; and Pipeline System's Compressor Station 3, a metering site, and the interconnection to the Pipeline System. In-water pile driving associated with construction of the LNG Loading and Vessel Berthing Area, turning basin, MOF, and Tug Berth have the potential to harass marine mammals. Rio Grande would also remove existing navigation markers. We describe these construction activities below.

LNG Loading and Vessel Berthing Area

Two LNG vessel loading berths would be constructed along the south-central boundary of the Terminal to accommodate simultaneous loading of two LNG vessels (see Figure 2). The berths would be recessed into the Terminal property so that loading LNG vessels, separated by 76 m (250 ft), would not encroach on the navigable channel boundaries of the BSC. Construction of the loading berths would require dredging to a depth of up to -14 m (43 ft plus 2 ft *al*lowable overdepth) mean lower low water

(MLLW) (-13-m [43 ft] plus -0.6 m [2 ft] of allowable overdepth). No pile driving in-water is associated with this part of the project.

Turning Basin

A 457.2-m (1,500-foot)-diameter turning basin would be constructed to the east of the LNG vessel loading berths to accommodate turning maneuvers of the LNG vessels calling on the Terminal. LNG vessels would be escorted into the BSC and turning basin via tug boats, rotated in the turning basin, and then placed adjacent to a loading berth with the bow facing downstream (*i.e.,* eastward). The turning basin would be partially recessed into the terminal site, but the area of the turning basin would encroach on the navigable channel of the BSC such that channel transit would be temporarily precluded until the LNG vessels were moored at the berth. As with the loading berths, the turning basin would be dredged to a depth of up to −13.1 m (−43 ft plus 2 ft allowable overdepth). The navigable channel is maintained at −12.8 m (−42 ft) MLLW and would be deepened to −15.8 m (−52 ft) plus 0.6 m (2 ft) allowable overdepth and an additional 0.6 m (2 ft) for advanced maintenance dredging. An in-water Private Aid to Navigation (PATON) consisting of two steel 48-in pipe piles would be installed just outside of the footprint of the turning basin.

MOF and Tug Basin

Rio Grandewould construct a MOF along the western extent of the Terminal site, adjacent to the BSC. The MOF would primarily be used during construction for marine delivery of bulk materials and larger or prefabricated equipment as an alternative to road transportation; however, it would be maintained for the life of the terminal for periodic delivery of bulk materials. The MOF, which would require a dredged depth of up to −7.6 m (−25 ft) MLLW plus 0.6 m (2 ft) advanced maintenance allowance, would be constructed of a steel sheet pile bulkhead on land. Fencing would be placed around the MOF to control access and separate it from the adjacent wetlands on the west side of the terminal site; access would be through the western LNG terminal entrance. The MOF would be capable of berthing two barges simultaneously. Rio Grande anticipates that 880 barges would deliver materials to the MOF during the first 5 years of construction, although deliveries would continue as needed for the remainder of construction and into operations. Bulk materials delivered to the MOF would include the crushed sand or stone necessary for concrete fabrication. Ten 42-in piles would be installed in-water at the tug berth to support construction.

Removal of Existing Navigation Aids

RGLNG proposes to relocate one of the USCG fixed navigation aids in the BSC waterway. Pile driving would include in-water removal of five 12-in-diameter timber piles at the existing navigation aid location using a vibratory hammer. A double bubble curtain would be deployed during all vibratory hammer operations to reduce noise generated by the hammer. The new navigation aid would be installed on land near the shoreline. All five piles would be removed on the same day at a rate of one pile removed every 20 minutes.

In total, Rio Grande would install 12 piles associated with the marine facilities and remove five existing 12-in timber, navigation piles. (Table 1).

TABLE 1—IN-WATER PILE DRIVING AND REMOVAL ACTIVITIES FOR RIO GRANDE

Area	Pile size/type	Method	Source level (dB) [1]			Piles per day	Duration (days)	Total piles
			SEL	RMS	Peak			
PATON at the LNG Berth ...	[2] 48-in (steel)	Vibratory	161.2	161.2	n/a	1	2	2
		Impact	179.7	191.6	205.5			
Removal of USCG Navigation Aid.	12-in (timber)	Vibratory	[3] 145.0	[3] 145.0	n/a	[5] 5	[5] 1	5
Tug Berth	[4] 42-in (steel)	Vibratory	161.2	161.2	n/a	2	5	10
		Impact	179.7	191.6	205.5			

[1] Source levels presented here account for use of a bubble curtain; therefore, they represent a 7dB reduction from unattenuated source levels.
[2] 48-in pile source levels represent a −7 dB reduction from median values presented in Austin *et al* (168 dB rms (vibratory) and 198.6 dB rms and 186.6 dB SEL (diesel impact hammer).
[3] The 145 dB SL represents a −7dB reduction from 152 dB; 152 dB represents the highest RMS value measured at 16 m during removal of timber piles at Port Townsend (Laughlin, 2011).
[4] Rio Grande conservatively applied 48-in pile source levels measured at the Port of Alaska (Austin *et al.* 2016) to 42-in pile source level estimate.
[5] Rio Grande's application indicates pile removal of the five 12-in timber piles would occur at a rate of one pile per day for five days. The applicant later clarified this was a mistake in interpreting the engineer's intent and that all five piles would be removed on the same day.

Rock Armoring at the MOF

East of the MOF, channel embankments and the top slope of the shoreline (to a depth of −0.6 m [−2 ft] MLLW) would be graded to a 1:3 slope, stabilized with bedding stone overlain by geotextile fabric, and then covered with riprap (*i.e.,* rock armoring) (see Section 1.3.2 for further discussion of dredging activities). In the marine berths and turning basin, where vessel activity could erode the underwater channel slopes, the shoreline would be dredged to a 1:3 slope and stabilized with riprap to a depth of −13.1 m (−43 ft) MLLW. The rock armoring would extend to the top of the slope at elevation +1.8 m (+6 ft) North American Vertical Datum of 1988 and would tie in to the MOF bulkhead. The installation of rock armor does not generate in-water noise levels to the extent harassment is anticipated; therefore, this activity will not be discussed further.

Dredging

RGLNG would dredge the berthing areas and turning basin to a depth of −13.1 m (−43 ft) MLLW, with a −0.6 m (−2 foot) allowable over-dredge. The sides of the berthing areas and turning basin would be contoured at a 1:3 slope. The MOF would be excavated and dredged to a depth of −7.6 m (−25 ft) MLLW plus 0.6 m (2 ft) advanced maintenance allowance), to allow barges and shallow-draft vessels to directly

offload bulk materials at the Terminal site. RGLNG would install rock armoring to provide scour protection from propeller wash on the slope parallel to the shoreline. About 476,317.7 m^3 (623,000 yd^3) of material would be excavated along the shoreline and outside the federally maintained BSC by land-based equipment for the construction of the berthing areas, turning basin, and MOF. This material would be directly placed at the Terminal site for fill. An additional 29,817.6 m^3 (39,000 yd^3) of material would be dredged from the MOF using a mechanical dredge from the shoreline. Approximately 4.6 million m^3 (6.1 million yd^3) of material would be dredged from the berths and turning basin using water-based equipment. Material would be dredged using a hydraulic dredge and temporary pipeline and placed at a U.S. Army Corps of Engineers (USACE)-approved dredged-material-placement area. The placement area will be on the southern shoreline. Although the temporary dredge material pipeline will cross the BSC, it will be completely submerged and will rest on the bottom of the BSC while dredging activities take place. NMFS does not anticipate harassment to marine mammals from dredging nor is it likely the presence of the pipeline would be perceived as a barrier to dolphins. Therefore, harassment from dredging by Rio Grande is not anticipated or proposed to be authorized, and this activity is not discussed further.

Annova LNG

Annova is proposing to site, construct, and operate facilities necessary to liquefy and export natural gas along the south bank of the BSC (Figure 2). The purpose of the Project is to operate a mid-scale natural gas liquefaction facility along the South Texas Gulf Coast for exporting LNG to international markets via LNG carriers through United States and international waters. The terminal will include a new LNG export facility with a nameplate capacity of 6.0 million metric tons per annum (6.6 million U.S. tons) and a maximum output at optimal operating conditions of 6.95 million metric tons (7.66 million U.S. tons) per year of LNG for export. The project site is located on a 2.96 km^2 (731-acre) property adjacent to the BSC on land owned by the Brownsville Navigation District (BND). The property, located at approximate mile marker 8.2 on the south bank of the BSC, has direct access to the Gulf of Mexico via the Brazos Santiago Pass.

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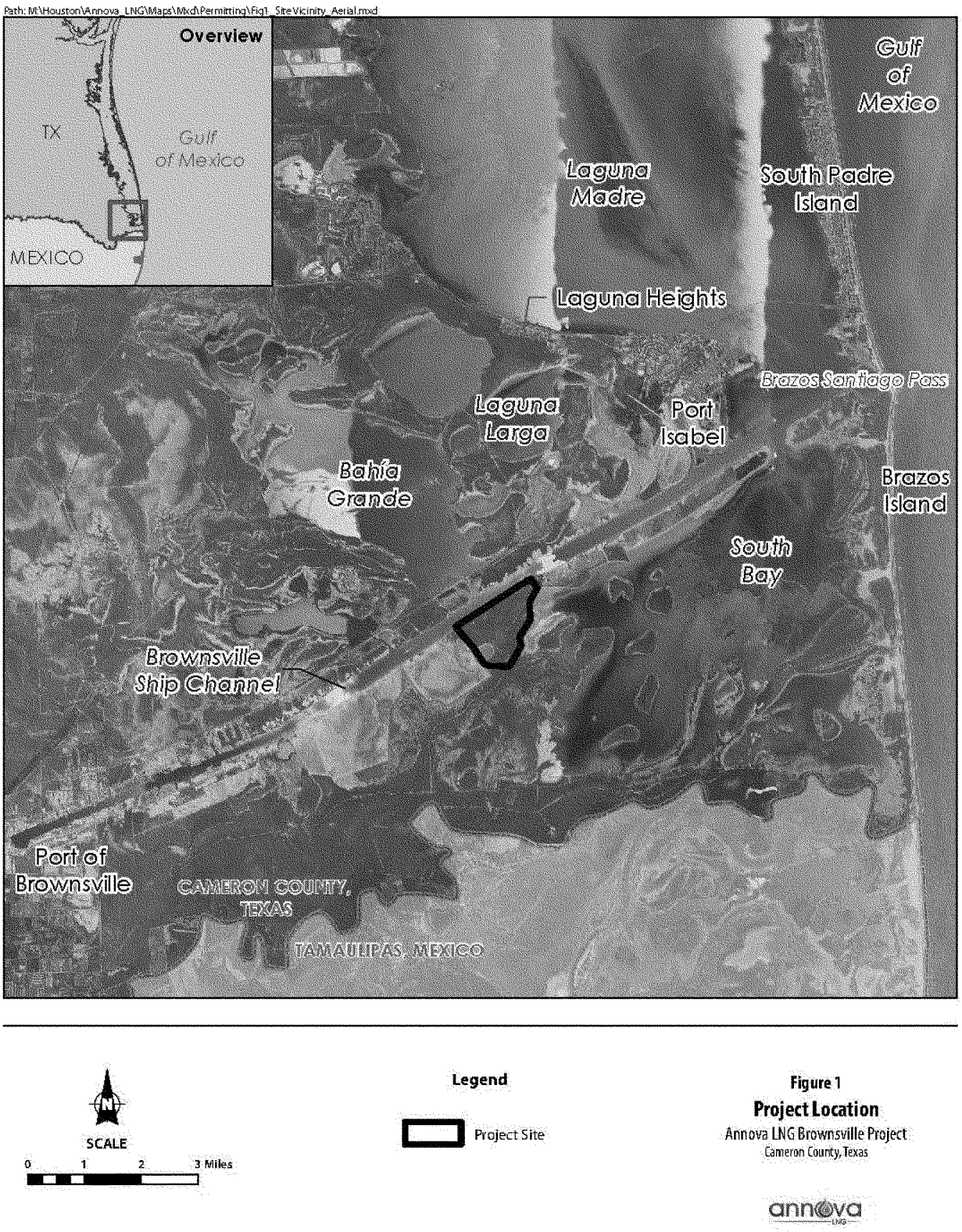

Figure 2. Annova LNG Terminal Location.

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Natural gas will be delivered to the facility via a third-party intrastate pipeline. The natural gas delivered to the site via the feed gas pipeline will be treated, liquefied, and stored on-site in two single-containment LNG storage tanks, each with a net capacity of approximately 160,000 cubic m (m^3) (42.3 million gallons). The LNG will be pumped from the storage tanks to the marine facilities, where it will be loaded

onto LNG carriers at the berthing dock using cryogenic piping.

The facilities for the Project include the following major components: gas pretreatment facilities; liquefaction facilities (six liquefaction trains and six approximately 72,000-horsepower electric motor-driven compressors); two LNG storage tanks; boil-off gas handling system; flare system; marine facilities; control, administration, and support buildings; an access road; fencing and barrier wall; and utilities (power, water, and communication). Similar to Rio Grande, in-water work with the potential to cause harassment to marine mammals includes construction of the marine facilities.

The marine facilities will include a 457 m (1,500-foot) diameter turning basin and widened channel approach areas to the turning basin (see Figure 2). LNG carriers will dock on the loading platform at the south side of the turning basin. The marine facilities include the following components: Loading platform and berth for one LNG carrier, including turning basin and access areas along the BSC; cryogenic pipelines and vapor return lines; aids to navigation; MOF, mooring and breasting dolphins; and tug berth area.

The proposed project involves installation and removal of 16 temporary 24-in diameter steel piles and installation of four 96-in diameter steel breasting dolphin piles (see Table 2). The 16 temporary steel piles will provide support during installation of the breasting dolphins (four temporary piles for each breasting dolphin). Each temporary pile will be installed using a vibratory and impact hammer. Installation of the temporary piles will occur in stages, initially with a vibratory hammer followed by an impact hammer. Once installation of the breasting dolphin piles is complete, all temporary piles will be removed using a vibratory hammer.

TABLE 2—IN-WATER PILE DRIVING AND REMOVAL SCENARIOS FOR ANNOVA

Area	Pile size/type	Method	Source level (dB) [1]			Piles per day	Duration (days)	Total piles
			SEL	RMS	Peak			
Breasting Dolphin (temporary).	24-in (steel)	Vibratory [1]	165.0	165.0	n/a	4	[3] 8	16
		Impact [2]	171.0	187.0	207.0			
Breasting Dolphins (permanent).	96-in (steel)	Vibratory [1]	170.0	170.0	n/a	0.5	[4] 8	4
		Impact [2]	188.0	198.0	213.0			

[1] Vibratory driving and removal source levels do not account for use of a bubble curtain. Source: Caltrans (2015), Table I.2–2.
[2] Impact driving source levels account for use of a bubble curtain (*i.e.,* −7 dB from unattenuated source level). Source: Caltrans (2015), Table I.2–1.
[3] Includes four days for installation and four days for removal.
[4] Four of the eight days include both vibratory and impact hammering; the remaining four days include impact hammering only.

Dredging

Annova LNG will dredge the marine berth using a hydraulic cutter dredge. The berth will be dredged to the final design depth of −13.7 m (−45 ft) mean lower low water, plus 0.9 m (3 ft) for advance maintenance and over depth, with side slopes at a ratio of 3:1 where sheet piling is not used. Material removed by land-based excavation will be used for on-site fill where possible or placed on the Project site to support landscaping and final grading. Annova LNG proposes to use the existing Dredged Material Placement Area (DMPA) 5A or 5B, located just west of the Project site, to dispose of dredged material not used as fill on-site. Dredged material will be moved to the DMPA through an approximately 2.6 km (1.6-mi)-long, floating dredged material pipeline that will be temporarily anchored along the south shore of the BSC. The dredged material pipeline will be marked with navigation lights and reflective signs and monitored to ensure the safety of area traffic. Dredging for the marine berth is estimated to occur in two, 10-hour shifts, six days per week. Noise from dredging is not anticipated to harass marine mammals and the dredge material pipeline will not cross the BSC, avoiding potential impacts (*e.g.,* entrapment) to marine mammals. Therefore, dredging will not be discussed further.

Proposed mitigation, monitoring, and reporting measures for Annova 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

Sections 3 and 4 of Rio Grande and Annova's applications 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 3 lists all species with expected potential for occurrence in the BSC and adjacent Laguna Madre and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). 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 values presented in Table 3 are the most recent available at the time of publication and are available in the draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE ACTION AREA

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]
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	Laguna Madre	N, Y	unknown	UND	0.4
		Western Coastal GoM	N, N	20,161 (0.17, 17,491, 2012)	175	0.6
Atlantic spotted dolphin	*Stenella frontalis*	Northern GoM	N, N	37,611 (0.28, unk, 2004)	Undet	42
Rough-toothed dolphin	*Steno bredanensis*	Northern GoM	N, N	[5] 624 (0.99, 311, 2009)	2.5	[6] 1.2

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; Nmin is the minimum estimate of stock abundance.

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.

4—The abundance estimate reported in the latest stock assessment report for common bottlenose dolphin Gulf of Mexico Bay, Sound, and Estuary stocks is 80 animals. However, this estimate is considered outdated as it is based on surveys from 1992–1993 (Blaylock and Hoggard 1994). Recent photo-identification surveys by Piwetz and Whitehead (2019) in Lower Laguna Madre identified 109 individuals; however, the authors note even this estimate is lower than a minimum population estimate.

5—This abundance estimate is reported in the latest stock assessment report for rough-toothed dolphins in the Northern Gulf of Mexico stock (Hayes *et al.* 2018). This estimate is considered outdated (more than 8 years old) and is based on surveys from 2009 (Garrison 2016). It does not include continental shelf waters and does not correct for unobserved animals. Data combined from 1992–2009 resulted in an estimate of 4,853 (CV=0.19) (Roberts *et al.* 2016).

6—Total human M/SI considers the mean annual M/SI from fishery observer related interactions from 2010–2014 and two stranded animals with signs of human-caused mortality (*i.e.,* 0.8 + 0.4).

All species that could potentially occur in the proposed project areas are included in Table 3. As described below, three species (with four managed 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.

In addition, the West Indian manatee (*Trichechus manatus manatus*) may be found in the Laguna Madre. However, manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Bottlenose Dolphins

Bottlenose dolphins are found throughout the world in both offshore and coastal waters, including harbors, bays, gulfs, and estuaries, as well as nearshore coastal waters, deeper waters over the continental shelf, and even far offshore in the open ocean. Bottlenose dolphins may travel alone or in groups, and the groups continually break apart and reform. Their travel is characterized by persistent movement in a consistent direction. They use breeding, playing, aggression, and gentle body contact (such as rubbing) as ways to have social interactions with one another. Bottlenose dolphins can thrive in many environments and feed on a variety of prey, such as fish, squid, and crustaceans (*e.g.,* crabs and shrimp). They use different techniques to pursue and capture prey, searching for food individually or cooperatively. For example, they can work to bring fish together into groups (herding). They then take turns charging through the schools to feed. They may also trap schools of fish against sand bars and seawalls. They also use passive listening and/or high frequency echolocation to locate prey.

The Gulf of Mexico hosts 36 stocks of bottlenose dolphins, as designated for management purposes by NMFS: 1 offshore stock, 1 continental shelf stock, 3 coastal stocks, and 31 Northern Gulf of Mexico Bay, Sound, and Estuary (BSE) stocks, seven of which occur in Texas (Waring *et al.* 2016; Hayes *et al.* 2019). Distinguishing between individuals of each coastal and BSE stock is difficult as members of these stocks have nearly identical physical characteristics and often have overlapping range boundaries. Coastal and estuarine stocks can partially overlap in their ranges, with estuarine dolphins observed in coastal waters and coastal dolphins observed in estuarine waters (*e.g.,* Bassos-Hull *et al.* 2013; Laska *et al.* 2011; Maze and Würsig 1999). The two stocks that may be present in the ensonified area are the Laguna Madre BSE stock and western Gulf of Mexico coastal stock.

Laguna Madre Stock

Bottlenose dolphins are found throughout the Laguna Madre estuary. The abundance of the entire Laguna Madre stock is considered ''unknown'' for management purposes. In August of 2016, the Marine Mammal Stranding Network conducted boat-based surveys to search for an injured entangled dolphin reported in the extreme southern portion of lower Laguna Madre (Ronje *et al.,* 2018). Over the course of the 4 days of surveys, 46 dolphin group sightings were recorded, estimated at 60 individuals. In 2018 and 2019, Piwetz and Whitehead (2019) conducted 5 surveys covering 365.4 km in the southern portion of the lower Laguna Madre to better understand dolphin distribution and abundance. Dolphin sightings were consistent along the BSC until the industrial section (Figure 3), beginning around the Brownsville Fishing Harbor, spanning approximately 6.5 km to the west where the channel ultimately terminates. Dolphins were observed in the Brazos Santiago Pass, several of which travelled to the end of the pass around the Boca Chica Jetty, where waters are turbulent and dolphins have been observed foraging. In the lower Laguna Madre, north of the Queen Isabella Causeway, dolphins were concentrated around the deeper waters of the Gulf Intracoastal Waterway (GIWW). Overall, 33 groups of dolphins were recorded. Calves (n = 15) were present in 33 percent (n = 11) of the total group sightings and comprised 10

percent (n = 15) of the total number of dolphins sighted. Preliminary photo-ID analysis includes 109 individuals, 95 of which are considered distinct or marginally distinct based on dorsal fin nicks and notches. These surveys only covered the southern portion of the lower Laguna Madre, a small portion of the stock's home range. As expected, the nonasymptotic nature of the discovery curve (accumulation curve) indicates that the sampling effort has not yet identified all, or even most, of the individuals that use this region. Of the distinct or marginally distinct individuals, 42 percent (n = 28) were sighted on more than one survey day and 6 percent (n = 6) were observed in both the winter and summer seasons, suggesting at least some degree of site fidelity. In summary, the preliminary results presented in Piwetz and Whitehead (2019) show that bottlenose dolphins use the lower Laguna Madre area, primarily deeper channels and passes, present day use is likely greater than the outdated SAR abundance estimate, and a number of individuals show some degree of site fidelity.

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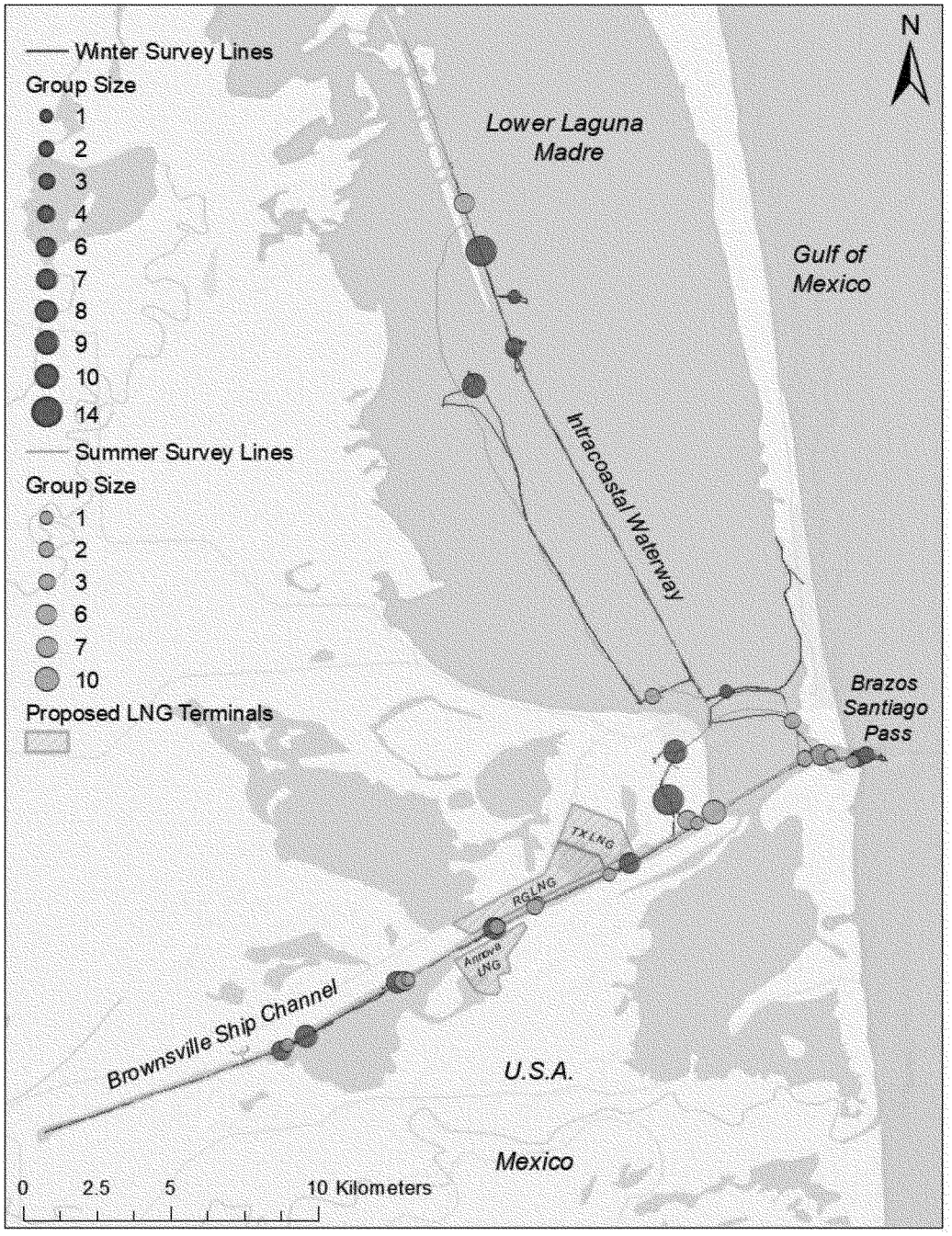

Figure 3. Initial sighting locations of bottlenose dolphin groups in the lower Laguna Madre region during photo-identification surveys in December 2018 and August 2019 (as presented in Piwetz and Whitehead, 2019).

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Observed behavioral states included slow travel, fast travel, probable feed, feed (several observations of fish in mouth), mill, and social. The small sample size precluded robust statistical analysis; however, the current trend indicates that foraging and socializing may occur more within the BSC than other sub-areas of the lower Laguna Madre (Piwetz and Whitehead, 2019).

Within the BSC, commercial fishing trawlers may play a role in the occurrence of coastal bottlenose dolphins within the BSC, with coastal dolphins following trawlers into the estuary. Interaction with the shrimp fishery is a common occurrence on the Atlantic and Gulf coasts (*e.g.,* Siegal *et al.* 2015; Greenman and McFee, 2014). During the summer, Piwetz and Whitehead (2019) observed five of 33 groups of dolphins following shrimp trawlers and foraging on discarded bycatch either behind the trawler or directly off the stern. Ronje (2016) noted dolphins inside the BSC were usually observed slowly travelling, often in the direction of tidal movement or behind shrimp trawlers during the morning hours and that dolphins were observed as far as the Brownsville Fishing Harbor, where a number of commercial fisheries vessels were docked. Given the BSC is a dead-end channel, in-bound dolphins traveling past the proposed terminals would also have to pass the terminals as they leave the BSC.

Dolphins in Laguna Madre are subject to several anthropogenic stressors. Dolphin tourism vessels and commercial fishing charters were observed pursuing groups of dolphins in the region (Ronje *et al.,* 2018). Dolphins often follow shrimp trawlers, feeding on discarded catch, a behavior, which can increase gear interaction risk. The BSC and GIWW is dredged by the U.S. Army Corps of Engineers. In addition to potential threats from vessel and fishing activities, the BSC is a busy industrial port that exports hazardous materials such as chemical and petroleum products. There are no records of major oil spills in LM in the recent past. However, given that ships and barges regularly use the GIWW and the ports in LM, as well as the presence of pipelines and wells, smaller spills have occurred via leaks or minor collisions or accidents (Sharma *et al.,* 1997). For example, in 2009 an oil slick formed around Port Isabel and tar balls washed up on beaches, with no known source of an oil spill (Brownsville Herald, 2009).

Western Gulf of Mexico Coastal Stock

During aerial surveys in 2011 and 2012, the abundance estimates for the Gulf of Mexico western coastal stock of bottlenose dolphins were based upon tracklines and sightings in waters from the shoreline to the 20-m isobath and between the Texas-Mexico border and the Mississippi River Delta. This stock's boundaries abut other bottlenose dolphin stocks, namely the Northern Coastal Stock, Continental Shelf Stock and several bay, sound and estuary stocks in Texas and Louisiana, and while individuals from different stocks may occasionally overlap, it is not thought that significant mixing or interbreeding occurs between them.

Bottlenose dolphins are known to become entangled in, or ingest recreational and commercial fishing gear (Wells and Scott 1994; Gorzelany 1998; Wells *et al.* 1998; Wells *et al.* 2008), and some are struck by vessels (Wells and Scott 1997; Wells *et al.* 2008). Since 1990, there have been 14 bottlenose dolphin die-offs or Unusual Mortality Events (UMEs) in the northern Gulf of Mexico, and 7 of these have occurred within the boundaries of the Western Coastal Stock and may have affected the stock. Sources of these UMEs include morbillivirus, low salinity, the *Deepwater Horizon* oil spill, and harmful algal blooms (Hayes *et al.,* 2015).

Total U.S. fishery-related mortality and serious injury for this stock is not known, but at a minimum is greater than 10 percent of the calculated PBR and, therefore, cannot be considered to be insignificant and approaching zero mortality and serious injury rate. The status of this stock relative to OSP in the Gulf of Mexico EEZ is unknown. There are insufficient data to determine the population trends for this stock.

Atlantic Spotted Dolphins

Estimates of immigration rates between the western North Atlantic shelf population and the Gulf of Mexico stock were less than 1 percent per year (Viricel and Rosel 2014), which is well below the 10 percent per year threshold for demographic independence (Hastings 1993), thereby supporting separate stocks for Gulf of Mexico and western North Atlantic shelf populations. In the Gulf of Mexico, Atlantic spotted dolphins occur primarily from continental shelf waters 10–200 m deep to slope waters <500 m deep and are present year-round. However, it has been suggested that this species may move inshore seasonally during spring, but data supporting this hypothesis are limited (Caldwell and Caldwell 1966; Fritts *et al.* 1983). Viricel and Rosel (2014) also found support for two demographically independent populations within the northern Gulf of Mexico. One population primarily occupied shelf waters from the Texas-Mexico border eastward to Cape San Blas, Florida while the second population was concentrated over the Florida shelf in the eastern Gulf of Mexico and stretched westward to the Florida panhandle. However, NMFS identifies one stock in the project area: The Northern Gulf of Mexico stock.

The commercial fisheries that interact, or that potentially could interact, with this stock in the Gulf of Mexico are the pelagic longline fishery and the Southeastern U.S. Atlantic/Gulf of Mexico shrimp trawl fishery. No ongoing habitat threats are provided in the SAR with the exception of ongoing health impacts from the 2010 Deepwater Horizon oil spill.

Rough-Toothed Dolphins

Rough-toothed dolphins occur in oceanic and to a lesser extent continental shelf waters in the northern Gulf of Mexico (*i.e.,* U.S. Gulf of Mexico) (Figure 1; Fulling *et al.* 2003; Mullin and Fulling 2004; Maze-Foley and Mullin 2006). Although there are only a few records from Gulf of Mexico waters beyond U.S. boundaries (*e.g.,* Jefferson and Schiro 1997, Ortega Ortiz 2002), rough-toothed dolphins almost certainly occur throughout the oceanic Gulf of Mexico (Jefferson *et al.* 2008), which is also composed of waters belonging to Mexico and Cuba where there is currently little information on cetacean species abundance and distribution. This is a transboundary stock and the abundance estimates are for U.S. waters only.

The estimated mean annual fishery-related mortality and serious injury for this stock during 2010–2014 was 0.8 rough-toothed dolphins due to interactions with the pelagic longline fishery (Hayes *et al.,* 2018). This stock was also affected by the Deepwater Horizon oil spill.

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 decibel (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 4.

TABLE 4—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).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Three marine mammal species (all mid-frequency cetaceans) have the reasonable potential to co-occur with the proposed pile driving and removal activities.

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.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and dredging. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.* aircraft, vessels, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). 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).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push the pile into the sediment. Vibratory hammers produce significantly less sound than impact hammers and the nature of the noise (*i.e.,* no sharp rise times) reduce the probability and severity of marine mammal auditory injury (Nedwell and Edwards 2002; Carlson *et al.* 2005).

The potential impacts of Rio Grande and Annova's proposed activities on marine mammals would be caused by acoustic stressors. Any non-auditory injury from potential non-acoustic stressors such as vessel movement and rock armoring is de minimis due to the nature of the work (*e.g.,* barges are stationary) and the proposed mitigation for any vessels (*e.g.,* tugs) to slow in the presence of marine mammals or, for Rio Grande, delay placement of rock armoring if marine mammals approach within 10 m. Therefore, here we focus on acoustic stressors resulting from both projects: Pile installation and removal and dredging.

Acoustic Impacts

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). Exposure to in-water construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and/or lead to non-observable physiological responses such an increase in stress hormones ((Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Gotz *et al.,* 2009). Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of elevated noise exposure are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007).

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. Below we discuss three categories of potential acoustic-driven effects on marine mammals: (1) Physical auditory effects (threshold shifts), (2) behavioral effects and (3) potential impacts on marine mammal habitat.

Auditory Effects—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 threshold shift is customarily expressed in dB. A TS can be permanent or temporary. 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.* 2014b), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—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 Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—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 Southall *et al.* 2007), 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, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

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 (similar to those discussed in auditory masking, below). 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 takes place during a time when the animal is traveling through the open ocean, 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. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). However, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are 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 Table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving and vibratory pile driving while removing piles involves only a vibratory hammer. For the projects considered in the proposed IHAs, these activities would not occur at the same time, a limited number of piles would be installed and removed per day, and there would likely be pauses in activities such that noise from pile operations is not continuous. Given these considerations, and that any dolphins are likely moving through the action area and not remaining for extended periods of time, the potential for PTS is *de minimis* (and we are not proposing to authorize any Level A harassment take) and the potential for TTS is low.

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. Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience,

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.,* 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. In general, if a marine mammal responds to a stimulus by changing its behavior (*e.g.*, through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole.

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 above, 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 seismic 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).

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 reacts briefly to an underwater sound by changing its behavior temporarily (*e.g.,* ceases foraging, moving a small distance away from the source), the impacts of the change are unlikely to be significant to the individual, l*et al*one 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). There are broad categories of potential marine mammal responses to anthropogenic noise, 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; Ng and Leung 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). 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. Due to the very shallow water depths in the BSC, we do not anticipate dolphins would alter dive behavior. They may; however, remain submerged for longer periods of time as they avoid the area.

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. Due to the narrowness of the BSC, noise from pile operations does not propagate to the degree it would in the more open waters of the Laguna Madre; therefore, the potential area for foraging disruption is very small compared to available foraging habitat.

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, 2005b, 2006; Gailey *et al.,* 2007).

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 (*Eubalaena glacialis*) 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.,* 2007b). 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 (*Eschrictius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic

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). Given that other acoustic stressors are already present within the BSC and dolphins continue to utilize the BSC, it is unlikely dolphins would avoid the BSC in response to relatively brief pile driving noise during LNG terminal construction.

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.,* Seyle 1950; 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).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

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).

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). 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.,* pile driving, 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.

Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The BSC hosts numerous recreational and commercial vessels; therefore, background sound levels in the BSC are already elevated above ambient by these activities.

The frequency range of the potentially masking sound is important in determining any potential behavioral 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.,* 2007b; 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 sustained elevated ambient sound levels, thus intensifying masking.

The biological significance of many of the behavioral effects is difficult to predict, especially if the detected disturbances appear minor. Consequences of behavioral modification could be biologically significant if the change affects growth, survival, or reproduction. Example significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Longer-term habitat abandonment due to loss of desirable acoustic environment; and
- Longer-term cessation of feeding or social interaction.

We do not expect dolphins exposed to pile driving noise to respond in the intense manners described above. Pile driving and removal associated with projects is very brief (about couple hours (at most) per day for 8 to 20 non continuous days and the area of ensonification to sound levels above NMFS harassment thresholds is very small (1 to 5 km^2). While we anticipate marine mammals to behaviorally react to pile driving noise, such as avoiding the area, increasing swim speeds and ceasing behavior such as socializing and foraging, we expect dolphins would return to pre-exposure behavior shortly after exiting the ensonified zone. As these individual- level effects are low, we do not anticipate that harassment to any individual would lead to adverse impacts on a given marine mammal stock's annual rates of recruitment of survival.

Marine Mammal Habitat Effects

The area likely impacted by the projects is relatively small compared to the available habitat for all impacted species and stocks, and does not include any ESA-designated critical habitat. There are no known foraging hotspots or other bottom structure of significant biological importance to marine mammals in the BSC. Therefore, the main impact issue associated with the proposed activities would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The primary potential acoustic impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory and impact pile driving and removal in the area.

In-water pile driving activities would also cause short-term effects on water quality due to increased turbidity. Any increases in turbidity and suspended sediments would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to a few meters from the pile.

Potential avoidance by dolphin prey (*e.g.,* fish, shrimp) of the immediate area is also possible. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution (summarized in Popper and Hastings 2009). Hastings and Popper (2005) reviewed several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented physical and behavioral 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). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. The SPLs associated with pile driving may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.* 2014).

The use of a double bubble curtain by both applicants during impact pile driving will greatly reduce the potential for fish injury or mortality. Therefore, we anticipate impacts to prey will be primarily behavioral in nature. The exact duration of fish avoidance of this area after pile driving is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The duration of the construction activities is relatively short. Rio Grande and Annova pile driving and removal activities would occur for 8 and 20 non-consecutive days, respectively. Impacts to habitat and prey are expected to be minimal based on the use of a double bubble curtain during all impact driving and short duration of activities. Further, the BSC (a man-made canal) is a very small portion of marine mammal habitat within Laguna Madre.

Permanent impacts to marine mammal habitat will be limited to the presence of the terminal post-

construction. Rio Grande's terminal would be located along the existing shoreline; however, Annova's terminal would be located in currently what is uplands. Therefore, the area of marine mammal habitat will actually be increased in size due to dredging out of these uplands. However, the quality of this expanded habitat is likely poor due to the industrialized nature of the project.

In its Final Environmental Impact Statement for both the Rio Grande and Annova terminals, the Federal Energy Regulatory Commission (FERC) included an Essential Fish Habitat (EFH) Assessment. EFH is present within the BSC. On February 15, 2019, and February 5, 2019, NMFS' Habitat Conservation Division concurred with FERC that the construction of the Rio Grande and Annova LNG terminals, respectively, would result in temporary, limited impacts to EFH. NMFS had no conservation recommendations for FERC on either project.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through these IHAs, 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 and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdowns)—discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized. Given the scope of work considered, no mortality or serious injury is anticipated or proposed to be authorized for this activity. The projects do have the potential to cause Level B (behavioral) harassment of dolphins within the BSC. Below we describe how the Level B harassment 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 intermittent (*e.g.,* impact pile driving) sources.

Both Rio Grande and Annova's activities include the use of continuous (vibratory pile driving and removal) and intermittent (impact pile driving) sound sources; therefore, the 120 and 160 dB re: 1 µPa (rms) 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). Both Rio Grande and Annova proposed activities include the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the Table 5. 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 5—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

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
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.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that 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 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 distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet to calculate Level A harassment threshold isopleths for impact and vibratory pile driving are presented in Table 6 and 7, respectively.

TABLE 6—INPUTS INTO NMFS PTS USER SPREADSHEET FOR IMPACT PILE DRIVING

Input parameters	Rio Grande	Annova	
Spreadsheet Tab Used	E.1) Impact pile driving		
Source Level (SELs-s)	179.7	171	188
Source Level (SPLpk)	205.5	200	213
Weighting Factor Adjustment (kHz)	2		
Number of piles per day	1 (48-in), 2 (42-in)	4	0.5
Number of strikes per pile	400	675	2,700
Propagation (xLogR)	15		
Distance of source level measurement (m)	10		

TABLE 7—INPUTS INTO NMFS PTS USER SPREADSHEET FOR VIBRATORY PILE DRIVING

Input parameters	Rio Grande		Annova	
	12-in piles	48-in and 42-in	24-in	96-in
Source Level (RMS SPL) [1]	145	161.2	165	170
Number of piles per day	5	1 (48-in), 2 (42-in)	4	0.5
Duration to drive or remove a single pile (minutes)	[2] 20	24	10 (install), 45 (remove) [3]	20
Propagation (xLogR)	15			
Distance from source level measurement (m)	16	10	10	10

[1] Source levels account for a −7db bubble curtain reduction from unattenuated source levels.

[2] We note Rio Grande's application indicated it would take 480 minutes to remove each 12-in pile and 1 pile would be removed per day. Upon request from NMFS, the applicant later clarified this time reflected the removal of all five piles, including when the hammer would not be operating. The actual hammer operation time per pile is 20 minutes and all 5 piles would be removed in a single day.

[3] We note Annova's application indicated it would take 60 minutes to remove each 24-in pile but the applicant later clarified this included time when the hammer would not be operating and that actual hammer time would be, at most, 45 minutes.

The results of the User Spreadsheet are presented in Table 8. These distances represent the distance at which a dolphin would have to remain for the entire duration considered in the calculation and may be unrealistic (*e.g.,* NMFS does not anticipate a dolphin would remain at 18 m for the entire time it takes to install two 42-in piles with an impact hammer). In all cases, the peak Level A harassment threshold is not reached. For these reasons, the potential for Level A harassment take from all pile driving and removal is very small. However, for these proposed IHAs, the applicants have proposed shutdown zones greater than or equal to the outputs of the User Spreadsheet to further ensure the potential for all Level A harassment take is avoided.

TABLE 8—LEVEL A HARASSMENT ISOPLETHS AND CORRESPONDING ENSONIFIED AREAS

Pile type	Hammer type	Level A isopleth (m)	Level A area (km^2)
Rio Grande			
42-in	Vibratory	0.5	<0.01
	Impact	18.4	<0.01
48-in-diameter steel tube piles	Vibratory	0.3	<0.01
	Impact	11.6	<0.01
12-in-diameter timber piles [2]	Vibratory	0.1	<0.01
Annova			
24-in	Vibratory	0.3 (install) 0.9 (remove)	<0.01
	Impact	10.9	<0.01
92-in	Vibratory	1.2	<0.01
	Impact	93.5	0.04

To estimate the area ensonified to the Level B harassment thresholds, a basic calculation that incorporated the source levels provided in Table 9 and a practical spreading loss model was used to estimate distances to the respective intermittent (160 dB rms) and continuous (120 dB rms) thresholds. However, the width of the BSC is relatively narrow (approximately 300 m wide); therefore, the Level B harassment areas were clipped to account for land. Table 9 provides the calculated Level B harassment isopleths and area accounting for land.

TABLE 9—LEVEL B HARASSMENT DISTANCES AND AREAS FOR RIO GRANDE AND ANNOVA

Hammer type	Pile size (source level dB rms)	Isopleth distance (m)	Level B harassment area (km^2) [1]
Rio Grande			
Impact	42- and 48-in	1,278	1.06
Vibratory	42- and 48-in	5,580	4.85
	12-in	743	0.62
Annova			
Impact	24-in (187)	631	0.56
	96-in (198)	3,415	[2] 1.0
Vibratory	24-in (165)	10,000	[2] 1.0
	96-in (170)	21,544	[2] 1.0

[1] Ensonified areas are truncated by land. See Figures 4–6 in both Rio Grande and Annova's applications.

[2] Although radii to Level B harassment isopleths are similar between applications, Annova's pile driving will take place setback from the shoreline inside a berthing area (currently on land but will be dug out—see Figures 4–6 in Annova's application) versus Rio Grande's pile driving which will be conducted along the current shoreline. The nature of the work creates much smaller ensonified areas for Annova.

Take Calculation and Estimation

The abundance, distribution and density of marine mammals in Laguna Madre is poorly understood. Therefore, while the harassment areas described above are important for planning mitigation (*e.g.,* shutdown to avoid Level A harassment) and monitoring, they are not part of the take estimate calculations. For both applicants, we have considered other quantitative information (*e.g.,* group size and sighting rates) as well as behavior to estimate take.

Bottlenose Dolphins

For bottlenose dolphins, both applicants first estimated density in the Laguna Madre using the number of individuals reported in Piwetz and Whitehead (2019), which was 109 dolphins. We note this is not an abundance estimate of the Laguna Madre stock as Piwetz and Whitehead (2019) conducted the surveys in a limited area of the lower Laguna Madre and the authors note the non-asymptotic nature of the [photo-identification] discovery curve (accumulation curve) indicates that the sampling effort has not yet identified all, or even most, of the individuals that use this region. Regardless, both applicants used habitat data layers from Finkbeiner *et al.* (2009) to estimate the area of the Laguna Madre, removing the layers that were not dolphin habitat (*e.g.,* land, emergent marsh, and mangroves), which resulted

in a 1,938 km² area. Separately, they estimated the area of the BSC at 27 km², for a total area of 1,965 km². Using these inputs, both applicants calculated a density of 0.055 dolphins/km² (109/1,965 = 0.055). NMFS believes this approach is an underestimate since the surveys in Piwetz and Whitehead (2019) were confined to the lower Laguna Madre. Therefore, we applied the 109 animals to the survey area in the study. The report did not provide the survey area (only the combined area covered for all five days) but a rudementary GIS exercise yielded an approximate survey area of 140 km². This results in a density of 0.76 dolphins/km².

When considering a density-based approach to calculate potential take, NMFS typically recommends the following equation: *density* × *area* × *pile driving days.* Using this equation and the NMFS-derived survey area of 140 km², the resulting total take estimate for Rio Grande is approximately 29 ((0.76 dolphins/km² × 4.85 km² × 7 days) + (0.76 dolphins/km² × 0.62 km² × 1 day) and approximately 12 for Annova (0.76 dolphins/km² × 1.0 km × 16 days).

While these calculations would be appropriate for more open water areas, the results are not realistic for the context of these projects. First, dolphins travel up and down the BSC therefore the potential for them to be exposed to pile driving noise is somewhat independent of the harassment zone sizes as all zones cross the entire width of the channel they are likely to travel into these zones on any given day (*i.e.,* that all dolphins traveling the BSC will eventually pass the terminal sites and therefore have equal chances for exposure). Second, Rio Grande is conducting less work on fewer days than Annova. Given the likely daily occurrence for dolphins to be within the BSC, it is unrealistic to assume Rio Grande has the potential to have more than double the instances of take than Annova. For this reason, NMFS determined the resulting take based on density is not realistic and has instead estimated take based on sighting rates which considers an important parameter—the number of hours of pile driving.

To derive a more realistic take estimate, NMFS considered the Piwetz and Whitehead (2019) data and the amount of pile driving proposed by each applicant. Piwetz and Whitehead (2019) observed 109 dolphins over 26.72 hours of survey effort, resulting in an average of 4.1 dolphins/hour. Rio Grande anticipates installing 12 piles and removing 5 piles over approximately 11.3 hours. Given the number of dolphins/hour, this results in a total take estimate of 46 (4.1 dolphins per hour × 11.3 hours). Annova anticipates installing 20 piles and removing 16 of those 20 piles over approximately 15 hours. Given the number of dolphins/hour, this results in a total take estimate of 62 takes (4.1 dolphins per hour × 15 hours). This amount of take more closely reflects the potential for both applicants to harass animals and allows for an adequate amount of take when considering another important parameter- group size. The average expected group size of dolphins in the BSC is 4.5 dolphins (Piwetz and Whitehead, 2019). The proposed amount of bottlenose dolphin take for Rio Grande and Annova is presented in Table 10 and 11, respectively.

Rough-Toothed and Atlantic Spotted Dolphins

It is unlikely that rough-toothed dolphins or Atlantic spotted dolphins will occur in the BSC as these species typically inhabit coastal and offshore waters. We note that neither of these species were observed during opportunistic and planned surveys in 2016 through 2019 (Ronje *et al.,* 2018; Piwetz and Whitehead 2019). However, because there is a small risk that these animals may be exposed to project-related noise if they do enter the BSC during pile driving (*e.g.,* a stranding event or other abnormal behavior), both Rio Grande and Annova have each requested take equating to the average group size of these species (Maze-Foley and Mullin 2006). These mean group sizes are 14 rough-toothed dolphins and 26 Atlantic spotted dolphins (Table 10 and 11).

TABLE 10—PROPOSED TAKE FOR RIO GRANDE

Species	Stock	Level B harassment take
Bottlenose dolphin	Laguna Madre	46
	Western Gulf of Mexico Coastal	.....
Rough-toothed dolphin	N. Gulf of Mexico	14
Atlantic spotted dolphin	N. Gulf of Mexico	26

TABLE 11—PROPOSED TAKE FOR ANNOVA

Species	Stock	Level B harassment take
Bottlenose dolphin	Laguna Madre	62
	Western Gulf of Mexico Coastal	.....
Rough-toothed dolphin	N. Gulf of Mexico	14
Atlantic spotted dolphin	N. Gulf of Mexico	26

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 the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the 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 the 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.

Both Rio Grande and Annova have proposed similar mitigation measures to ensure the least practicable adverse impact on marine mammals. Because dolphins are present within the Laguna Madre year-round, we are not proposing any in-water work windows.

Each IHA would contain the following mitigation measures:

For in-water construction, heavy machinery activities other than pile driving (*e.g.,* use of barge-mounted excavators, or dredging), if a marine mammal comes within 10 m, Rio Grande and Annova must cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions. This measure is designed to prevent physical injury from in-water equipment.

Rio Grande and Annova are required to conduct briefings for construction supervisors and crews, the monitoring team, and staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

Two protected species observers (PSOs) must be stationed on land, barge, boat, or dock with full view of the shutdown zones (Table 12) and with direct view of the opposite shoreline to observe for marine mammals within the Level B harassment zone. If a marine mammal is observed within or approaching the shutdown zone, the PSOs will call for a shutdown.

TABLE 12—SHUTDOWN ZONES

Applicant	Pile	Shutdown zone (m)
Rio Grande	All piles	20
Annova	24-in	20
	96-in	100

Marine mammal monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone (Table 12), their behavior must be monitored and documented until they leave of their own volition, at which point the activity may begin or they have not been re-sighted within 15 minutes.

If a marine mammal is entering or is observed within an established shutdown zone (Table 12), pile driving must be halted or delayed. Pile driving may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without subsequent detections.

Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Rio Grande and Annova must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

Rio Grande and Annova are required to employ a double bubble curtain during all impact pile driving and operate it in a manner consistent with the following performance standards: The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column; the lowest bubble ring must be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact; and air flow to the bubblers must be balanced around the circumference of the pile. Rio Grande also proposed operating a double bubble curtain during all vibratory pile driving and removal and we have accounted for its ability to attenuate noise in our analysis. Therefore, Rio Grande must also operate this double bubble curtain during vibratory driving and removal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone (Table 9), pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed without a subsequent sighting.

In the case that 75 percent of the authorized take is met and two or more piles are left to be installed to complete the project, Rio Grande and Annova would implement additional monitoring and mitigation to ensure the authorized take is not exceeded. If this trigger is met, an additional PSO would be positioned at the western edge of the Level B harassment zone.

Based on our evaluation of the applicants' 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); and
- Mitigation and monitoring effectiveness.

Marine mammal monitoring before, during, and after pile driving and removal must be conducted by NMFS-approved PSOs who are independent and have a degree in biological sciences or related training/field experience. NMFS considers the following qualifications when reviewing potential PSO's *Curriculum Vitae* (CV): Ability to conduct field observations and collect data according to assigned protocols, experience or training in the field identification of marine mammals, including the identification of behaviors, sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations, writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior, and ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary. Rio Grande and Annova must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

Each IHA holder must submit a draft report on all marine mammal monitoring conducted under their IHA within ninety calendar days of the completion of marine mammal monitoring. A final report must be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS.

The marine mammal report must contain information related to construction activities, weather conditions, the number of marine mammals observed, by species, relative to the pile location (*e.g.,* distance and bearing), description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A harassment and Level B harassment zones during pile driving and removal, if pile driving or removal was occurring at time of sighting, age and sex class, if possible, of all marine mammals observed, PSO locations during marine mammal monitoring, detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any, an extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible. Rio Grande and Annova must also submit all PSO datasheets and/or raw sighting data to NMFS.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to NMFS and the Southeast Marine Mammal Stranding Network. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. Reporting information must include information about the event, species, animal condition and behavior, and if possible, photographs.

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, our analysis below applies to the issuance of an IHA to Rio Grande and, separately, issuance of an IHA to Annova, as both projects include construction of an LNG terminal in the same area of the BSC.

Pile driving activities associated with both projects, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) incidental to underwater sounds generated from pile driving. Harassment could occur if dolphins are present in relatively close proximity (1–5 km^2) to pile driving and removal.

No Level A harassment, serious injury or mortality is anticipated given the nature of the activities and measures designed to avoid the potential of injury (*e.g.,* PTS) to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the

planned mitigation measures. Rio Grande and Annova would utilize a double bubble curtain during all impact pile driving while Rio Grande has also committed to using the double bubble curtain during vibratory driving and removal. Specifically, vibratory and impact hammers will be the primary methods of installation. Piles will first be installed using vibratory pile driving. Vibratory pile driving produces lower SPLs than impact pile driving. The rise time of the sound produced by vibratory pile driving is slower, reducing the probability and severity of injury. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact pile driving is used, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft starts (for impact driving), marine mammals are expected to move away from a sound source; thereby, lowering received sound levels.

The proposed activities by Rio Grande and Annova are localized and of relatively short duration (8 and 16 days, respectively). The project area is also very limited in scope spatially (confined to a small area of the BSC). Localized (confined to the BSC) and short-term noise exposures produced by project activities may cause short-term behavioral modifications in dolphins. Surveys in the lower Laguna Madre indicate dolphin behavior is generally dominated by socializing, traveling (often in the direction of tidal movement), and foraging (Ronje *et al.,* 2018; Piwetz and Whitehead, 2019). Dolphins were also observed foraging behind active commercial shrimp trawlers in the BSC as far as the Brownsville Fishing Harbor (Ronje *et al.* 2018). During another survey, commercial fishing trawlers were observed actively operating and 31 percent (n = 5) of groups were observed foraging behind trawlers or directly off the stern taking advantage of discarded bycatch (Piwetz and Whitehead, 2019).

Another Texas waterway similar to the BSC, the Galveston Ship Channel, has been a hot spot for dolphin research in Texas. Dolphins regularly use the GSC to forage (57 percent of observed behavioral states) and socialize (27 percent), and for traveling (5 percent) (Piwetz, 2019). The author found when boats were present, the proportion of time dolphins spent socializing and foraging was significantly less than expected by chance. Swimming speeds increased significantly in the presence of small recreational boats, dolphin-watching tour boats, shrimp trawlers, and when tour boats and shrimp trawlers were both present. We would expect animals in the BSC to respond similarly (*e.g.,* decreased foraging and socializing) to pile driving. However, the activities considered in these IHAs (pile driving) would be stationary in nature and no vessels would be actively approaching dolphins nor would dolphins likely be attracted to pile driving as they are to shrimp trawls.

In general, effects on individuals that are taken by Level B harassment will likely be limited to temporary reactions such as avoidance, increased swimming speeds, and decreased socializing and foraging behaviors. We would anticipate swim speeds would increase as dolphins move closer to the pile driving location (similar to how they react to vessels); however, this would move them quickly past the terminal and pre-pile driving exposure behavior would likely return quickly. Foraging and socializing behaviors may cease; however, these behaviors would also resume shortly thereafter. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein.

The project also is not expected to have significant adverse effects on affected marine mammal habitat. Marine mammal habitat quality within the BSC varies. There is little development along the shoreline until the Brownsville Fishing Harbor, located approximately 8 km west of the project sites, when the BCS becomes commercial/industrial. Dolphin habitat in the BSC would be temporarily, indirectly impacted during the brief duration of pile driving for both projects. Direct impacts to dolphin habitat would not occur during Annova's construction as the site is currently uplands. For Rio Grande, direct impacts to foraging habitat would be minimal and temporary in nature during pile driving, primarily consisting of increased turbidity. Dredging would permanently deepen the channel at the Rio Grande terminal location; however, the entire BSC is a man-made canal that is dredged. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammal foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities, the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from the proposed activities are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No Level A harassment, mortality is anticipated or authorized.
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The specified activity and ensonification area is very small (1–5 km^2) relative to the overall habitat ranges of all species and does not include habitat areas of special significance; and
- The presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.
- The impacts to marine mammal habitat would be temporary in nature, primarily increased turbidity and noise.

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 Rio Grande's specified activities and, separately, Annova's specified activities, 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. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For coastal stocks (bottlenose, Atlantic spotted, and rough-toothed dolphins) the amount of proposed take is less than one percent of the population. There is no population estimate available for the Laguna Madre

stock of bottlenose dolphins. Two studies investigating dolphins in Lower Laguna Madre yielded approximately 60 in 2016 (Ronje *et al.,* 2018) and 109 individuals in 2018 and 2019 (Piwetz and Whitehead, 2019). However, these surveys were very limited in space with respect to the stock range and the numbers reflect identified individuals. More specifically, Ronje *et al.* 2018 limited their survey to the extreme lower portion of Lower Laguna Madre while Piwetz and Whitehead (2019) acknowledge the non-asymptotic nature of the discovery curve (accumulation curve) indicates that the sampling effort has not yet identified all, or even most, of the individuals that use this region (presumably referring to lower Laguna Madre). The entire Laguna Madre stock range include upper and lower Laguna Madre.

To estimate potential abundance, we looked for comparative ecosystems to estimate potential population size and trends in abundance estimates for other Gulf of Mexico BSE stocks. The Indian River Lagoon (IRL) in Florida is similar in configuration and length to Laguna Madre but is approximately half the size (539 km^2 versus 1137 km^2). Similar to Laguna Madre, there are no recent stock estimates for the IRL; however, seasonal aerial surveys spanning the IRL from 2002 and 2003 yielded a range of 362 (CV = 0.29) to 1316 (CV = 0.24) with an overall mean abundance of 662 dolphins (Hayes *et al.,* 2016). For those Gulf of Mexico BSEs that have been more intensively studied in recent years, the trend demonstrates these BSEs support much larger stocks of bottlenose dolphins than previously believed. For example, the abundance estimates for the Barataria Bay, Mobile Bay, and Mississippi Sound stocks based on older data were estimated at 138, 122, and 901 animals, respectively (Hayes *et al.* 2017). More recent surveys and analysis now estimate those stocks at 2,306, 1,393, and 3,046 dolphins, respectively. For these reasons, it is reasonable to assume the entire Laguna Madre similarly supports several hundred to thousand animals.

Finally, dolphins within the BSC have been documented as following the tides and shrimp trawls making their way back to the fleet docks which are located west of the terminal sites (Ronje *et al.* 2018). Because the BSC is a dead-end canal, dolphins traveling past the terminal sites in a westward direction must re-transit past the terminal sites to exit the BSC. This is likely to occur on the same day given the tides. While it is not possible to determine if pile driving would be occurring as animals are transiting both west and east of the terminal sites on any given day, it is possible some animals may be exposed to pile driving on more than one occasion on any given day (*e.g.,* if pile driving is occurring in the morning and then several hours later, after a tide change). Therefore, the number of individual dolphins actually harassed may be less than the amount of take proposed to be authorized.

In summary, surveys in Laguna Madre have been limited to lower Laguna Madre and the authors acknowledge the limitations of their studies for purposes of estimating stock size, the IRL (a lagoon similar in configuration and proximity to ocean waters as the BSC but approximately half the surface water area) supports hundreds to over 1,000 animals, and trends of older stock estimates compared to more recent data for other Gulf of Mexico BSE stocks. For these reasons, it is likely the Laguna Madre stock estimate is, at minimum, several hundred animals. Further, the number of individuals taken may be less than the amount of take authorized. Therefore, for the Laguna Madre stock of bottlenose dolphins, we find that the total taking may reasonably be expected to represent less than one-third of the total likely population abundance.

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 relative to the population size of the affected species or stocks may be taken incidental to Rio Grande's proposed activities and, separately, incidental to Annova's proposed activities.

Endangered Species Act (ESA)

No incidental take of ESA-listed 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 IHAs to both Rio Grande and Annova authorizing the take, by Level B harassment only, of small numbers of marine mammals provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHAs 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 authorizations, and any other aspect of this Notice of Proposed IHA for the proposed projects. We also request at this time comment on the potential Renewal of the proposed IHAs 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 these IHAs or subsequent Renewal IHAs.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly 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 Renewal 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 the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA 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);

(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; and

- 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: May 1, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09830 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA170]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Cook Inlet Salmon Committee will meet May 26, 2020 via web conference.

DATES: The meeting will be held on Tuesday, May 26, 2020, from 9 a.m. to 5 p.m., Alaska Daylight Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/1483.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via web conference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, Council staff; email: *james.armstrong@noaa.gov.* For technical support please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, May 26, 2020

The agenda for the meeting will include Committee member proposals for additional management measures under Alternative 2 and Alternative 2–expanded scope, Committee action on final management measure recommendations, review of progress and further development on the Environmental Assessment and Regulatory Impact Review, and a discussion of next steps and the timeline for the amendment. The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1483* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1483.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Public Comment

Public comment will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1483.*

Special Accommodations

The meeting is accessible to people with disabilities. Requests should be directed to Shannon Gleason at (907) 903–3107 at least 7 working days prior to the meeting date.

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

Dated: May 5, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–09881 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA150]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Groundfish Electronic Monitoring Policy Advisory Committee and Technical Advisory Committee (Committees) will hold an online meeting, which is open to the public.

DATES: The meeting will be held Tuesday, May 26, 2020, from 9 a.m. to 5 p.m., Pacific Daylight Time, or until business for the day in completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at 503–820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Staff Officer, Pacific Council; *Brett.L.Wiedoff@noaa.gov;* telephone: (503) 820–2424.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Committees to discuss materials and develop recommendations that are scheduled to be considered during the June 2020 Pacific Council meeting. Specifically, the Committees will discuss recommendations for further development of electronic monitoring policies and regulations for federally managed West Coast groundfish fisheries. The Committees may also discuss other items on the Pacific Council's June agenda, particularly administrative matters.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: May 5, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–09880 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA129]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letters of Authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources (OPR) has received a request from the NMFS Southwest Fisheries Science Center (SWFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), OPR is announcing receipt of the SWFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. OPR invites the public to provide information, suggestions, and comments on the SWFSC's application and request.

DATES: Comments and information must be received no later than June 8, 2020.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: OPR 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. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401. 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: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* 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 may be provided to the public for review.

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 the 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 the takings are set forth.

Summary of Request

On April 30, 2020, we received a complete and adequate application from SWFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by SWFSC. The requested regulations would be valid for five years, from October 30, 2020, through October 29, 2025. The SWFSC plans to conduct fisheries research surveys in the California Current Research Area (off the U.S. west coast) and the Antarctic Research Area (in the Antarctic Scotia Sea). It is possible that marine mammals may interact with fishing gear (*e.g.,* trawl nets, longlines) used in SWFSC's research, resulting in injury, serious injury, or mortality. In addition, the SWFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, SWFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

The requested regulations would be the second incidental take regulations issued to SWFSC, following regulations in place from 2015–2020. SWFSC has complied with all requirements of the previously issued Letters of Authorization and has not exceeded the authorized take numbers. Monitoring reports submitted by SWFSC are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-swfsc-fisheries-and-ecosystem-research.*

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. Federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The SWFSC is the research arm of NMFS in the Southwest Region. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in three geographic research areas: The California Current Research Area (along the U.S. West Coast), the Eastern Tropical Pacific Research Area (ETPRA) (throughout the Eastern Tropical Pacific Ocean), and the Antarctic Research Area (in the Scotia Sea area off Antarctica). However, no research activity is planned for the ETPRA during the next five years, and this research area is not included in the scope of SWFSC's current request. The SWFSC provides scientific information to support the Pacific Fishery Management Council and numerous other domestic and international fisheries management organizations.

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the SWFSC designs and executes the studies and funds vessel time. The gear types used fall into several categories: Pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, seine nets, and other gear. Of research gear used by SWFSC, only pelagic trawl, hook and line gear (including longline gears), and seine nets are likely to interact with marine mammals. The majority of these surveys also use active acoustic devices.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the SWFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the SWFSC, if appropriate.

Dated: May 5, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09925 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 200504–0126]

RIN 0660–XC045

Input on Proposals and Positions for the 2020 World Telecommunication Standardization Assembly

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice, request for public comment.

SUMMARY: NTIA is seeking comments and recommendations on priorities that advance international communications and information policies at the International Telecommunication Union (ITU). Additionally, NTIA seeks input from stakeholders and interested parties on its proposals and positions on matters that will be addressed at the 2020 World Telecommunication Standardization Assembly (WTSA–2020) of the ITU. NTIA's priorities, described below, are intended to best position the United States' Information and Communications Technology (ICT) industry to retain its global leadership in the rapidly evolving communications sector. NTIA is working closely with the U.S. Department of State (State), which is leading and coordinating the WTSA–2020 preparatory process for the United States. This Notice and Request for Public Comment is the public's opportunity to comment on NTIA's proposals and positions for WTSA–2020.

DATES: Comments are due on or before June 8, 2020.

ADDRESSES: Written comments may be submitted by mail to the Office of International Affairs (OIA), National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4701, Washington, DC 20230. Written comments may also be submitted electronically to *WTSA2020@ntia.gov.* Please submit electronic comments, either in Microsoft word or Adobe PDF, using a text searchable format. NTIA will post comments to the NTIA's website at *https://www.ntia.gov/federal-register-notice/2020/comments-proposals-positions-wtsa20.*

FOR FURTHER INFORMATION CONTACT: Aimee Meacham, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4701, Washington, DC 20230; telephone: (202) 482–5820; email: *ameacham@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs at (202) 482–7002 or *press@ntia.gov.*

SUPPLEMENTARY INFORMATION:

Background: Within the U.S. Department of Commerce (Commerce), NTIA is the Executive Branch agency responsible for advising the President on communications and information policy.[1] NTIA was established in 1978 in response to the growing national consensus that ''telecommunications and information are vital to the public welfare, national security, and competitiveness of the United States,'' and that, ''rapid technological advances being made in the telecommunications and information fields make it imperative that the United States maintain effective national and international policies and programs capable of taking advantage of continued advancements.'' [2] The agency plays a central role in the formulation of the U.S. Government's ICT policies, particularly with respect to telecommunications and the internet. NTIA advances these policies and related priorities in conjunction with State at global venues, including the ITU. The ITU's WTSA–2020 will be held in Hyderabad, India from November 17–27, 2020. It is an assembly of Member States and private sector organizations (sector members) that participate in the Standardization Sector of the ITU (''ITU–T''). WTSA–2020 will set the ITU–T agenda for the next four years and will select the leadership of the ITU–T Study Groups. In addition to technical standards, the ITU–T studies and develops recommendations beyond standardization that affect industry, such as global numbering, accounting and settlement mechanisms, international mobile roaming, fraud and misuse of facilities, competition policy, and economic and regulatory impacts of the internet digital economy.

Through this notice, NTIA is soliciting comments and recommendations from stakeholders and other interested parties on its proposals and positions that feed into the State-led preparatory process for WTSA–2020. Comments are welcomed from all interested stakeholders—including the private sector, the technical community, academia, government, civil society, and individuals. The comments will help NTIA, and the U.S. Government more broadly, to leverage and prioritize their resources and policy expertise most effectively. Please note that NTIA is not seeking additional comments from parties that may have responded to the Department of State's Request for Comments.[3]

NTIA's principles and objectives for WTSA–2020 align with the Administration's 2017 National Security Strategy, which affirmed that ''the United States will advocate for open, interoperable communications, with minimal barriers to the global exchange of information and services'' [4] and the Administration's 2018 National Cybersecurity Strategy Pillar II objective to ''[p]reserve United States influence in the technological ecosystem and the development of cyberspace as an open engine of economic growth, innovation, and efficiency.'' [5]

[1] 47 U.S.C. 902(b)(2)(D).

[2] 47 U.S.C. 901(b)(1–6).

[3] See 85 FR 6256 (Feb. 2, 2020).

[4] The National Security Strategy of the United States of America, December 2017, available at *https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf.*

[5] The National Cybersecurity Strategy of the United States of America, September 2018,

NTIA's policy and proposal objectives will include advancing the following efforts to: (1) Further the multistakeholder approach to internet policy; (2) advance ITU–T restructuring to increase organizational effectiveness, reduce duplication; (3) improve ITU–T processes and procedures (*i.e.,* working methods), especially transparency; and (4) increase U.S. strategic engagement and influence in the ITU–T. NTIA's objectives will also support Commerce priorities to: (1) Promote technical standards that preserve our economic security, facilitate US technology leadership globally, and enhance the resilience of cyberspace; and, (2) address barriers to coordination and collaboration with other industry-led standards development efforts.

I. Further the Multistakeholder Approach to Internet Policy

NTIA remains committed to a multistakeholder approach with respect to internet policy issues. All stakeholders (governments, the private sector, and civil society) have a role to play in the development of the internet and the ITU should provide a consensus-driven, transparent forum for issues appropriate to its own mission (*e.g.,* interconnection). NTIA's view, along with that generally of the USG, is that the success of the internet has been in part based on the fact that no one single entity controls it, allowing entrepreneurs, industries, scientists, and academics globally to continually innovate. NTIA's proposals and positions on internet policy issues will be guided by the objectives of promoting the multistakeholder approach, maintaining the stability and security of the internet, and maintaining the appropriate limited role for the ITU. Recognizing that the ITU has a role within its limited scope and remit, the NTIA will work with the multistakeholder community to identify constructive, clearly-defined, specific ITU–T study-group questions, based on the importance of contribution-driven/membership driven work. We seek comment on the policy position outlined for this objective. Based on ITU–T presentations to Regional WTSA–2020 Preparatory Meetings,[6] we expect to see new proposals to WTSA–2020 addressing:

- Artificial Intelligence/Machine Learning
- Consumer Protection
- Cybersecurity
- Digital Economy
- Internet Policy and Governance
- internet Platforms
- Internet of Things
- 5G—IMT–2020
- International Mobile Roaming
- Mobile Financial Services/Digital Currency
- Personal Data Protection
- Over-the-Top Services
- Healthcare Technology
- Quantum Cryptography
- Quantum Computing
- Unmanned Aerial Vehicles
- Smart Cities
- Mobile Virtual Networks
- Other emerging Technologies

(a) What role would stakeholders like the ITU–T to play with respect to standards development for these issues? Given NTIA's limited resources to cover or even track all of these issues at the ITU and all other Standards Developing Organizations (SDO), it would help us to understand which of these issues are more effectively covered in other SDOs.

II. Advance ITU–T Restructuring To Increase Organizational Effectiveness, Reduce Duplication and Ensure the Proper Scope of the ITU

NTIA expects that WTSA–2020 will focus heavily on restructuring study groups through either merger or expansion. NTIA supports the ongoing efforts to improve the structure of the ITU–T to ensure that it focuses on its core competencies.

NTIA and other U.S. stakeholders have noted that the emphasis of work in ITU–T has shifted away from the development of technical standards to regulatory policy; specifically using the output of ITU–T study groups as an input to the development of the International Telecommunications Regulations (ITRs) used to try to impose regulations on the internet. NTIA's priority is to ensure the ITU–T refocuses its efforts on technical matters that are within its mandate and expertise and to minimize and redirect any work on issues outside ITU–T's mandate. NTIA is deeply concerned that certain countries wish to expand the scope of ITU–T study groups beyond their mandate and to use the output of ITU–T study groups as a step to reshape the ITRs. NTIA expects that Member States and in some cases Sector Members will continue to look to enlarge the scope and volume of ITU–T activities.

Recently, ITU–T Member States and Sector Members launched focus groups on quantum information technology for networks, artificial intelligence (AI) for autonomous and assisted driving, AI for health, environmental efficiency for AI and other emerging technologies, technologies for Network 2030, and machine learning for future networks and vehicular multimedia. Many of these issues are addressed in other SDOs and many are not within the remit of the ITU–T or its areas of expertise.

There is also a significant overlap for the issues amongst the current ITU–T Study Group structure. NTIA sees merit in a reduced number of Study Groups as this would provide a clearer scope and direction for each Study Group, reduce overlap, and enhance participation of developed and developing countries in the activities of the sector. Furthermore, NTIA recommends combining study groups into functional topics within a single study group in order to improve synergy, reduce the number of meetings, and make efficient use of limited ITU, national, and private sector resources. NTIA and State will advocate for the following specific proposals related to restructuring:

(a) Only one ITU–T Study Group considers economic and policy issues and the United States believes that no other activities of ITU–T should be combined with such studies. As such, the United States supports the proposals to retain the current structure of ITU–T Study Group 3 and increase its coordination role with ITU–D. As a longer-term vision, NTIA believes that moving policy components of ITU–T to ITU Development Sector (ITU–D) aligns with ITU Constitution (CS) Article 21, Functions and Structure of the Telecommunication Development Sector. The move would benefit developing countries for whom this remains a priority issue and increases accessibility of the meetings and thus participation.

(b) *Merge Study Groups*—Merging Study Group 11 (SG11): Signaling requirements, protocols, test specifications and combating counterfeit products should be merged with Study Group 13 (SG 13) Future networks, with focus on IMT–2020, cloud computing and trusted network infrastructures into a single group with a new name. There is significant overlap in the subjects addressed in SG 11 and SG 13. NTIA is of the view that SG 11 and SG 13 have a wide variety of forward-looking telecommunications questions that are currently under study. NTIA believes that work of the current study groups 11 and 13 are related, including signaling, requirements, interfaces, and protocol

available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/National-Cyber-Strategy.pdf.*

[6] *See* ITU–T Regional WTSA–2020 Preparatory Meetings: (1) Africa; (2) Americas; (3) Arab States; (4) Asia and the Pacific; (5) CIS; and Europe. Americas, Asian Pacific, available at *https://www.itu.int/en/ITU-T/wtsa20/prepmeet/Pages/default.aspx.*

work. Merging questions and groups also makes it more expedient for the US government and US stakeholders to cover these issues at the ITU. NTIA plans to prioritize its participation in relevant questions of this combined Study Group as we believe it is imperative that the United State facilitate US industry's ability to influence standards for the next generation of communications.

We seek comment on the policy position outlined for this objective. Specifically:

(a) We seek comment on which study groups should be combined or specific proposals at the ITU.

(b) Assuming the ITU–T study group structure remains as it is today, in which study groups (SGs) and activities should NTIA prioritize its participation and why? The current groups for the Study Period 2017–2020 are available at *https://www.itu.int/en/ITU-T/studygroups/2017-2020/Pages/default.aspx.*

(c) Should there be any new study groups at the ITU–T? Should any study groups be eliminated or consolidated? Of the issues that ITU–T study groups now cover, are there issues that are more appropriately addressed in other SDOs? If so, which SDOs and why?

III. Improve ITU–T Processes and Procedures (i.e., Working Methods), and Transparency

NTIA will focus on where the ITU–T processes and procedures add value to the technical standards work within its remit, and look to enhance those areas of value while minimizing areas of little to no value. With concerns noted above on potential scope and mission creep, NTIA would like to ensure that processes and procedures are strengthened, including reducing duplication and increasing collaboration among ITU Sectors and with other SDOs.

For example, the ITU–T's scope expansion is most apparent in the proliferation of ITU–T emerging technology focus groups, which increasingly address policy and regulatory matters and whose outputs often lead directly to study group recommendations. Aside from the inappropriate mission creep, the ITU–T study groups adopt focus group recommendations in their entirety, without debate or sufficient peer review—thus inconsistent with a hallmark of ITU decisions of being ''consensus-driven.'' NTIA is concerned that ITU–T focus groups may be used to bypass the questions of appropriateness of scope, generally lack transparency, and have significant operational, financial, and strategic implications for ITU–T and more broadly the ITU. NTIA sees opportunities for improving the clarity, specificity, and completeness with which ITU–T working methods and procedures are documented. NTIA seeks to enhance the efficiency and effectiveness of ITU–T through procedural improvements that benefit all stakeholders in the future of the ITU. The ITU's budget constraints leave no room for duplication in its efforts. The current inefficiency not only costs the ITU capital, but also both Member States and Sector Members, requiring more of their time and resources to achieve the same work outputs while detracting from where the ITU can and should uniquely engage. In other words, NTIA recognizes that if it is difficult for the members of the ITU to effectively cover all of the issues at the ITU–T, it is nearly impossible for developing countries within the Americas and other regions to have any voice in most standardization issues thus undermining the credibility of ITU output having any global imprimatur.

We seek comment on the policy position outlined for this objective. Specifically:

(a) Should the ITU strengthen cooperation and collaboration among the three ITU sectors? If so, what are some suggested methods for doing so?

(b) What, if any, modifications to WTSA Resolutions and Recommendations would improve their efficiency and effectiveness?

IV. Increase U.S. Presence and Influence in the ITU–T

The United States has been and continues to be a leading innovator of world-changing ICT. U.S. presence in international SDOs has allowed us to influence global standards and has been a key factor of the ICT success. The development and transition to 5G requires even greater representation and participation by the U.S. public and private sectors. The call for increased representation in SDOs has recently been taken up in legislation. There are numerous SDOs focused on various aspects of telecommunication and ICT policies. While the ITU–T has been widening its areas of interest in recent years, participation from U.S. firms in ITU–T standards work has declined in general. At the same time, we have seen an increase in the participation from other countries looking to gain influence in global standards bodies and increase market share, especially in emerging economies. NTIA has observed that many developing countries refer to international treaty organizations, such as the ITU, when adopting national standards and policies. Given this background, NTIA intends to promote ways to foster increased US leadership and facilitate greater participation and representation the U.S. stakeholders, as appropriate.

We seek comment on the policy position outlined for this objective. Specifically:

(a) What factors influence U.S. industry's participation in ITU meetings? How do these organizations decide to allocate time and resources to ITU sectors, study groups, or focus groups? How should U.S. industry's decisions affect how NTIA participates in SDOs, ITU sectors, study groups or focus groups?

(b) Have changes in ITU–T membership (sector and associate members) affected U.S. leadership in technology and telecommunication industry standards? Will these changes affect those standards going forward? If so, how?

(c) How should NTIA engage with, and facilitate, U.S. industry and other relevant stakeholders' awareness of and participation in ITU and other SDOs?

(d) How does ITU involvement in global standards development positively or negatively affect U.S. industry interests? How does it advance US industry interests?

(e) How important are ITU–T recommendations to U.S. ICT stakeholders? Is there a wide implementation of the ITU–T recommendations in the United States or elsewhere by relevant organizations or companies? Why or why not? What factors affect the adoption or implementation of ITU–T recommendations, *e.g.,* cost, applicability? Please provide examples of these implementations, if any.

V. Further the Multistakeholder Approach to Internet Policy

The ITU–T leadership continues to look at ways to improve the Sector's work going forward and has increased the Sector's focus on ICT applications and services, as they are economic drivers. Specifically, ITU–T leadership has stated in interviews and meetings that it will focus on ITU–T activities that will help build additional trust (*i.e.,* cybersecurity) in the ICT sector, improving the standards development process, and delivering standards in areas of convergence such as automotive, healthcare, and financial technology (fintech). Many countries view the ITU as a ''trusted entity'' and as the appropriate venue for addressing their cyberspace and security concerns. NTIA supports the current limited role of the ITU–T in technical

recommendation work related to telecommunications security. NTIA's deliberations on security issues will be guided by the objectives of recognizing the role of other standards development organizations (SDOs); promoting private sector leadership on technical standards; and ensuring the ITU–T work remains within its mission scope.

We seek comment on the policy position outlined for this objective. Specifically:

(a) What, if any, ITU recommendations are necessary to ensure a resilient, secure and diverse 5G supply chain (to include, for example, manufacturing, importation, operations, maintenance and distribution) to ensure traceability, transparency, security, privacy and trustworthiness of data, devices and networks?

(b) What should the ITU–T continue to focus on that has value to U.S. interests?

(c) What unique value does the ITU Standardization Sector, as part of an intergovernmental organization, provide?

(d) What areas should the ITU–T avoid and of those, where are those areas better handled?

VI. Explore Further Coordination and Collaboration With Other Industry-Led Standards Development Organizations

There are numerous SDOs with deep expertise on various aspects of telecommunications and information policies. While the ITU–T has been widening its areas of interest in recent years, the participation from U.S. firms in ITU–T standards work has declined. At the same time, we have seen a dramatic increase in the participation from other countries looking to gain influence at the ITU. NTIA will continue to advocate for standards from SDOs developed using a consensus-based, industry-driven approach; that industry should lead international standards development processes, and that those processes should be transparent and open. The ITU–T Study Group 13's Network 2030 Focus group, for example, has studied the capabilities of networks for the year 2030 and beyond to answer specific questions on what kinds of network internet Protocol (IP) architecture and the enabling mechanisms are suitable for novel scenarios, such as holographic type communications and high-precision communication demands of emerging market verticals.[7] Additionally, we expect to see and oppose proposals to include other topics that may not be appropriate for ITU–T consideration and are better addressed by other SDOs—both private and public/private partnerships. We expect to see and oppose topics in the following areas as completely outside the ITU–T remit: Consumer protection, personal data protection, healthcare technology, and unmanned aerial vehicles.

We seek comment on the policy position outlined for this objective. Specifically:

Are there specific areas where the work of the ITU–T is either duplicative or has unnecessary overlaps with the work of other SDOs? If so, please describe the duplication or overlap, as well as any additional concerns.

Request for Public Comment

In addition to the questions above, NTIA invites comment on the full range of issues that may be presented by this inquiry, and also welcomes input and comments on any specific issues being advanced by other countries, private sector organizations, and stakeholders for WTSA–2020.

Instructions for Commenters:

Commenters are encouraged to address any or all of the questions in this RFC. Comments that contain references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments. Comments submitted by email should be machine-readable and should not be copy-protected. Comments submitted by mail may be in hard copy (paper) or electronic (on CD–ROM or disk).

Commenters should include the name of the person or organization filing the comment, as well as a page number on each page of their submissions. All comments received are a part of the public record and generally will be posted on the NTIA website, *https://www.ntia.gov,* without change. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Dated: May 4, 2020.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–09835 Filed 5–7–20; 8:45 am]

BILLING CODE 3510–60–P

[7] *See* ITU–T Focus Group on Technologies for Network 2030, available at *https://www.itu.int/en/ITU-T/focusgroups/net2030/Pages/default.aspx.*

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* June 07, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/27/2020 and 4/3/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSNs—Product Names:
MR 13020—Scoop, Cookie, Medium
MR 13022—Corer, Cupcake
MR 13024—Cookie Press, Disc Storage, 12 Discs
MR 13025—Set, Disc, Christmas
MR 13056—Kit, Bottle, Bakers, 8pc
MR 13057—Knife, Icing, Cupcake
MR 13058—cups, Baking, Silicone
MR 13059—Spatula, Baking, cookie, Silicone
MR 13049—Set, Disc, Springtime
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Service

Service Type: Grounds Maintenance
Mandatory for: U.S. Army Engineer District San Francisco, Bay Model Visitor Center, Sausalito, CA
Mandatory Source of Supply: North Bay Rehabilitation Services, Inc., Rohnert Park, CA
Contracting Activity: DEPT OF THE ARMY, W075 ENDIST SAN FRAN

Deletions

On 4/3/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSNs—Product Names:
8415–00–FAB–0702—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XSmall-Short
8415–00–FAB–0706—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XSmall-Regular
8415–00–FAB–0713—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Small-Short
8415–00–FAB–0724—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Small-Regular
8415–00–FAB–0728—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Small-Long
8415–00–FAB–0730—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Med-Regular
8415–00–FAB–0733—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Med-Long
8415–00–FAB–0744—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Large-Regular
8415–00–FAB–0751—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, Large-Long
8415–00–FAB–0754—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XLarge-Regular
8415–00–FAB–0759—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XLarge-Long
8415–00–FAB–0760—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XLarge-Xlong
8415–00–FAB–0925—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XXLarge-Regular
8415–00–FAB–0936—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XXLarge-Long
8415–00–FAB–0941—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, OEFCP, XXLarge-Xlong
8415–00–FAB–6057—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Small-Regular
8415–00–FAB–6067—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Med-Regular
8415–00–FAB–6074—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Large-Regular
8415–00–FAB–6080—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, XLarge-Regular
8415–00–FAB–6082—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Large-Long
8415–00–FAB–6089—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, XLarge-Long
8415–00–FAB–8745—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Small-Short
8415–00–FAB–8758—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Small-Long
8415–00–FAB–8809—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, Med-Long
8415–00–FAB–8820—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, XLarge-XLong
8415–00–FAB–8828—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, 2XLarge-Regular
8415–00–FAB–8829—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, 2XLarge-Long
8415–00–FAB–8834—Kit, Pre-Cut Fabric, GEN III ECWCS, Jacket, UCP, 2XLarge-XLong
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: DEPT OF JUST/FEDERAL PRISON SYSTEM, Washington, DC
NSNs—Product Names:
8415–00–FAB–6409—Kit, Pre-Cut Fabric, GEN III ECWCS, Trouser, UCamo, XL–XL
8415–00–FAB–6410—Kit, Pre-Cut Fabric, GEN III ECWCS, Trouser, UCamo, XS–XS
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: DEPT OF JUST/FEDERAL PRISON SYSTEM, Washington, DC

Services

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: 124 Manley Street, Brockton, MA
Mandatory Source of Supply: Morgan Memorial Goodwill Industries, Boston, MA
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: 443 Route 119 North, Indiana, PA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC CTR–FT DIX (RC)

Service Type: Janitorial/Minor Maintenance
Mandatory for: U.S. Federal Building and Post Office, Tupelo, MS
Mandatory Source of Supply: Alabama Goodwill Industries, Inc., Birmingham, AL
Contracting Activity: PUBLIC BUILDINGS SERVICE, ACQUISITION DIVISION/SERVICES BRANCH

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–09897 Filed 5–7–20; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Lending Report of the Bureau of Consumer Financial Protection, April 2020

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Fair Lending Report of the Bureau of Consumer Financial Protection.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its eighth Fair Lending Report of the Bureau of Consumer Financial Protection (Fair Lending Report) to Congress. The Bureau is committed to ensuring fair, equitable, and nondiscriminatory access to credit for both individuals and communities. This report describes our fair lending activities in innovation, outreach, prioritization, guidance and rulemaking, supervision, and enforcement for calendar year 2019.

DATES: The Bureau released the April 2020 Fair Lending Report on its website on April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Bobby Conner, Senior Policy Counsel, Fair Lending, at 1–855–411–2372. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

1. Fair Lending Report of the Bureau of Consumer Financial Protection, April 2020

Message From Kathleen L. Kraninger, Director

I am pleased to present this Fair Lending Annual Report to Congress reflecting the Consumer Financial Protection Bureau's fair lending efforts in 2019.

During the past year, we've worked hard to enhance our fair lending efforts by leveraging the authorities provided by Congress and the Bureau's resources to be more effective and comprehensively utilized. From supervision and enforcement to rulemaking, guidance and education, the Bureau is dedicated to using all the tools at its disposal to achieve our mission: Fair, equitable, and nondiscriminatory access to credit markets for consumers and their communities.

Through our supervision and enforcement work, we strive to foster a culture of institutional compliance and prevention of consumer harm. As part of these important efforts, the Bureau continues to vigorously enforce fair lending laws, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act. Through our rulemaking and guidance, we articulate to regulated entities clear rules of the road that protect consumers while promoting competition, transparency, and fair markets for financial products and services. Through our outreach, we continue to educate and empower consumers to make informed decisions that secure their financial well-being.

In addition, the Bureau continues to focus on consumer beneficial innovation—one of my key priorities—including innovation that provides fair, equitable, and non-discriminatory access to credit. In 2019, the Bureau issued three new policies to help promote innovation and facilitate compliance: A revised No-Action Letter Policy, a revised Trial Disclosure Program Policy, and the Compliance Assistance Sandbox Policy. We encourage innovators to consider these tools to develop new financial products and services to better serve consumers.

One particular fair lending issue ripe for innovative solutions is making financial products and services more accessible to consumers who are unbanked and underbanked, including those who are Limited English Proficient (LEP). By working on these complex issues together, I am confident that we can find ways to overcome obstacles and provide greater access to credit markets, including to LEP consumers.

In 2019, we issued a Request for Information regarding ''Tech Sprints.'' Tech Sprints gather regulators, technologists, financial institutions, and subject matter experts from key stakeholders to collaboratively develop innovative solutions to clearly identified challenges. We are excited to explore the use of Tech Sprints to encourage regulatory innovation and collaborate with stakeholders in developing viable solutions to regulatory compliance challenges. I hope to announce more about these efforts in the near future.

Finally, in light of recent events concerning the COVID–19 pandemic, I am mindful of the need for additional innovative solutions that protect America's consumers.

I am proud of the work that is highlighted in this report and grateful to the Bureau staff who have been instrumental in leading these efforts. Going forward, we will continue to work on expanding responsible access to credit and helping to ensure that all consumers are protected from discrimination.

Sincerely,

Kathleen L. Kraninger

Message From Patrice Alexander Ficklin, Director, Office of Fair Lending and Equal Opportunity

As we reflect on another year and look ahead to the next, the Bureau continues to make progress in ensuring fair, equitable, and nondiscriminatory access to credit for all consumers in America. To that end, I am honored to share our achievements in this, our eighth Fair Lending Report.

During the past year, the Office of Fair Lending and Equal Opportunity (OFLEO) continued to coordinate the Bureau's fair lending work both internally, and with other governmental agencies, civil rights organizations, consumer groups, and industry to encourage consumer-friendly innovation to expand access to credit, especially for unbanked and underbanked consumers.

Through our work on innovation, we also aim to provide meaningful guidance to institutions on fair lending compliance in the age of innovation. In this vein, in 2019, along with four other financial regulators, the Bureau issued a joint statement about the use of alternative data in underwriting, seeking to expand fair, equitable, and nondiscriminatory access to credit. The use of alternative data such as cash-flow data may improve the speed and accuracy of credit decisions and expand access to fair and affordable credit to consumers who currently may not obtain credit in the mainstream credit system, and the Bureau encourages responsible use of such data to expand access to credit.

We are particularly excited by our role in launching the Bureau's first Tech Sprints, which we hope will facilitate the use of innovative technologies to address challenges experienced by consumers, industry and regulators.

I look forward to continuing to work with all stakeholders in protecting America's consumers and expanding access to credit. When navigating complex fair lending issues, stakeholders should consider OFLEO as a resource.

Sincerely,

Patrice Alexander Ficklin

1. Innovations in Access to Credit

1.1 Collaboration Between the Office of Fair Lending and Equal Opportunity and the Office of Innovation

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Bureau's mission to include both fair lending and

innovation components. Specifically, the Dodd-Frank Act makes clear that ''[t]he Bureau is authorized to exercise its authorities under [F]ederal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services . . . (2) *consumers are protected* from unfair, deceptive, or abusive acts and practices and *from discrimination* . . . and (5) markets for consumer financial products and services operate transparently and efficiently to *facilitate access and innovation.*'' [1]

The Bureau is also responsible for providing oversight and enforcement of Federal fair lending laws intended to ensure ''fair, equitable, and nondiscriminatory access to credit for both individuals and communities.'' [2] The Bureau's Office of Fair Lending and Equal Opportunity (OFLEO) coordinates fair lending work both internally and externally with Bureau stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies. OFLEO also works closely with the Office of Innovation (OI) to help encourage innovation in expanding responsible credit access, including fair, equitable, and nondiscriminatory access to credit to underserved populations.

On September 10, 2019, the Bureau, through OI, issued three new policies to promote innovation and facilitate compliance: A revised No-Action Letter (NAL) Policy,[3] a revised Trial Disclosure Program Policy,[4] and the Compliance Assistance Sandbox Policy.[5] The Bureau is accepting applications under these policies and, as of this report, has granted two NALs and a NAL template under the revised 2019 NAL Policy.[6]

As part of its coordination function, OFLEO works with OI regarding applications to the Bureau's innovation programs that involve fair lending and access to credit issues.

Review of such applications generally includes consideration of the potential fair lending risks associated with the proposed product or service, as well as its potential for expanding access to credit for underserved or underbanked populations. In addition, after an application related to fair lending or access to credit has been granted by the Bureau, the two offices continue to work together, for example, in reviewing data submitted by the recipient relating to fair lending and credit access issues.

The Bureau encourages consumer-beneficial innovations, including those that can help serve populations currently underserved by the mainstream credit system. Entities are strongly encouraged to contact the Bureau before applying to any of the innovation programs.

1.2 No-Action Letter Issued to HUD Housing Counseling Agencies

In September 2019, the Bureau issued a NAL under the revised 2019 NAL policy in response to a request by the U.S. Department of Housing and Urban Development (HUD) on behalf of more than 1,600 housing counseling agencies (HCAs) that participate in HUD's housing counseling program.[7] The NAL was issued after HUD brought concerns to the Bureau about HCAs and mortgage lenders not entering into agreements that would fund counseling services due to uncertainty about the application of the Real Estate Settlement Procedures Act.

The more than 1,600 HUD-certified HCAs serve more than one million households annually. They offer pre-purchase homeownership counseling to potential borrowers looking to purchase their first home, providing important information on fair housing, fair lending, and access to credit issues. With this information, potential borrowers may be better able to make informed choices based on their financial circumstances to achieve safe and sustainable homeownership. The NAL is intended to facilitate HCAs entering into such agreements with lenders and will enhance the ability of HCAs to obtain funding from additional sources.

At the same time, in response to HUD's application, the Bureau issued a NAL Template for mortgage lenders under the NAL Policy, providing a foundation for future NAL applications by mortgage lenders.

1.3 Joint Statement On the Use of Alternative Data in Credit Underwriting

In December 2019, the Bureau, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) (collectively ''the agencies'') issued a joint statement on the use of alternative data in underwriting by banks, credit unions, and non-bank financial firms.[8]

The purpose of the statement was to provide guidance on the use of alternative data in underwriting and, to the extent firms are using or contemplating using alternative data, to encourage responsible use of such data.

Alternative data includes information not typically found in consumers' credit reports or customarily provided by consumers when applying for credit. Alternative data can include cash-flow data derived from consumers' bank account records.

The statement further explains that a well-designed compliance management program provides for a thorough analysis of relevant consumer protection laws and regulations to ensure firms understand the opportunities, risks, and compliance requirements before using alternative data. As reflected in the statement, the agencies recognize that use of alternative data in a manner consistent with applicable consumer protection laws may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. Additionally, the agencies acknowledge that using alternative data may enable consumers to obtain additional products and/or more favorable pricing/terms based on enhanced assessments of repayment capacity.

1.4 Providing Adverse Action Notices When Using Artificial Intelligence and Machine Learning Models

As part of our consumer protection mission, Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation the Bureau is monitoring for

[1] Dodd-Frank Act section 1021(b)(2), (5) (emphasis added).

[2] Dodd-Frank Act sections 1002(13), 1013(c).

[3] Consumer Fin. Prot. Bureau, *No-Action Letter Policy* (Sept. 10, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf;* Policy on No-Action Letters, 84 FR 48229, 48229–48246 (Sept. 6, 2019).

[4] Consumer Fin. Prot. Bureau, *Policy to Encourage Trial Disclosure Programs* (Sept. 6, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf; Policy to Encourage Trial Disclosure Programs,* 84 FR 48260, 48260–48272 (Sept. 13, 2019).

[5] Consumer Fin. Prot. Bureau, *Policy on the Compliance Assistance Sandbox* (Sept. 6, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf; Policy on the Compliance Assistance Sandbox,* 84 FR 48246, 48246–48260 (Sept. 13, 2019).

[6] Consumer Fin. Prot. Bureau, *Granted Applications,* https://www.consumerfinance.gov/about-us/innovation/granted-applications/.

[7] Consumer Fin. Prot. Bureau, *CFPB Issues Policies to Facilitate Compliance and Promote Innovation* (Sept. 10, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/.*

[8] Consumer Fin. Prot. Bureau, *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 3, 2019), *https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/.*

fair lending and access to credit issues is artificial intelligence (AI), and more specifically, machine learning (ML), a subset of AI.

One important issue is how complex AI models address the adverse action notice requirements in ECOA and the Fair Credit Reporting Act (FCRA). ECOA requires creditors to provide consumers with the main reasons for a denial of credit or other adverse action.[9] FCRA also includes adverse action notice requirements.[10] These notice provisions serve important anti-discrimination, educational, and accuracy purposes. There may be questions about how institutions can comply with these requirements if the reasons driving an AI decision are based on complex interrelationships.

The existing regulatory framework has built-in flexibility that can be compatible with AI algorithms. For example, although a creditor must provide the specific reasons for an adverse action, the Official Interpretation to ECOA's implementing regulation, Regulation B, provides that a creditor need not describe how or why a disclosed factor adversely affected an application,[11] or, for credit scoring systems, how the factor relates to creditworthiness.[12] Thus, the Official Interpretation provides an example that a creditor may disclose a reason for a denial, even if the relationship of that disclosed factor to predicting creditworthiness may be unclear to the applicant. This flexibility may be useful to creditors when issuing adverse action notices based on AI models where the variables and key reasons are known, but which may rely upon non-intuitive relationships.

Another example of this flexibility is that neither ECOA nor Regulation B mandate the use of any particular list of reasons. Indeed, the regulation provides that creditors must accurately describe the factors actually considered and scored by a creditor, even if those reasons are not reflected on the current sample forms.[13] This latitude may be useful to creditors when providing reasons that reflect alternative data sources and more complex models.

Industry continues to develop tools to accurately explain complex AI decisions, and the Bureau expects more methods will emerge. These developments hold great promise to enhance the ''explainability'' of AI and facilitate use of AI for credit underwriting compatible with adverse action notice requirements.

Despite this flexibility, there may still be some regulatory uncertainty about how certain aspects of the adverse action requirements apply in the context of AI/ML. Entities are encouraged to consider the Bureau's new innovation policies as a means to address these potential compliance issues.

The Bureau welcomes continued dialogue with institutions and organizations regarding innovative ways to fulfill adverse action notice requirements when using AI.

1.5 Update on Upstart No-Action Letter

In 2017, the Bureau announced a NAL to Upstart Network, Inc. (Upstart), a company that uses alternative data and machine learning in making credit underwriting and pricing decisions.[14] Upstart's underwriting model uses traditional underwriting data and various categories of alternative data, including information related to borrowers' education and employment history. The NAL, approved under the Bureau's 2016 NAL policy, references the application of ECOA and Regulation B to Upstart's use of alternative data and ML for its underwriting and pricing model. This NAL is specific to the facts and circumstances of Upstart and does not serve as an endorsement of the use of any particular variables or modeling techniques in credit underwriting and pricing. In addition, the NAL does not serve as an endorsement of Upstart or the products or services it offers.

As a condition for receiving the NAL, Upstart agreed to a model risk management and compliance plan that requires it to analyze and appropriately address risks to consumers, as well as assess the real-world impact of alternative data and ML. Pursuant to the NAL, Upstart provides the Bureau with information comparing outcomes from its underwriting and pricing model (tested model) against outcomes from a hypothetical model that uses traditional application and credit file variables and does not employ ML (traditional model). Upstart independently validated the traditional model through fair lending testing to ensure that it did not violate antidiscrimination laws.

Since the issuance of the NAL, Upstart has worked to answer several key questions, including:

- Whether the tested model's use of alternative data and ML expands access to credit, including lower-priced credit, overall and for various applicant segments, compared to the traditional model.
- Whether the tested model's underwriting or pricing outcomes result in greater disparities than the traditional model with respect to race, ethnicity, sex, or age, and if so, whether applicants in different protected class groups with similar model-predicted default risk actually default at the same rate.

Upstart agreed to allow the Bureau to share key highlights from simulations and analyses that it conducted pursuant to its model risk management and compliance plan; the simulations and analyses were not separately replicated by the Bureau. The following results provided by Upstart reflect the net effect of both the alternative data and the ML methodology used in the lender's model as applied to the lender's applicant pool. The Bureau shared this information in a blog post in August 2019.[15]

The results provided from the access-to-credit comparisons show that the tested model approves 27% more applicants than the traditional model, and yields 16% lower average APRs for approved loans.

This reported expansion of credit access reflected in the results provided occurs across all tested race, ethnicity, and sex segments resulting in the tested model increasing acceptance rates by 23–29% and decreasing average APRs by 15–17%.

In many consumer segments, the results provided show that the tested model significantly expands access to credit compared to the traditional model. Under the tested model, the results provided reflect that:

- Near prime consumers with FICO scores from 620 to 660 were approved approximately twice as frequently.
- Applicants under 25 years of age are 32% more likely to be approved.
- Consumers with incomes under $50,000 are 13% more likely to be approved.

With regard to fair lending testing, which compared the tested model with the traditional model, the approval rate and APR analysis results provided for minority, female, and 62 and older applicants showed no disparities that require further fair lending analysis under the compliance plan. The Bureau continues to monitor the Upstart NAL.

[9] 15 U.S.C. 1691(d)(2).

[10] 15 U.S.C. 1681m (a).

[11] 12 CFR pt. 1002, comment 9(b)(2)–3.

[12] *Id.* at 9(b)(2)–4.

[13] 12 CFR pt. 1002, comment 9(b)(2)–2 and app. C, ¶ 4.

[14] Consumer Fin. Prot. Bureau, *CFPB Announces First No-Action Letter to Upstart Network* (Sept. 14, 2017), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.*

[15] Patrice Alexander Ficklin and Paul Watkins, Consumer Fin. Prot. Bureau, *An update on credit access and the Bureau's first No-Action Letter* (Aug. 6, 2019), *https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/.*

1.6 Tech Sprints Request for Information

In September 2019, the Bureau, through collaboration between OI, the Office of Technology and Innovation, and OFLEO, issued a Request for Information (RFI) seeking comments and information to identify opportunities to utilize ''Tech Sprints'' to encourage regulatory innovation.[16]

Used successfully by the Financial Conduct Authority in the United Kingdom, Tech Sprints gather regulators, technologists, financial institutions, and subject matter experts from key stakeholders for several days to work together to develop innovative solutions to clearly identified challenges. Small teams include participants from both the regulator and a diversity of entities to ensure the inclusion of regulatory, industry, and technology perspectives. The regulator assigns a specific regulatory compliance or market problem to each team and challenges the teams to solve or mitigate the problem using modern technologies and approaches. The most promising ideas can then be further developed either in collaboration with the regulator or by external parties.

Specifically, the RFI stated that the Bureau is interested in using Tech Sprints to:

- Leverage cloud solutions, machine-automated compliance checks that allow for independent validation by regulators, and other developments that may reduce or modify the need for regulated entities to transfer data to the Bureau.
- Continue to innovate HMDA data submission, processing, and publication to help ease burdens, increase flexibility, and resolve compliance challenges, while satisfying all legal requirements.
- Identify new technologies and approaches that can be used by the Bureau to provide more cost-effective oversight of supervised entities, effective evaluation of compliance and risk, and closer interface with financial industry systems and technology that may include the use, for example, of analytical tools in the review of mortgage origination data.
- Explore other technological approaches to robust and secure data access or exchange between regulated entities and the Bureau.
- Reduce unwarranted regulatory compliance burdens.

In the RFI, the Bureau sought responses to questions, including:

- What regulatory compliance issues, problems, procedures, or requirements could benefit from innovation through a Bureau Tech Sprint?
- What financial technology or other advances hold the most promise for helping modernize regulatory compliance?
- Other than organizing Tech Sprints, what else might the Bureau do to encourage innovation in financial products and services? For example, could advances be encouraged by changes to certain Bureau rules or policies?

The comment period closed on November 8, 2019, and the Bureau received 19 comments in response to its RFI. The feedback identified an interest in organizing Tech Sprints in the areas of HMDA, supervision data sharing and submission, automated compliance, third-party technology providers/bank-fintech partnerships, consumer disclosures, and regulations.

The information provided will help the Bureau identify how stakeholders can work together to create a regulatory environment (1) that allows flexible, efficient, and effective innovation to flourish; (2) where new and/or emerging risks can be identified and managed effectively; and (3) where consumers have the appropriate level of protection and suitable access to the benefits of technological advancement. The information may also help identify responsible innovations that can be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system. The Bureau expects to announce its first Tech Sprints later in 2020.

2. Outreach: Promoting Fair Lending Compliance and Education

Pursuant to the Dodd-Frank Act, the Bureau regularly engages in outreach with stakeholders, including civil rights organizations, consumer advocates, industry, academia, and other government agencies, to: (1) Educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau's work to inform its policy decisions.[17]

Throughout 2019, OFLEO worked closely with other Bureau offices to execute the Bureau's fair lending outreach and education efforts.

The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities, and to receiving valuable input about fair lending issues and how innovation can promote fair, equitable, and nondiscriminatory access to credit.

2.1 Educating Stakeholders About Fair Lending Compliance and Access to Credit Issues

2.1.1 Bureau Blog Posts, Statements, Reports, and Press Releases

The Bureau regularly uses blog posts, statements, reports, and press releases as tools to timely and effectively communicate with consumers and other stakeholders on issues, emerging areas of concern, Bureau initiatives, and more. In 2019, the Bureau published three blog posts related to fair lending including: an update on credit access and the Bureau's No-Action Letter with Upstart,[18] the 2019 report on the Bureau's *Building a Bridge to Credit Visibility* symposium,[19] and the release of the 2018 Fair Lending Annual Report.[20] The Bureau's blog posts, including those related to fair lending, may be accessed at *www.consumerfinance.gov/blog.*

The Bureau also issued two statements related to fair lending in 2019: a *Statement on Collection of Demographic Information by Community Development Financial Institutions,*[21] and a *Joint Statement with Federal Regulators on the Use of Alternative Data in Credit Underwriting.*[22]

In 2019, the Bureau also issued six press releases related to fair lending

[16] Consumer Fin. Prot. Bureau, *Request for Information Regarding Tech Sprints* (Sept. 12, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_rfi_tech-sprints.pdf.*

[17] Consumer Fin. Prot. Bureau, *Fiscal Year 2020: Annual performance plan and report, and budget overview,* Performance goal 2.1.1, at 69 (Feb. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy20.pdf.*

[18] Patrice Alexander Ficklin and Paul Watkins, Consumer Fin. Prot. Bureau, *An update on credit access and the Bureau's first No-Action Letter* (Aug. 6, 2019), *https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/.*

[19] Patrice Alexander Ficklin and J. Frank Vespa-Papaleo, Consumer Fin. Prot. Bureau, *A report on the Bureau's Building a Bridge to Credit Visibility Symposium* (July 19, 2019), *https://www.consumerfinance.gov/about-us/blog/report-credit-visibility-symposium/.*

[20] Patrice Alexander Ficklin, *Encouraging innovation in expanding credit access: 2018 Fair Lending Report to Congress,* Consumer Fin. Prot. Bureau (June 28, 2019), *https://www.consumerfinance.gov/about-us/blog/2018-fair-lending-report-congress/.*

[21] Consumer Fin. Prot. Bureau, *Statement on Collection of Demographic Information by Community Development Financial Institutions* (June. 27, 2019), *https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/statement-collection-demographic-information-community-development-financial-institutions/.*

[22] Consumer Fin. Prot. Bureau, *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 3, 2019), *https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/.*

topics including: the Bureau's announcement regarding its symposia series,[23] the release of certain 2018 HMDA data,[24] [25] the extension of the public comment period for the Advance Notice of Proposed Rulemaking (ANPR) regarding HMDA data points,[26] the issuance of a final HMDA Rule,[27] the issuance of the Interagency Statement on the Use of Alternative Data in Credit Underwriting,[28] and a public enforcement action against Freedom Mortgage Corporation.[29] The Bureau's statements and press releases, including those related to fair lending, may be accessed at *www.consumerfinance.gov/about-us/newsroom.*

2.1.2 Bureau Outreach Engagements With Stakeholders

Bureau staff participated in 63 outreach engagements throughout 2019 to educate external stakeholders about fair lending compliance and access to credit issues. In most of those engagements, Bureau personnel also received information and feedback on the Bureau's policy decisions.

Specifically, in 2019, the Bureau communicated directly with fair lending, civil rights, consumer and community advocates, and with industry through speeches, panel remarks, presentations, roundtables, a webinar, an onsite HMDA Help Desk, and smaller meetings on issues pertaining to fair, equitable, and nondiscriminatory access to credit. The Bureau also engaged with stakeholders through the Bureau's website, consumerfinance.gov. Some examples of the topics covered include: fair lending supervision and enforcement priorities, innovations in lending, HMDA and Regulation C, small business lending, the Bureau's Tech Sprints RFI, access to credit for LEP consumers, providing adverse action notices when using ML models, and the use of alternative data.

2.1.3 2019 HMDA Warning Letters

In 2019, the Bureau issued warning letters to mortgage-lending institutions indicating that they may be required to collect, record, and report data about their mortgage-lending activity under HMDA and Regulation C, and that they may be in violation of those requirements.[30] The letters urged recipients to review their practices to ensure their compliance with all relevant laws. The recipients were encouraged to respond to the Bureau to advise if they have taken, or will take, steps to ensure compliance with the law, or to tell the Bureau if they if they think their activities do not trigger HMDA reporting thresholds.

Through these letters the Bureau seeks to increase compliance with HMDA through enhanced education efforts and direct outreach to potentially non-compliant mortgage lenders, and to increase HMDA data quality and completeness through accurate reporting. Since commencing the issuance of the HMDA warning letters more than 140,000 new mortgage loan application registers (LARs) that previously went unreported by the entities have now been reported. The Bureau will follow up on these letters to ensure compliance, as appropriate.

2.1.4 Supervisory Highlights

Supervisory Highlights has long been a report that anchors the Bureau's efforts to communicate about the Bureau's supervisory activity. In March 2019, the Winter 2019 *Supervisory Highlights* noted the updates made to HMDA Small Entity Compliance Guide from October 30, 2018.[31] At that time, the Bureau updated the HMDA Small Entity Compliance Guide to reflect changes made to the HMDA by section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).

All editions of *Supervisory Highlights* are available at *www.consumerfinance.gov/reports.*

2.2 Listening to Stakeholders To Inform the Bureau's Policy Decisions

2.2.1 Bureau Outreach Engagements With Stakeholders

As described above in section 2.1.2, Bureau outreach engagements serve as a vehicle to hear the views of external stakeholders in order to inform the Bureau's policy decisions. In these events, Bureau staff received feedback from stakeholders on issues pertaining to discrimination and fair, equitable, and nondiscriminatory access to credit.

2.2.2 Bureau Outreach Follow-Up From 2018 Building a Bridge Symposium

In follow-up to the Bureau's September 17, 2018 *Building a Bridge to Credit Visibility* symposium, and to increase the Bureau's knowledge base about innovations in small business lending, the Offices of Fair Lending and Small Business Lending Markets held two Fair Lending Roundtables with Minneapolis/St. Paul-area (Twin Cities) stakeholders involved in small business lending. The event was held on May 8, 2019, in Minneapolis, Minnesota. Participants at the Roundtables represented both industry and consumer groups, including community banks, credit unions, and Community Development Financial Institutions (CDFIs) that provide small business credit in the Twin Cities area. Also in attendance were representatives from the Minnesota Credit Union League and Credit Union National Association.

Aside from collecting invaluable information that will inform the Bureau's work and future policymaking, the event introduced the Bureau to certain local organizations in the Twin Cities area that were previously unaware of the Bureau's work and resources. The event also served as a conduit for bringing together local organizations involved in providing small business microlending in the Twin Cities area that had not previously connected. The Bureau anticipates that these groups will continue to benefit from working together to help small businesses and their communities in the Twin Cities area.

2.2.3 Bureau Symposium on Section 1071

In April 2019, the Bureau announced a symposia series exploring consumer protections in today's dynamic financial

[23] Consumer Fin. Prot. Bureau Announces Symposia Series (Apr. 8, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/.*

[24] Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2018 Data on Mortgage Lending* (Aug. 30, 2019), *https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2018-data-mortgage-lending/.*

[25] Consumer Fin. Prot. Bureau, *HMDA Modified Loan Application Registers Released* (Mar. 29, 2019), *https://www.consumerfinance.gov/about-us/newsroom/hmda-modified-loan-application-registers-released/.*

[26] Consumer Fin. Prot. Bureau, *CFPB Extends Comment Period for ANPR on HMDA Data Points* (Jun. 27, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-extends-comment-period-anpr-hmda-data-points/.*

[27] Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Issues Final HMDA Rule to Provide Relief to Smaller Institutions* (Oct. 10, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-final-hmda-rule-provide-relief-smaller-institutions/.*

[28] *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 3, 2019), *https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/.*

[29] Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Settles with Freedom Mortgage Corporation* (Jun. 5, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/.*

[30] On October 27, 2016, the Bureau issued the first round of HMDA warning letters, *https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-financial-institutions-about-potential-mortgage-lending-reporting-failures/.*

[31] Consumer Fin. Prot. Bureau, *Supervisory Highlights Winter 2019* at 19 (March 2019), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf.*

services marketplace.[32] The series is aimed at stimulating a proactive and transparent dialogue to assist the Bureau in its policy development process, including possible future rulemakings. During each symposium, the Bureau hosts a discussion panel of experts with a variety of viewpoints on the topic.

On November 6, 2019, the Bureau held a symposium on section 1071 of the Dodd-Frank Act.[33] Section 1071 amended ECOA to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The symposium provided a public forum for the Bureau and the public to hear various perspectives on the small business lending marketplace and the Bureau's upcoming implementation of section 1071.

The event featured remarks by Director Kraninger. The symposium also consisted of two panels of experts. The first panel focused on the current state of, and future outlook for, the small business lending marketplace. The second panel included a discussion of the implementation of section 1071. Additional information regarding this symposium, including the agenda, the panelists' written statements, and a video of the event is available on the Bureau's website.[34] Information about the Bureau's efforts to implement section 1071 can be found in section 4.2.2 of this Report.

3. Interagency Coordination and Engagement

Throughout 2019, the Bureau coordinated its fair lending regulatory, supervisory, and enforcement activities with other Federal agencies and State regulators to promote consistent, efficient, and effective enforcement of Federal fair lending laws. This interagency engagement sought to address current and emerging fair lending risks. Interagency engagement occurs in numerous ways, including through several interagency organizations.

The Federal Financial Institutions Examination Council (FFIEC) is currently chaired by Director Kraninger.[35] Through the FFIEC, the Bureau has robust engagement with other partner agencies that focus on fair lending issues.

For example, the Bureau currently chairs the FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee of the FFIEC Task Force on Consumer Compliance (Task Force). The Task Force oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

Additionally, the Bureau, the Federal Trade Commission (FTC), HUD, FDIC, FRB, NCUA, OCC, DOJ, and the Federal Housing Finance Agency (FHFA), comprise the Interagency Task Force on Fair Lending (Fair Lending Task Force). Currently, the Bureau chairs the Fair Lending Task Force, which meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

Further, the Bureau also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of Federal agencies—DOJ, HUD, and FTC—that meets regularly to discuss issues specifically relating to fair lending enforcement. The agencies use these meetings to discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

In addition to these established interagency working groups, Bureau personnel meet periodically and on an ad hoc basis with DOJ, HUD, and the prudential regulators to coordinate the Bureau's fair lending work.

4. Guidance and Rulemaking

4.1 HMDA and Regulation C Rulemaking and Guidance

4.1.1 Regulation C 2019 Notice of Proposed Rulemaking and Final Rule

In May 2019, the Bureau issued a Notice of Proposed Rulemaking (NPRM)[36] proposing two alternatives to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans. The proposed amendments would increase the threshold so that institutions originating fewer than either 50 closed-end mortgage loans, or alternatively, 100 closed-end mortgage loans, in either of the two preceding calendar years would not have to report such data as of January 1, 2020. The proposed rule also proposed to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit and setting a threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary threshold.

In October 2019, the Bureau issued a Final Rule[37] amending Regulation C to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit. The Final Rule announced that any change to the closed-end mortgage loan reporting threshold and permanent open-end threshold to take effect upon expiration of the temporary threshold would be addressed in a later rule.

The Final Rule also further implements the partial exemptions from HMDA's requirements that EGRRCPA recently added to HMDA. In August 2018, the Bureau issued an interpretive and procedural rule to implement and clarify the EGRRCPA amendments to HMDA (2018 HMDA Rule).[38] The 2018 HMDA Rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for insured depository

[32] Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau* Announces Symposia Series (Apr. 8, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/*.

[33] Consumer Fin. Prot. Bureau, *CFPB Symposium: Section 1071 of the Dodd-Frank Act* (Nov. 6, 2019), *https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-section-1071-dodd-frank-act/*.

[34] *Id.*

[35] Collectively, the FRB, FDIC, NCUA, OCC, and the Bureau comprise the FFIEC. The FFIEC is a ''formal interagency body empowered to prescribe uniform principles, standards, and report forms for the [F]ederal examination of financial institutions'' by the member agencies listed above and the State Liaison Committee ''and to make recommendations to promote uniformity in the supervision of financial institutions.'' Fed. Fin. Inst. Examination Council, *http://www.ffiec.gov* (last visited March 30, 2020). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

[36] Home Mortgage Disclosure (Regulation C), 84 FR 20972 (May 13, 2019).

[37] Home Mortgage Disclosure (Regulation C), 84 FR 57946 (Oct. 29, 2019).

[38] Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325 (Sept. 7, 2018).

institutions with less than satisfactory examination histories under the Community Reinvestment Act of 1977. This final rule incorporates into Regulation C these interpretations and procedures, with minor adjustments, by adding new § 1003.3(d) relating to the partial exemptions and making various amendments to the data compilation requirements in § 1003.4. The Final Rule further implements EGRRCPA by addressing certain additional interpretive issues relating to the partial exemptions that the 2018 HMDA Rule did not specifically address, such as how to determine whether a partial exemption applies to a transaction after a merger or acquisition. The provisions in the final rule implementing the EGRRCPA took effect on January 1, 2020.

4.1.2 Regulation C Data Points and Coverage 2019 Advance Notice of Proposed Rulemaking

In May 2019, the Bureau issued an ANPR relating to the data points that the Bureau's 2015 HMDA Rule added to Regulation C or revised to require additional information.[39] Additionally, the ANPR relates to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C. The Bureau currently is reviewing the comments received and expects to issue a Notice of Proposed Rulemaking (NPRM) later in 2020.

4.1.3 HMDA Public Data Disclosure Guidance

The Bureau has decided to commence a new notice-and-comment rulemaking to govern HMDA data disclosure. In its 2015 final rule to implement the Dodd-Frank Act amendments to HMDA, the Bureau adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes.[40] The Bureau sought comment in 2017 on its proposed application of the balancing test to the 2018 data,[41] and issued final policy guidance in late 2018.[42]

In consideration of stakeholder comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau has decided to commence a new notice-and-comment rulemaking to govern HMDA data disclosure. The Bureau expects to issue a NPRM later in 2020. The Bureau plans to consider the HMDA data points and public disclosure proposed rules concurrently.

4.1.4 2018 HMDA Data Release

In August 2019, on behalf of the FFIEC, the Bureau released data on mortgage lending transactions at U.S. financial institutions covered by HMDA.[43] Covered institutions include banks, savings associations, credit unions, and mortgage companies. The HMDA data covers 2018 lending activity. Many of the data points were available for the first time in the 2018 HMDA data. Certain smaller-volume financial institutions are not required to report all these data, pursuant to the EGRRCPA, as described above in section 4.1.1

With the data, the Bureau released two Data Point articles. The first describes the historical data points in the 2018 HMDA data, as well as recent trends in mortgage and housing markets.[44]

The second introduces the new and revised data points in the 2018 HMDA data and provides some initial observations about the nation's mortgage market in 2018 based on those new or revised data points.[45]

Earlier, in March 2019, Modified LARs data were published for approximately 5,400 financial institutions.[46] The Modified LARs contain loan-level information for 2018 on individual HMDA filers, modified to protect privacy.

4.1.5 HMDA Guidance and Resources

The Bureau created many resources to help facilitate compliance with Regulation C, including an Executive Summary of HMDA rule changes; Small Entity Compliance Guide; Key Dates Timeline, Institutional and Transactional Coverage Charts; Reportable HMDA Data Chart; sample data collection form, and Frequently Asked Questions (FAQs), in addition to downloadable Webinars that provide an overview of the HMDA rule. The Bureau also provides on its website an Interactive Bureau Regulations version of Regulation C.

HMDA resources are routinely updated throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in September 2019, the Bureau released the 2020 Filing Instructions Guide (FIG) and the Supplemental Guide for Quarterly Filers. Together with the FFIEC, in March 2019, the Bureau also published the 2019 edition of the HMDA Getting it Right Guide. The Bureau also worked with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website.

4.2 ECOA and Regulation B Rulemaking and Guidance

4.2.1 Statement on Collection of Demographic Information by Community Development Financial Institutions

In July 2019, the Bureau issued a statement regarding the collection of demographic information by financial institutions that are Community Development Financial Institutions (CDFIs) receiving assistance from the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund).[47]

The Bureau became aware that some financial institutions that are certified CDFIs receiving assistance from the CDFI Fund have inquired whether they are subject to ECOA and Regulation B's general prohibition on a creditor collecting certain information about an applicant for credit, such as the applicant's race or ethnicity.

The statement explains that CDFIs receiving Federal financial assistance from the CDFI Fund may collect demographic information on the individuals the CDFI serves, consistent with the ECOA and its implementing Regulation B, provided the collection of the information is for the purpose of complying with the regulatory requirements of the CDFI Fund.

4.2.2 Small Business Data Collection

As described earlier in this report, section 1071 of the Dodd-Frank Act amends ECOA to require, subject to

[39] Home Mortgage Disclosure (Regulation C), 84 FR 20049 (May 8, 2019).

[40] 80 FR 66128, 66134 (Oct. 28, 2015).

[41] Disclosure of Loan-Level HMDA Data, 82 FR 44586 (Sept. 25, 2017).

[42] 84 FR 649 (Jan. 31, 2019).

[43] Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2018 Data on Mortgage Lending* (Aug. 30, 2019), *https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2018-data-mortgage-lending/.*

[44] Consumer Fin. Prot. Bureau, *Data point: 2018 mortgage market activity and trends,* (Aug. 30, 2019), *https://www.consumerfinance.gov/data-research/research-reports/data-point-2018-mortgage-market-activity-and-trends/.*

[45] Consumer Fin. Prot. Bureau, *Data Point: Introducing New and Revised Data Points in HMDA* (Aug. 30, 2019), *https://www.consumerfinance.gov/data-research/research-reports/introducing-new-revised-data-points-hmda/.*

[46] Consumer Fin. Prot. Bureau, *HMDA Modified Loan Application Registers Released* (Mar. 29, 2019), *https://www.consumerfinance.gov/about-us/newsroom/hmda-modified-loan-application-registers-released/.*

[47] Consumer Fin. Prot. Bureau, *Statement on Collection of Demographic Information by Community Development Financial Institutions* (July 29, 2019), *https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/statement-collection-demographic-information-community-development-financial-institutions/.*

rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that specific data be collected, maintained, and reported, including but not limited to: the type of loan applied for, the amount of credit applied for, the type of action taken with regard to each application, the census tract of the principal place of business of the loan applicant, and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of section 1071. The Bureau may adopt exceptions to any requirement of section 1071 and may exempt any financial institution from its requirements, as the Bureau deems necessary or appropriate to carry out section 1071's purposes.

The Bureau issued an RFI in 2017 seeking public comment on, among other things, the types of credit products offered, and the types of data currently collected by lenders in this market, and the potential complexity, cost of, and privacy issues related to, small business data collection.

In connection with its Spring 2019 rulemaking agenda,[48] the Bureau announced its intention to recommence work to develop rules to implement section 1071 of the Dodd-Frank Act.

In November 2019, the Bureau hosted a symposium on small business data collection. The information received in response to the 2017 RFI and the symposium will help the Bureau determine how to implement the statute efficiently while minimizing burdens on lenders.

In addition, the Bureau is working to conduct a survey of lenders to obtain estimates of one-time costs lenders of varying sizes would incur to collect and report data pursuant to section 1071. The Bureau anticipates that its next step will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, to consult with representatives of small businesses that may be affected by the rulemaking.[49]

Also, during 2019, the Bureau was involved in litigation regarding the implementation of section 1071 of the Dodd-Frank Act. Information concerning the litigation can be found in section 5 of this Report.

5. Amicus Program and Other Litigation

The Bureau files *amicus curiae,* or ''friend-of-the-court,'' briefs in significant court cases concerning Federal consumer financial protection laws, including ECOA. These *amicus* briefs provide the courts with the Bureau's views on significant consumer financial protection issues. Information regarding the Bureau's *amicus* program, including a description of the *amicus* briefs it previously filed, is available on the Bureau's website.[50]

During 2019, the Bureau was involved in litigation regarding section 1071 of the Dodd-Frank Act. On May 14, 2019, the California Reinvestment Coalition filed a lawsuit in the U.S. District Court for the Northern District of California against the Bureau seeking an order compelling the Bureau to issue rules implementing section 1071 of the Dodd-Frank Act. On June 27, 2019, an amended complaint was filed adding the National Association for Latino Community Asset Builders and two individuals as plaintiffs in the lawsuit. The Bureau answered and the parties filed cross-motions for summary judgment. Information about the Bureau's efforts to implement section 1071 can be found in section 4.2.2 of this Report.

6. Fair Lending Supervision And Enforcement

6.1 Risk-Based Prioritization

Because Congress charged the Bureau with responsibility for overseeing many lenders and products, the Bureau has long-used a risk-based approach to prioritize supervisory examinations and enforcement activity. This approach helps ensure that the Bureau focuses on areas that present substantial risk of credit discrimination for consumers.[51] This same approach continued in 2019.

As part of the prioritization process, the Bureau identifies emerging developments and trends by monitoring key consumer financial markets. If this market intelligence identifies fair lending risks in a particular market that require further attention, that information is incorporated into the prioritization process to determine the type and extent of attention required to address those risks.

The prioritization process incorporates a number of additional factors, including: Tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of HMDA and other publicly available data.

6.1.1 Fair Lending Supervisory and Enforcement Priorities

Through its annual risk-based prioritization process for 2019, the Bureau focused its fair lending supervision efforts on mortgage origination, small business lending, student loan origination, and debt collection and model use.

As in previous years, the Bureau's mortgage origination work continued to focus on: (1) Redlining and whether lenders intentionally discouraged prospective applicants living or seeking credit in minority neighborhoods from applying for credit; (2) assessing whether there is discrimination in underwriting and pricing processes including steering; and (3) HMDA data integrity and validation (which supports ECOA exams) as well as HMDA diagnostic work (monitoring and assessing new rule compliance).

The Bureau's small business lending work focused on assessing whether (1) there is discrimination in the application, underwriting, and pricing processes, (2) creditors are redlining, and (3) there are weaknesses in fair lending related compliance management systems (CMS).

The Bureau's student loan origination work focused on whether there is discrimination in policies and practices governing underwriting and pricing. In the area of debt collection and model use, the Bureau's work focused on whether there is discrimination in policies and practices governing auto servicing and credit card collections, including the use of models that predict recovery outcomes.

The Bureau also continued to enforce Federal fair lending laws, including ECOA and HMDA. One key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining.

6.2 Fair Lending Supervision

In 2019, the Bureau initiated 26 supervisory events at financial services

[48] Consumer Fin. Prot. Bureau, *Regulatory Agenda, https://www.consumerfinance.gov/policy-compliance/rulemaking/regulatory-agenda/* (Last visited Apr. 29, 2020).

[49] *Id.*

[50] *https://www.consumerfinance.gov/policy-compliance/amicus/.*

[51] For additional information regarding the Bureau's risk-based approach in prioritizing supervisory examinations, *see* section 3.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights Summer 2013, http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.*

institutions under the Bureau's jurisdiction to determine compliance with Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities, including ECOA and HMDA.

Consistent with BCFP Bulletin 2018–01,[52] the Bureau issues Matters Requiring Attention (MRAs) to correct violations of Federal consumer financial law, remediate harmed consumers, and address weaknesses in CMS that examiners found are directly related to violations of Federal consumer financial law. MRAs include timeframes for periodic reporting of efforts taken to address these matters, as well as expected timeframes for implementation. The Bureau also uses Supervisory Recommendations (SRs) to address the Bureau's supervisory concerns related to financial institutions' CMS. SRs do not include provisions for periodic reporting nor expected timelines for implementation. In 2019, the Bureau provided MRAs directing entities to take corrective actions that will be monitored by the Bureau through follow-up supervisory events. The Bureau also issued SRs in 2019 relating to supervisory concerns related to weak fair lending CMS, including weak policies and procedures, risk assessments, fair lending testing, and/or fair lending training.

6.3 Fair Lending Supervisory Developments

6.3.1 Updated ECOA Baseline Review Modules and HMDA Examination Procedures

In April 2019, the Bureau updated its ECOA Baseline Review Modules[53] and its HMDA Examination Procedures.[54]

The ECOA Baseline Review Modules consist of five modules that CFPB examination teams use to conduct ECOA Baseline Reviews to evaluate how institutions' CMS identify and manage fair lending risks under ECOA. In addition, examination teams use Module 2: Fair Lending CMS to review a supervised entity's fair lending CMS as part of an ECOA Targeted Review, supplemented with additional modules from these procedures as necessary.

A HMDA review includes transactional testing for HMDA data accuracy conducted using the HMDA Examination Procedures within the CFPB Supervision and Examination Manual. The updated HMDA Examination Procedures include updates to reflect the Bureau's interpretive and procedural rule, issued in August 2018, which implements and clarifies section 104 of EGRRCPA.

6.4 Fair Lending Enforcement

The Bureau has the statutory authority to bring actions to enforce the requirements of HMDA and ECOA. In this regard, the Bureau has the authority to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the Bureau's administrative enforcement process. The Bureau also has independent litigating authority and can file cases in Federal court alleging violations of fair lending laws under the Bureau's jurisdiction. Like other Federal bank regulators, the Bureau is required to refer matters to DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[55]

6.4.1 Public Enforcement Actions

In 2019, the Bureau filed one fair lending public enforcement action: In the Matter of Freedom Mortgage Corporation (File No. 2019–BCFP–0007). The Bureau announced the settlement with Freedom Mortgage Corporation (Freedom) on June 5, 2019.[56] Freedom is a mortgage lender with its principal place of business in Mount Laurel, New Jersey, and one of the ten largest HMDA reporters nationwide. For each year from 2013 through 2016, it originated more than 50,000 home-purchase loans, including refinancings of home-purchase loans. Freedom is required to collect, record, and report data on HMDA-covered transactions to comply with HMDA and Regulation C.

According to the consent order, the Bureau found that Freedom violated HMDA and Regulation C by submitting mortgage-loan data for 2014 to 2017 that contained numerous and intentional errors. The Bureau found that Freedom reported inaccurate race, ethnicity, and sex information and that much of Freedom's loan officers' recording of this incorrect information was intentional. For example, certain loan officers were told by managers or other loan officers that, when applicants did not provide their race or ethnicity, they should select non-Hispanic white regardless of whether that was accurate.

Under the terms of the consent order, Freedom must pay a civil money penalty of $1.75 million and take steps to improve its compliance management to prevent future violations.

6.4.2 ECOA Referrals to the Department of Justice

The Bureau must refer to the DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[57] The Bureau also may refer other potential ECOA violations to the DOJ.[58] In 2019, the Bureau referred three matters to the DOJ involving discrimination pursuant to section 706(g) of ECOA. The first referral involved discrimination based on a pattern or practice of redlining in mortgage origination based on race. The second referral resulted from discrimination based on receipt of public assistance income in mortgage origination. Lastly, the third referral involved discrimination based on race and national origin in auto origination.

6.4.3 Implementing Enforcement Orders

When an enforcement action is resolved through a public enforcement order, the Bureau (together with DOJ, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system. Throughout 2019, the Bureau continued to implement and oversee compliance with the two public enforcement orders described below.

On June 29, 2016, the Bureau and the DOJ announced a joint action against BancorpSouth Bank (BancorpSouth) for discriminatory mortgage lending practices that harmed African Americans. The consent order, which was entered by the Court on July 25,

[52] Consumer Fin. Prot. Bureau, BCFP Bulletin 2018–01: *Changes to Types of Supervisory Communications* (Sept. 25, 2018), *https://files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf.*

[53] Consumer Fin. Prot. Bureau, *ECOA Baseline Review Procedures* (Apr. 1, 2019), *https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/equal-credit-opportunity-act-ecoa-baseline-review-procedures/.*

[54] Consumer Fin. Prot. Bureau, *HMDA Examination Procedures* (Apr. 1, 2019), *https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/home-mortgage-disclosure-act-hmda-examination-procedures/.*

[55] 15 U.S.C. 1691e(h).

[56] Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Settles with Freedom Mortgage Corporation* (Jun, 5, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/.*

[57] 15 U.S.C. 1691e(g).

[58] *Id.*

2016, required BancorpSouth to pay $4 million in direct loan subsidies in minority neighborhoods in Memphis; [59] at least $800,000 for community programs, advertising, outreach, and credit repair; $2.78 million to African American consumers who were unlawfully denied or overcharged for loans; and a $3 million penalty.[60] On June 25, 2018, the Bureau announced that participation materials were mailed to potentially eligible African American borrowers identified as harmed by BancorpSouth's alleged discrimination in mortgage lending between 2011 and 2015, notifying them how to receive redress. Starting on March 15, 2019, checks were mailed to African American borrowers who were confirmed as eligible to receive a payment.

[59] ''Majority-minority neighborhoods'' or ''minority neighborhoods'' refers to census tracts with a minority population greater than 50 percent.

[60] Consent Order, *United States* v. *BancorpSouth Bank,* No. 1:16-cv-00118–GHD–DAS (N.D. Miss. July 25, 2016), ECF No. 8, *https://files.consumerfinance.gov/f/documents/201606_cfpb_bancorpSouth-consent-order.pdf.*

On February 2, 2016, working with the DOJ, the Bureau ordered Toyota Motor Credit Corporation (Toyota Motor Credit) to pay up to $21.9 million in damages to harmed African American and Asian and/or Pacific Islander borrowers for unlawful discrimination.[61] On December 29, 2017, participation materials were mailed to potentially eligible borrowers whom Toyota Motor Credit overcharged for their auto loans notifying them how to participate in the settlement fund. On February 1, 2019, checks were mailed to eligible, participating consumers.

6.4.4 Pending Fair Lending Investigations

In 2019, the Bureau had a number of ongoing and newly opened fair lending investigations of institutions. One of the Bureau's key areas of focus was potential discrimination in mortgage lending, including the unlawful practice of redlining.

[61] Consent Order *In re Toyota Motor Credit Corporation,* CFPB No. 2016–CFPB–0002 (Feb. 2, 2016), *https://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf.*

7. Interagency Reporting on ECOA and HMDA

The Bureau is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[62] In addition, the Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[63]

7.1 Reporting on ECOA Enforcement

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under section 704 of ECOA are discussed in this section.

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[62] 15 U.S.C. 1691f.

[63] 12 U.S.C. 2807.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

FFIEC AGENCIES				
Bureau of Consumer Financial Protection (CFPB)	Federal Deposit Insurance Corporation (FDIC)	Federal Reserve Board (FRB)	National Credit Union Administration (NCUA)	Office of the Comptroller of the Currency (OCC)

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

NON-FFIEC AGENCIES		
Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA)	Department of Transportation (DOT)	Farm Credit Administration (FCA)
Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA)[64]

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7.1.1 Public Enforcement Actions

The eleven agencies charged with administrative enforcement of ECOA under section 704 are as follows:

- CFPB;
- FDIC;
- FRB;
- NCUA;
- OCC; [65]
- Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA),[66]

[64] 15 U.S.C. 1691c.

[65] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau) comprise the Federal Financial Institutions Examination Council (FFIEC). The FFIEC is a ''formal interagency body empowered to prescribe uniform principles, standards, and report forms for the [F]ederal examination of financial institutions'' by the member agencies listed above and the State Liaison Committee ''and to make recommendations to promote uniformity in the supervision of financial institutions.'' Federal Financial Institutions Examination Council, *http://www.ffiec.gov* (last visited March 30, 2020). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

[66] The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions

Continued

- Department of Transportation (DOT);
- Farm Credit Administration (FCA);
- Federal Trade Commission (FTC);
- Securities and Exchange Commission (SEC); and
- Small Business Administration (SBA).[67]

In 2019, none of the 11 ECOA enforcement agencies brought public enforcement actions for violations of ECOA. Below is an overview of the year-to-year combined ECOA enforcement actions at all Federal agencies since 2012:

TABLE 3—ECOA ENFORCEMENT BY ALL FEDERAL AGENCIES

Calendar year	Total public enforcement actions
2012	[68] 17
2013	9
2014	2
2015	5
2016	3
2017	1
2018	0
2019	0

7.1.2 Violations Cited During ECOA Examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently-cited violations were as follows:

TABLE 4—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2019

Regulation B violations: 2019	FFIEC agencies reporting
12 CFR 1002.4(a), (b), 1002.5(b), 1002.6(b), 1002.7(d)(1): Discrimination	CFPB,[69] FDIC,[70] FRB,[71] OCC.[72]
Discrimination on a prohibited basis in a credit transaction; Discouragement of prospective applicants on a prohibited basis; A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction; Improperly considering receipt of public assistance in a system of evaluating applicant creditworthiness; Improperly requiring the signature of the applicant's spouse or other person.	
12 CFR 1002.9(a)(1), (a)(2), (b)(1), (b)(2), (c): Adverse Action	CFPB,[73] FDIC,[74] FRB,[75] NCUA,[76] OCC.[77]
Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.	
12 CFR 1002.12(b)(1): Record Retention	CFPB,[78] NCUA,[79] OCC.[80]
Failure to preserve application records.	

Among institutions examined for compliance with ECOA and Regulation B, the Non-FFIEC agencies reported that the most frequently-cited violations were as follows:

TABLE 5—REGULATION B VIOLATIONS CITED BY NON–FFIEC ECOA AGENCIES, 2019

Regulation B violations: 2019	Non–FFIEC agencies reporting
12 CFR 1002.9(a)(1)(i), (a)(2), (c): Adverse Action	FCA
Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice.	
12 CFR 1002.13: Failure to request and collect information for monitoring purposes	FCA

The AMS, SEC and the SBA reported that they received no complaints based on ECOA or Regulation B in 2019. In 2019, the DOT Office of Aviation Enforcement and Proceedings reported that it may have received a relatively small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA, which it processed informally. The FTC is an enforcement agency and does not conduct compliance examinations.

7.2 Referrals to the Department of Justice

In 2019, four FFIEC agencies (CFPB, FDIC, FRB, and NCUA) made a total of seven referrals to the DOJ involving discrimination in violation of ECOA. A brief description of those matters follows.

As reported in section 6.4.2, in 2019, the Bureau referred three matters to the DOJ. Those referrals involved: Discrimination based on a pattern or practice of redlining in mortgage origination based on race; discrimination based on receipt of public assistance income in mortgage origination; and discrimination based on race and national origin in auto origination.

previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

[67] 15 U.S.C. 1691c.

[68] This table identifies public enforcement actions by the year they were initiated (when filed and announced publicly).

[69] 12 CFR 1002.4(a), 1002.4(b), 1002.6(b).

[70] 12 CFR 1002.5(b).

[71] 12 CFR 1002.4(a).

[72] 12 CFR 1002.7(d)(1).

[73] 12 CFR 1002.9(a)(1), (a)(2), (b)(1), (b)(2), (c)(1).

[74] 12 CFR 1002.9(a)(2), (b)(2).

[75] 12 CFR 1002.9(a)(1)(i), (c)(2).

[76] 12 CFR 1002.9(a)(1), (a)(2), (b)(2).

[77] 12 CFR 1002.9(a)(1)(i), (a)(1)(ii), (a)(2).

[78] 12 CFR 1002.12(b)(1).

[79] 12 CFR 1002.12(b).

[80] 12 CFR 1002.12(b)(1).

In 2019, the FDIC referred two matters to the DOJ. The first referral involved discrimination in auto origination on the prohibited basis of the applicant's receipt of income derived from a public assistance program. The second referral involved discrimination in the underwriting of commercial loans on the prohibited basis of religion.

The FRB referred one matter to the DOJ in 2019. The referral involved pricing discrimination based on national origin, race, and sex.

In 2019, the NCUA referred one matter to the DOJ involving discrimination on the prohibited basis of age.

TABLE 6—COMBINED ECOA REFERRALS TO DOJ

Calendar year	Number of referrals to DOJ
2012	12
2013	24
2014	18
2015	16
2016	20
2017	11
2018	2
2019	7

7.3 Reporting on HMDA

The Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[81] The Bureau, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

APPENDIX A: DEFINED TERMS

Term	Definition
AI	Artificial Intelligence.
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture.
ANPR	Advance Notice of Proposed Rulemaking.
Bureau or CFPB	The Bureau of Consumer Financial Protection or Consumer Financial Protection Bureau.
CDFI	Community Development Financial Institutions.
CDFI Fund	Community Development Financial Institutions Fund.
CMS	Compliance Management System.
Dodd-Frank Act	The Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ	U.S. Department of Justice.
DOT	U.S. Department of Transportation.
ECOA	The Equal Credit Opportunity Act.
EGRRCPA	Economic Growth, Regulatory Relief, and Consumer Protection Act.
FCA	Farm Credit Administration.
FCRA	Fair Credit Reporting Act.
FDIC	Federal Deposit Insurance Corporation.
Federal Reserve Board or FRB	Board of Governors of the Federal Reserve System.
FFIEC	Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FTC	Federal Trade Commission.
GIPSA	Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture.
HCA	Housing counseling agency.
HMDA	The Home Mortgage Disclosure Act.
HUD	U.S. Department of Housing and Urban Development.
LAR	Loan Application Registers.
ML	Machine Learning.
MRA	Matters Requiring Attention.
NAL	No-Action Letter.
NCUA	The National Credit Union Administration.
NPRM	Notice of Proposed Rulemaking.
OCC	Office of the Comptroller of the Currency.
OFLEO	Office of Fair Lending and Equal Opportunity.
OI	Office of Innovation.
RFI	Request for Information.
SBA	Small Business Administration.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
SEC	Securities and Exchange Commission.
SR	Supervisory Recommendations.
USDA	U.S. Department of Agriculture.

Signing Authority

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

Dated: May 5, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–09890 Filed 5–7–20; 8:45 am]

BILLING CODE 4810–AM–P

[81] 12 U.S.C. 2807.

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, 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 National Security Education Board will take place.

DATES: Open to the public Tuesday, June 2, 2020 from 9:00 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held virtually. The meeting will be accessible through video conferencing (link: *https://global.gotomeeting.com/join/769707221*) and dial in (phone number: +1 786–535–3211). Please contact Ms. Eva Cohn by phone (571–256–0724) or email (*eva.e.cohn.civ@mail.mil*) for the meeting password.

FOR FURTHER INFORMATION CONTACT: Michael Nugent, (571) 256–0702 (Voice), (703) 692–2615 (Facsimile), *michael.a.nugent22.civ@mail.mil* (Email). Mailing address is National Security Education Program, 4800 Mark Center Drive, Suite 08F09–02, Alexandria, VA 22350–7000. Website: *https://www.nsep.gov/content/national-security-education-board.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

Agenda: 9:00 a.m.—National Security Education Board (NSEB) Full Meeting Begins. 9:15 a.m.—National Security Education Program (NSEP) Discussion with the Board. 10:30 a.m.—Class of 2020 Boren Scholars and Fellows. 11:00 a.m.—National Language Service Corps (NLSC) Update. 11:45 a.m.—Closing Remarks and Adjourn.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Written Statements: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. Pursuant to 102–3.140 and sections 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense National Security Education Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting. All written statements shall be submitted to the Designated Federal Officer for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*http://facadatabase.gov/.* Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the addressed listed in the **FOR FURTHER INFORMATION CONTACT** section at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the National Security Education Board until its next meeting.

Dated: May 5, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–09923 Filed 5–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0065]

Agency Information Collection Activities; Comment Request; Impact Study of Federally-Funded Magnet Schools

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 7, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0065. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Meredith Bachman, 202–245–7494.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the

burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Study of Federally-Funded Magnet Schools.

OMB Control Number: 1850–0943.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 706.

Total Estimated Number of Annual Burden Hours: 629.

Abstract: The Office of Management and Budget (OMB) package requests clearance for data collection activities to support a rigorous Impact Study of Federally-Funded Magnet Schools. The Institute of Education Sciences (IES) at the U.S. Department of Education (ED) has contracted with Mathematica Policy Research and its subcontractor, Social Policy Research Associates (SPR), to conduct this evaluation (ED–IES–17–C–0066). The evaluation included an initial feasibility assessment and determined that a rigorous impact study can be conducted.

The impact study would collect survey data from principals and district administrative records on admissions lotteries and student progress. The study would use these data to estimate the impacts of magnet schools on student achievement and diversity and to describe whether particular features of magnet schools are associated with greater success. The study would also collect survey data from charter schools on their admissions practices to provide context for the impact study findings.

Dated: May 5, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–09865 Filed 5–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1747–000]

South Fork Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced South Fork Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 25, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09868 Filed 5–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX20–4–000]

Rugged Solar LLC

May 4, 2020.

Take notice that on April 28, 2020, pursuant to sections 211 of the Federal Power Act,[1] and Rule 211 and 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] Rugged Solar LLC filed an application requesting that the Commission issue an order directing San Diego Gas & Electric Company to provide interconnection and transmission service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For

[1] 16 U.S.C. 824j, (2012 & Supp. V. 2017).

[2] 18 CFR 385.211, 385.214 (2019).

assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 19, 2020.

Dated: May 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09870 Filed 5–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1256–003; ER09–1256–005; ER12–2708–004; ER12–2708–005; ER12–2708–007.

Applicants: Potomac-Appalachian Transmission Highline, LLC.

Description: Accounting Compliance Filing and Refund Report of Potomac-Appalachian Transmission Highline, LLC.

Filed Date: 5/1/20.

Accession Number: 20200501–5531.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER18–1906–002; ER10–1532–005; ER10–1541–006; ER10–1642–007; ER10–1767–005; ER13–2349–004; ER13–2350–004; ER16–221–003; ER17–1757–003; ER18–1907–002.

Applicants: Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, Entergy Power, LLC, EWO Marketing, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC.

Description: Notification of Non-Material Change in Status of the Entergy Central MBR Utilities.

Filed Date: 4/30/20.

Accession Number: 20200430–5499.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–938–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020–05–01_Deficiency Response regarding SPP–JOA Affected Systems to be effective 4/4/2020.

Filed Date: 5/1/20.

Accession Number: 20200501–5350.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–941–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response—Enhance and Clarify Affected Systems Coordination to be effective 4/4/2020.

Filed Date: 5/1/20.

Accession Number: 20200501–5303.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–1203–000.

Applicants: Rock Creek Wind Project, LLC.

Description: Report Filing: Rock Creek Wind Project, LLC Supplement to be effective N/A.

Filed Date: 5/1/20.

Accession Number: 20200501–5247.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–1728–000.

Applicants: Borrego Solar Systems, Inc.

Description: Request for Limited Waiver of Borrego Solar Systems, Inc.

Filed Date: 4/30/20.

Accession Number: 20200430–5464.

Comments Due: 5 p.m. ET 5/5/20.

Docket Numbers: ER20–1751–000.

Applicants: El Paso Electric Company.

Description: Request for Waiver of OATT Provisions, et al. of El Paso Electric Company.

Filed Date: 5/1/20.

Accession Number: 20200501–5342.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1752–000.

Applicants: The Empire District Electric Company.

Description: Request for Limited Waiver for Extension of Time to File Annual Formula Rate Update of The Empire District Electric Company.

Filed Date: 5/1/20.

Accession Number: 20200501–5364.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–1753–000.

Applicants: Duke Energy Progress, LLC.

Description: Petition for Waiver of Tariff Provisions of Duke Energy Progress, LLC.

Filed Date: 5/1/20.

Accession Number: 20200501–5477.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–1754–000, ES20–40–000.

Applicants: Assembly Solar, LLC.

Description: Request for Waivers and Blanket Authorization to Issue Securities and Assume Liabilities of Assembly Solar, LLC.

Filed Date: 5/1/20.

Accession Number: 20200501–5478.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–1755–000.

Applicants: Green Mountain Power Corporation.

Description: Request for Limited Tariff Waiver, et al. of Green Mountain Power Corporation

Filed Date: 5/1/20.

Accession Number: 20200501–5479.

Comments Due: 5 p.m. ET 5/22/20.

Docket Numbers: ER20–1757–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Service Agreement No. 369—LCWCD Cancellation to be effective 7/4/2020.

Filed Date: 5/4/20.

Accession Number: 20200504–5081.

Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: ER20–1758–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Service Agreement No. 371—TOUA Cancellation to be effective 7/4/2020.

Filed Date: 5/4/20.

Accession Number: 20200504–5087.

Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: ER20–1759–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA & ICSA, SA Nos. 4492 & 4494; Queue No. AA2–060 (consent/amend) to be effective 6/30/2016.

Filed Date: 5/4/20.

Accession Number: 20200504–5090.

Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: ER20–1760–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA & ICSA, SA Nos. 4501 & 4502; Queue No. AA2–061 (consent/amend) to be effective 7/1/2016.

Filed Date: 5/4/20.

Accession Number: 20200504–5091.

Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: ER20–1761–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–05–04 Turlock EIM Entity Agreement to be effective 7/4/2020.

Filed Date: 5/4/20.

Accession Number: 20200504–5115.

Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: ER20–1762–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Petition for Waiver of Tariff Provisions of Duke Energy Carolinas, LLC.

Filed Date: 5/1/20.
Accession Number: 20200501–5532.
Comments Due: 5 p.m. ET 5/22/20.
Docket Numbers: ER20–1763–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment of WMPA, SA No. 5480, Queue No. AD2–002 (consent) to be effective 8/5/2019.
Filed Date: 5/4/20.
Accession Number: 20200504–5134.
Comments Due: 5 p.m. ET 5/26/20.
Docket Numbers: ER20–1764–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA Schedule 2 re Fuel Cost Policy to be effective 9/1/2020.
Filed Date: 5/4/20.
Accession Number: 20200504–5135.
Comments Due: 5 p.m. ET 5/26/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09866 Filed 5–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–54–000.
Applicants: Southern California Gas Company.
Description: Tariff filing per 284.123(b), (e)+(g): Offshore_Delivery_Service_Rate_Revision_April_2020 to be effective 4/1/2020.
Filed Date: 4/29/2020.
Accession Number: 202004295174.
Comments Due: 5 p.m. ET 5/20/2020.
284.123(g) Protests Due: 5 p.m. ET 6/29/2020.
Docket Numbers: RP12–609–000.
Applicants: Texas Gas Transmission, LLC.
Description: Report Filing: 2019 Operational Purchases and Sales Report.
Filed Date: 5/1/20.
Accession Number: 20200501–5082.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP13–212–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Report Filing: 2019 Operational Purchases and Sales Report.
Filed Date: 5/1/20.
Accession Number: 20200501–5080.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP16–864–002.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing Revenue Sharing Report 2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5032.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–846–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200501 Winter PRA to be effective 11/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5048.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–847–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 52749 to Exelon 52794) to be effective 5/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5049.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–848–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Southern 49811 to Texla 52798) to be effective 5/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5056.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–849–000.
Applicants: Southeast Supply Header, LLC.
Description: Compliance filing 2020 SESH TUP/SBA Annual Filing.
Filed Date: 5/1/20.
Accession Number: 20200501–5063.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–850–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—5/1/2020 to be effective 5/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5068.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–852–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Contracting Process Filing to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5223.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–853–000.
Applicants: Sabal Trail Transmission, LLC.
Description: § 4(d) Rate Filing: 2020 TUP/SBA Annual Filing to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5249.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–854–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: § 4(d) Rate Filing: 2020 GNGS TUP/SBA Filing to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5258.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–855–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—May 1, 2020 Negotiated Rates and Nonconforming Service Agreements to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5266.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–856–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: APL Term Provisions and Extensions to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5287.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–857–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Reservation Charge Credits to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5333.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–858–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: Reservation Charge Credits to be effective 6/1/2020.

Filed Date: 5/1/20.
Accession Number: 20200501–5334.
Comments Due: 5 p.m. ET 5/13/20.
Docket Numbers: RP20–859–000.
Applicants: Northern Border Pipeline Company.
Description: § 4(d) Rate Filing: BTU Filing to be effective 6/1/2020.
Filed Date: 5/1/20.
Accession Number: 20200501–5340.
Comments Due: 5 p.m. ET 5/13/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09867 Filed 5–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1748–000]

Ewington Energy Systems, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Ewington Energy Systems, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 25, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09869 Filed 5–7–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10009–32–ORD]

EPA Board of Scientific Counselors; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the EPA Board of Scientific Counselors (BOSC) is in the public interest and is necessary in connection with the performance of EPA's duties. Accordingly, the BOSC will be renewed for an additional two-year period. The purpose of the BOSC is to provide advice and recommendations to the Administrator regarding science and engineering research, programs and plans, laboratories, and research management practices. Inquiries may be directed to Tom Tracy, U.S. EPA, (Mail Code 8104R), 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone (202) 564–6518, or *tracy.tom@epa.gov.*

Dated: May 1, 2020.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2020–09875 Filed 5–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9050–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed April 27, 2020, 10 a.m. EST
Through May 4, 2020, 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200098, Draft, BR, CA, Friant-Kern Canal Middle Reach Capacity Correction Project, Comment Period Ends: 06/22/2020, Contact: Rain Emerson 559–262–0335.

EIS No. 20200099, Final, APHIS, PRO, Revisions to USDA–APHIS 7 CFR part 340 Regulations Governing the Importation, Interstate Movement, and Environmental Release of Certain Genetically Engineered Organisms, Review Period Ends: 06/08/2020, Contact: Cindy Eck 301–851–3892.

EIS No. 20200100, Draft Supplement, NCPC, DHS, GSA, DC, St. Elizabeth's Master Plan Amendment 2, Comment Period Ends: 07/02/2020, Contact: Paul Gyamfi 202–440–3405.

EIS No. 20200101, Draft, NRC, TX, Environmental Impact Statement for Interim Storage Partners LLC's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas, Comment Period Ends: 09/04/2020, Contact: James Park 301–415–6954.

Amended Notice

EIS No. 20200034, Draft, USFS, NC, Nantahala and Pisgah NFs DEIS for the Proposed Land Management Plan, Comment Period Ends: 06/29/2020, Contact: Heather Luczak 828–257–4817.

Revision to FR Notice Published 2/14/2020; Extending the Review Period from 5/14/2020 to 6/29/2020.

Dated: May 4, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–09859 Filed 5–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0122; FRL–10006–27]

Agency Information Collection Activities; Proposed Collection; Notice of Arrival of Pesticides and Devices Under Section 17(c) of FIFRA; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Notice of Arrival of Pesticides and Devices under section 17(c) of FIFRA'' and identified by EPA ICR No. 0152.13 and OMB Control No. 2070–0020, represents the renewal of an existing ICR that is scheduled to expire on December 31, 2020. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before July 7, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0122, by the following method:

- *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.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov*, as there is a temporary suspension of mail delivery to EPA, and no hand deliveries are currently accepted. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Connie Hernandez, FEAD (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–5190; email address: *hernandez.connie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. 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.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Notice of Arrival of Pesticides and Devices under section 17(c) of FIFRA.

ICR number: EPA ICR No. 0152.13.

OMB control number: OMB Control No. 2070–0020.

ICR status: This ICR is currently scheduled to expire on December 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. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The U.S. Customs and Border Protection (Customs) regulations at 19 CFR 12.112 require that an importer desiring to import a pesticide or device into the United States shall, prior to the shipment's arrival in the United States, submit a Notice of Arrival (NOA) of Pesticides and Devices (EPA Form 3540–1 or its Customs-authorized electronic equivalent) to EPA. Once EPA receives the NOA, EPA will determine the disposition of the shipment upon its arrival in the United States. Upon completing its review, the EPA response is sent to the importer of record or licensed customs broker, who must present the NOA to Customs upon arrival of the shipment at the port of entry. This is necessary to ensure that EPA is notified of the arrival of pesticides and pesticidal devices as required under FIFRA section 17(c), and that EPA has the ability to examine such

shipments to determine compliance with FIFRA. Customs compares entry documents for the shipment with the NOA and notifies the EPA regional office of any discrepancies. Alternatively, importers may submit NOA information electronically through Customs' Automated Commercial Environment (ACE). Most of the electronic filings are automatically processed, and an early indication is provided to the filer if the initial reporting requirements have been met and if the shipment can be released upon arrival at the port of entry. For those filings that do not meet the reporting requirements, automatic checks will be performed to notify the filer of errors. For filings that require non-automated checks, EPA staff can review and provide feedback notifications through ACE to the filer on what information is needed that has not been provided.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40,880 (per year) hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are pesticide importers, which includes many types of business entities ranging from Commercial and Institutional Building Construction (NAICS 236220) to Pesticide and Other Agricultural Chemical Manufacturing (NAICS 325300) and even Public Administration: Executive Offices (NAICS 921110). Other business and institutions that import pesticides include Agriculture, Forestry, Fishing and Hunting (Sector 11), Wholesale Trade, (Sector 42).

Estimated total number of potential respondents: 92,100.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One per application.

Estimated total annual burden hours: 40,880 hours.

Estimated total annual costs: $2,753,522. There is no capital or operation & maintenance costs.

III. Are there changes in the estimates from the last approval?

There is an increase of 24,540 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects an increase in the annual number of NOAs submitted. The new electronic system for submitting NOA filings, ACE, has contributed to the increase in the number of NOAs. The annual number of NOAs submitted to EPA increased from 38,000 for the previous ICR renewal to 92,100 for this ICR renewal. The average burden hours per response increased slightly from the previous ICR renewal of 0.43 hours to the current 0.44 per response. This change is an adjustment.

IV. What is the next step in the process for this ICR?

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 pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: April 28, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–09860 Filed 5–7–20; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Delay in Opening of 2019 EEO–1 Component 1 and 2020 EEO–3 and 2020 EEO–5 Data Collections Due to the Coronavirus Disease 2019 (COVID–19) Public Health Emergency

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: The U.S. Equal Employment Opportunity Commission (EEOC) announces a delay in the anticipated opening of the 2019 EEO–1 Component 1 data collection and the 2020 EEO–3 and EEO–5 data collections due to the Coronavirus Disease 2019 (COVID–19) public health emergency.

DATES: May 8, 2020. As a result of this Notice, pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), the EEOC would expect to begin collecting the 2019 EEO–1 Component 1 along with the 2020 EEO–1 Component 1 in March 2021. The EEOC expects to begin collecting the 2020 EEO–3 and 2020 EEO–5 in January 2021.

FOR FURTHER INFORMATION CONTACT: Rashida Dorsey, Ph.D., MPH, Director, Data Development and Information Products Division and Senior Advisor on Data Strategy, Office of Enterprise Data and Analytics, Equal Employment Opportunity Commission, 131 M Street NE, Room 4SW32L, Washington, DC 20507; (202) 663–4355 (voice) or (202) 663–7063 (TTY) or *OEDA@eeoc.gov*. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: In light of the Coronavirus Disease 2019 (COVID–19) public health emergency, and consistent with delays in Federal reporting requirements across the government and other actions taken to relieve employers of unnecessary burdens during this crisis, the Commission is delaying the anticipated opening of the 2019 EEO–1 Component 1 and the 2020 EEO–3 and EEO–5 Data Collections to a time when the agency anticipates that filers will have resumed more normal operations. EEO–1, EEO–3, and EEO–5 filers should begin preparing to submit data in 2021. The EEOC submitted the EEO–1 Component 1 information collection to OMB for approval under the Paperwork Reduction Act on March 23, 2020. Pending approval by OMB, the EEOC would expect to begin collecting the 2019 EEO–1 Component 1 along with the 2020 EEO–1 Component 1 in March 2021 and will notify filers of the precise date the surveys will open as soon as it is available. The EEOC expects to begin collecting the 2020 EEO–3 and the 2020 EEO–5 in January 2021 and will notify filers of the precise date the surveys will open as soon as it is available.

For the Commission.

Janet Dhillon,

Chair.

[FR Doc. 2020–09876 Filed 5–7–20; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1039; FRS 16723]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 7, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–1039.

Title: Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act—Review Process, WT Docket No. 03–128.

Form No.: FCC Form 620 and 621, TCNS E-filing.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 70,152 respondents and 70,152 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, sections 101(d)(6) and 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. 470a(d)(6) and 470f, and section 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b).

Total Annual Burden: 97,929 hours.

Annual Cost Burden: $13,087,425.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: FCC staff, State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO) and the Advisory Council of Historic Preservation (ACHP) use the data to take such action as may be necessary to ascertain whether a proposed action may affect sites of cultural significance to tribal nations and historic properties that are listed or eligible for listing on the National Register as directed by section 106 of the National Historic Preservation Act (NHPA) and the Commission's rules.

FCC Form 620, New Tower (NT) Submission Packet is to be completed by or on behalf of applicants to construct new antenna support structures by or for the use of licensees of the FCC. The form is to be submitted to the State Historic Preservation Office (''SHPO'') or to the Tribal Historic Preservation Office (''THPO''), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under section 106 of the NHPA prior to beginning construction may violate section 110(k) of the NHPA and the Commission's rules.

FCC Form 621, Collocation (CO) Submission Packet is to be completed by or on behalf of applicants who wish to collocate an antenna or antennas on an existing communications tower or non-tower structure by or for the use of licensees of the FCC. The form is to be submitted to the State historic Preservation Office (''SHPO'') or to the Tribal Historic Preservation Office (''THPO''), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under section 106 of the NHPA prior to beginning construction or other installation activities may violate section 110(k) of the NHPA and the Commission's rules.

The Tower Construction Notification System (TCNS) is used by or on behalf of Applicants proposing to construct new antenna support structures, and some collocations, to ensure that Tribal Nations have the requisite opportunity to participate in review prior to construction. To facilitate this coordination, Tribal Nations have designated areas of geographic preference, and they receive automated notifications based on the site coordinates provided in the filing. Applicants complete TCNS before filing a 620 or 621 and all the relevant data is pre-populated on the 620 and 621 when the forms are filed electronically.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–09809 Filed 5–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16725]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 7, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Improving Outage Reporting for Submarine Cables and Enhanced Submarine Outage Data.

Form Number: Not applicable.

Type of Review: New information collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 75 respondents; 336 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i)–(j) & (o), 405, and the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and 3 U.S.C. 301, and Exec. Order No. 10530.

Total Annual Burden: 2,016 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Outage reports filed with the Commission pursuant to Part 4 are presumed confidential. The information in those filings may be shared with the Department of Homeland Security only under appropriate confidential disclosure protections. Other persons seeking disclosure must follow the procedures delineated in 47 CFR 0.457 and 0.459 for requests for and disclosure of information. The information collection discussed here does not affect the confidential treatment of information submitted to the Commission's Network Outage Reporting System (NORS), an internet portal that collects submitted outage filings.

Needs and Uses: Section 151 of the Communications Act of 1934 (Act), as amended, requires the Commission to promote the safety of life and property through the use of wire and radio communications. Additionally, the Cable Landing License Act, (47 U.S.C. 34–39), and Executive Order 10530, provide the Commission with authority to grant, withhold, condition and revoke submarine cable landing licenses. Further, the Cable Landing License Act and Executive Order 10530 provide that the Commission may place conditions on the grant of a submarine cable landing license in order to assure just and reasonable rates and service in the operation and use of cables so licensed. ''Just and reasonable service'' entails assurance that the cable infrastructure will be reasonably available. Availability of submarine cables is also critically important for national security and the economy because submarine cables carry approximately 95 percent of international communications traffic and are the primary means of connectivity for numerous U.S. states and territories. Currently, submarine cable licensees provide information to the Commission on a voluntary, ad hoc basis through the Undersea Cable Information System (UCIS).

This is a new collection that will be part of the Commission's NORS outage reporting regime. As with the other information collection collected in NORS (under OMB Control No. 3060–0484), this new collection will facilitate FCC monitoring, analysis, and investigation of the reliability and security of submarine cable networks, and to identify and action on potential threats to our Nation's telecommunications infrastructure. Drawing from a decade of experience in outage reporting, the Commission will seek an ongoing dialogue with submarine cable licensees, as well as with the industry at large, regarding lessons learned from the new information collection. These efforts will help the Commission develop a better understanding of the root causes of significant outages, and to explore preventive measures to mitigate the impact of such outages on the Nation and the American public.

The addition of mandatory submarine cable outage data will provide the Commission with greater visibility into the availability and health of these networks, allowing the Commission to better track and analyze submarine cable resiliency. This enhanced visibility into submarine cable network outages will allow the Commission to take appropriate actions to mitigate disruptions, if necessary, and to avoid the development of larger, more significant problems which could impact national security and public safety interests. Submarine cable outages do not typically occur with the same frequency as terrestrial outages, but when they do occur have a greater impact on the Nation's telecommunications due to the volume and nature of communications carried over such cables. Damages to submarine cables are usually caused by weather or inadvertent slicing by underseas equipment. However, submarine cables are also susceptible to intentional damage for nefarious purposes that could lead to a severe degradation of crucial government, as well as non-government, communications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–09807 Filed 5–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1246; FRS 16726]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 7, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1246.

Title: FCC Reasonable Accommodation forms.

Form Number(s): FCC Form 5626, FCC Form 5627.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Federal Government.

Number of Respondents and Responses: 54 respondents; 108 responses.

Estimated Time per Response: 0.16 hours–5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for these collections is contained in the Rehabilitation Act of 1973, 29 U.S.C. 12101 *et seq.; see also* 29 CFR part 1630; Establishing Procedures to Facilitate the Provision of Reasonable Accommodation; EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, 29 CFR part 1615.

Total Annual Burden: 284 hours.

Total Annual Cost: $3,400.

Privacy Act Impact Assessment: Yes. The PII in this information collection is covered by the Equal Employment Opportunity Commission's Government-wide System of Records Notice or ''SORN,'' EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government's Complaint and Appeal Records.

Nature and Extent of Confidentiality: Confidentiality of information will be provided in accordance with the Privacy Act. The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: This information will be used by the Office of Workplace Diversity to process, track, and maintain the confidentiality of reasonable accommodation requests submitted on FCC Form 5626 and FCC Form 5627.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–09808 Filed 5–7–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans; Notice of Meeting

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Tribal Consultation.

SUMMARY: The U.S. Department of Health and Human Services, Administration for Children and Families (ACF) will host a virtual Tribal Consultation to consult on ACF programs and tribal priorities.

DATES:

Wednesday, June 10, 2020 from 1:00 p.m. to 5:45 p.m. (EDT) and

Thursday, June 11, 2020 from 1:00 p.m. to 5:45 p.m. (EDT)

ADDRESSES: Adobe Connect virtual platform and teleconference.

FOR FURTHER INFORMATION CONTACT: Michelle Sauve, Intergovernmental Affairs Specialist, Administration for Native Americans at 202–260–6974, by email at *michelle.sauve@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Administration for Children and Families (ACF), a division of the U.S. Department of Health and Human Services (HHS), promotes the economic and social well-being of families, children, individuals and communities with funding, strategic partnerships, guidance, training, and technical assistance. ACF's programs serve a wide variety of groups, including individuals and families with low income, refugees, Native Americans, and many others. To carry out its activities, ACF awards grants to state and local governments, non-profit groups, faith and community-based organizations, federally recognized Indian tribes, and in some programs, state-recognized or other Native American communities. ACF furnishes technical assistance, guidance, and overall supervision to grantees that, in turn, are responsible for direct delivery of services.

Pursuant to Executive Order 13175 of November 6, 2000 and the ACF Tribal Consultation Policy signed in 2011, ACF will host an annual tribal consultation in recognition of the government-to-government relationship between the United States and Indian tribes. Tribes may comment on any program or service of ACF as part of the consultation.

This year, when H.R. 1865, Further Consolidated Appropriations Act, 2020, became Public Law No: 116–94 on

December 20, 2019, the appropriations language encouraged ACF ''to convene a working group of federal early childhood program administrators, tribal early childhood stakeholders, and tribal leaders to examine coordination issues that may be impacting early childhood initiatives in tribal communities.'' We are interested in tribal leader input on barriers and opportunities regarding synchronizing early childhood initiatives in their communities.

We invite tribes to provide written testimony, in advance, to the Administration for Children and Families to help guide discussion. Testimonies are to be submitted no later than June 10, 2020 to the following: Jeannie Hovland, Commissioner, Administration for Native Americans, *anacommissioner@acf.hhs.gov.*

For further information and registration details for this Consultation, please visit the following link: *https://www.acf.hhs.gov/ana/2020-acf-tribal-consultation.*

Linda K. Hitt,

Executive Secretariat Certifying Officer.

[FR Doc. 2020–09850 Filed 5–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1711]

Cytomegalovirus in Transplantation: Developing Drugs To Treat or Prevent Disease; Final 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 ''Cytomegalovirus in Transplantation: Developing Drugs to Treat or Prevent Disease.'' The purpose of this guidance is to assist sponsors in all phases of the clinical development of drugs and biological products to treat or prevent cytomegalovirus (CMV) disease in patients who have undergone solid organ transplantation (SOT) or hematopoietic stem cell transplantation (HSCT). This guidance finalizes the draft guidance of the same name issued on May 21, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on May 8, 2020.

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–1711 for ''Cytomegalovirus in Transplantation: Developing Drugs to Treat or Prevent Disease.'' 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 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.

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. 6370, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled

''Cytomegalovirus in Transplantation: Developing Drugs to Treat or Prevent Disease.'' The purpose of this final guidance is to assist sponsors in the clinical development of drugs to treat or prevent CMV disease in patients who have undergone SOT or HSCT. Specifically, this guidance addresses FDA's current thinking regarding the overall development program and clinical trial designs for the development of drugs and biological products to support an indication for treating or preventing CMV disease in post-transplant populations. This guidance does not address drug development for treating or preventing congenital CMV infection or CMV infection in patients other than those undergoing SOT or HSCT. This guidance finalizes the draft guidance of the same name issued on May 21, 2018 (83 FR 23463). Changes in this final guidance compared with the previous draft guidance include:

- Clarification of the use of CMV DNAemia as a validated surrogate endpoint for use in certain clinical trials of CMV treatment or prevention
- Clarification that nonclinical combination studies for drugs to be used in combination are generally not needed
- Inclusion of updated background information to reflect the current literature on preventing CMV in transplant recipients

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 ''Cytomegalovirus in Transplantation: Developing Drugs to Treat or Prevent Disease.'' 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 found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312, 314, and 601 have been approved under OMB control numbers 0910–0014, 0910–0001, and 0910–0038, respectively.

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: May 1, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–09864 Filed 5–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5319]

Notice of Followup to Notice of Public Hearing and Request for Comments on Devices Proposed for a New Use With an Approved, Marketed Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a followup on a **Federal Register** document issued on September 26, 2017, that announced a public hearing and requested comments on a potential approach to enable device sponsors to obtain marketing authorization for their products labeled for a new use with an approved, marketed drug when the sponsor for the approved drug does not wish to pursue or collaborate on the new use, referred to in the notice as devices referencing drugs (DRDs). After further consideration and in light of the comments received, FDA does not intend to pursue the potential approach described in the referenced **Federal Register** document at this time.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5130, Silver Spring, MD 20993, 301–796–8941, *combination@fda.gov.*

SUPPLEMENTARY INFORMATION: FDA issued a **Federal Register** document on September 26, 2017 (82 FR 44803), entitled ''Devices Proposed for a New Use With an Approved, Marketed Drug; Public Hearing; Request for Comments''. The document announced a public hearing and requested comments on a potential approach to enable device sponsors to obtain marketing authorization for their products labeled for a new use with an approved, marketed drug when the sponsor for the approved drug does not wish to pursue or collaborate on the new use. Such new uses generally involve a change in how the drug is used or administered, such as a change in dose, route, or rate of administration, or use of the approved drug for an indication for which it is not approved. As discussed in the document, such DRDs raise unique public health, scientific, regulatory, and legal issues, which the potential approach was intended to address. However, after further consideration and in light of the comments received during the public hearing and submitted to the docket, FDA does not intend to pursue the potential approach described in the document at this time.

Dated: May 1, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–09832 Filed 5–7–20; 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; Information Collection Request Title: The Teaching Health Center Graduate Medical Education Program Reconciliation Tool, OMB No. 0915–0342—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

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. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than June 8, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

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: The Teaching Health Center Graduate Medical Education Program Reconciliation Tool OMB No. 0915–0342—Extension.

Abstract: The Teaching Health Center Graduate Medical Education (THCGME) program, authorized by Section 340H of the Public Health Service Act, was established by Section 5508 of Public Law (Pub. L.) 111–148. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) provided continued funding for the THCGME Program for fiscal years 2018 and 2019 and the Further Continuing Appropriations Act, 2020, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act extends funding for Fiscal Year (FY) 2020 for the first two months of FY 2021 (until November 30, 2020).

THCGME program awards payment for both direct and indirect expenses to support training for primary care residents in community-based ambulatory patient care settings. Direct medical expense payments are designed to compensate eligible teaching health centers for those expenses directly associated with resident training, while indirect medical expense payments are intended to compensate for the additional costs of training residents in such programs.

A 60-day notice published in the **Federal Register** on January 22, 2020, Vol. 85, No. 14; pp. 3696–97. There were no public comments.

Need and Proposed Use of the Information: THCGME program payments are prospective payments, and the statute provides for a reconciliation process, through which overpayments may be recouped and underpayments may be adjusted at the end of the fiscal year. This data collection instrument will gather information relating to the number of resident full-time equivalents in Teaching Health Center training programs in order to reconcile payments for both direct and indirect expenses.

Likely Respondents: The likely responders to the THCGME Reconciliation Tool are THCGME program award 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
THCGME Reconciliation Tool	58	1	58	2	116
Total	58		58		116

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–09906 Filed 5–7–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: June 4–5, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKL1 6705 Rockledge, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 5, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09920 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Cooperative Agreement for Clinical Trials in Communication Disorders (U01).

Date: June 2, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, (301) 496–8683, *el6r@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Review.

Date: June 4, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Ste 8300, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351 Bethesda, MD 20892 (301) 496–8683 *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Trial Review.

Date: June 23, 2020.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd. Ste 8300, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance Application Review.

Date: July 7, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd. Ste 8300, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, (301) 496–8683, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 5, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09927 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Emerging Investigator Award (EIA) (R35 Clinical Trial Optional).

Date: June 18, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924, (301) 827–7913, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Trials SEP.

Date: June 22, 2020.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 207–P, Bethesda, MD 20892–7924, (301) 827–7942, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 5, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09919 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute.

The meeting will be held as a virtual meeting and open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Frederick National Laboratory Advisory Committee to the National Cancer Institute.

Date: May 21, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: Ongoing and new activities at the Frederick National Laboratory for Cancer Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Caron A. Lyman, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda, instructions for access, and

any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(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: May 5, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09918 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing Healthcare Applications Review.

Date: May 12, 2020.

Time: 11:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NSC 6001 Executive BLVD Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D. Scientific Review Officer Scientific Review Branch Division of Extramural Activities 6001 Executive Blvd., Room 8351 Bethesda, MD 20892 (301) 496–8683 *singhs@nidcd.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Research Center Review.

Date: May 21, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Ste 8300, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, (301) 496–8683, *el6r@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 5, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09926 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: June 19, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NHLBI, 6705 Rockledge Drive, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 5, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09922 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute of Mental Health, June 2, 2020, 9:00 a.m. to June 4, 2020, 5:00 p.m., Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 6, 2020, 85 FR 516.

This notice is being amended to change the meeting format from an in-person to a virtual meeting. The date and time have also been changed to June 2, 2020 from 1:00 p.m. to 2:00 p.m. The meeting is closed to the public.

Dated: May 5, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09929 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Mental Health Council, May 19, 2020, 9:00 a.m. to May 19, 2020, 5:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD, 20852 which was published in the **Federal Register** on January 07, 2020, 85 FR 725.

This notice is being amended to change the meeting from in-person to a virtual meeting. The date and times remain the same. Open session will be videocast from this link: *https://videocast.nih.gov/live.asp?live=37495*.

The meeting is partially Closed to the public.

Dated: May 4, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09928 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: June 11–12, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *biesj@mail.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

Date: June 11–12, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09917 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Date: June 10–12, 2020.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKLI, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 5, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09921 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Institute on Drug Abuse Special Emphasis Panel; Cutting-Edge Basic Research Awards (CEBRA) (R21).

Date: June 1–5, 2020.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4245, Rockville, MD 20852, (301) 435–1426, *mcguireso@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Assessing the Effects of Cannabinoids on HIV-Induced Inflammation (R01 Clinical Trial Optional).

Date: June 10, 2020.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, (301) 402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

Date: June 15, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4245, Rockville, MD 20852, (301) 435–1426, *mcguireso@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SEP III: Step Up for Substance Use Disorders (SUD): A Drug Target Initiative for Scientists Engaged in Fundamental Research (U18—Clinical Trial Not Allowed).

Date: June 16, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Bethesda, MD 20852, *sindhu.kizhakkemadathil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 4, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09924 Filed 5–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4519–DR; Docket ID FEMA–2020–0001]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–4519–DR), dated April 3, 2020, and related determinations.

DATES: The declaration was issued April 3, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 3, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from severe storms, flooding, landslides, and mudslides during the period of February 5 to February 9, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oregon have been designated as adversely affected by this major disaster:

Umatilla County and the Confederated Tribes of the Umatilla Indian Reservation for Individual Assistance.

Umatilla, Union, Wallowa Counties and the Confederated Tribes of the Umatilla Indian Reservation for Public Assistance.

All areas within the State of Oregon are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09837 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4535–DR; Docket ID FEMA–2020–0001]

Wyoming; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wyoming (FEMA–4535–DR), dated April 11, 2020, and related determinations.

DATES: The declaration was issued April 11, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 11, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Wyoming resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Wyoming.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lee K. dePalo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wyoming have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Wyoming.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09841 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4530–DR; Docket ID FEMA–2020–0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4530–DR), dated April 5, 2020, and related determinations.

DATES: The declaration was issued April 5, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 5, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Oklahoma resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, George A. Robinson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Oklahoma.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09840 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4517–DR; Docket ID FEMA–2020–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4517–DR), dated April 3, 2020, and related determinations.

DATES: The declaration was issued April 3, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 3, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of West Virginia resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of West Virginia.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09845 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4513–DR; Docket ID FEMA–2020–0001]

Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the territory of the U.S. Virgin Islands (FEMA–4513–DR), dated April 2, 2020, and related determinations.

DATES: The declaration was issued April 2, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the territory of the U.S. Virgin Islands resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the territory of the U.S. Virgin Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the territory of the U.S. Virgin Islands have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the territory of the U.S. Virgin Islands.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09846 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4540–DR; Docket ID FEMA–2020–0001]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4540–DR), dated April 24, 2020, and related determinations.

DATES: This change occurred on April 24, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Allan Jarvis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09842 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4525–DR; Docket ID FEMA–2020–0001]

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–4525–DR), dated April 4, 2020, and related determinations.

DATES: The declaration was issued April 4, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 4, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Utah resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lee K. dePalo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Utah have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Utah.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09839 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4520–DR; Docket ID FEMA–2020–0001]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–4520–DR), dated April 4, 2020, and related determinations.

DATES: The declaration was issued April 4, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 4, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Wisconsin resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James K. Joseph, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Wisconsin.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09838 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4428–DR; Docket ID FEMA–2020–0001]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4528–DR), dated April 17, 2019, and related determinations.

DATES: This change occurred on April 24, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Allan Jarvis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09852 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4514–DR; Docket ID FEMA–2020–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4514–DR), dated April 2, 2020, and related determinations.

DATE: The declaration was issued April 2, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Tennessee resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Tennessee.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09836 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4532–DR; Docket ID FEMA–2020–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major

disaster for the State of Vermont (FEMA–4532–DR), dated April 8, 2020, and related determinations.

DATES: The declaration was issued April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 8, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Vermont resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Russell Webster, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Vermont.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09848 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4527–DR; Docket ID FEMA–2020–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4527–DR), dated April 5, 2020, and related determinations.

DATES: The declaration was issued April 5, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 5, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of South Dakota resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lee K. dePalo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of South Dakota.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09847 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4538–DR; Docket ID FEMA–2020–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4538–DR), dated April 23, 2020, and related determinations.

DATES: This change occurred on April 23, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jose M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Terry L. Quarles as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–09849 Filed 5–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–NWRS–2020–N035; FXRS126101HMBHS–201–FF01RSHM00]

Hart Mountain National Antelope Refuge, Lake County, OR; Notice of Intent To Prepare a Bighorn Sheep Management Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a management plan (plan) for bighorn sheep (*Ovis canadensis*) for Hart Mountain National Antelope Refuge (refuge). We will also prepare an environmental impact statement to develop alternatives for management actions in the plan and evaluate the environmental effects of those actions. We provide this notice in compliance with the National Environmental Policy Act to advise the public, other Federal and State agencies, and Tribes of our intentions, and to obtain public comments and suggestions on the scope of the issues to consider in the planning process.

DATES: To ensure consideration, written comments must be received or postmarked on or before June 8, 2020.

ADDRESSES: Information concerning the refuge and the bighorn sheep population is available on our website, at *https://www.fws.gov/refuge/Hart_Mountain/What_We_Do/Resource_Management/Bighorn_Sheep_Plan.html.*

Send your questions or comments by any of the following methods:

- *Email: Sheldon-Hart@fws.gov.* Include ''Hart Mountain Bighorn Sheep Plan'' in the subject line of the message.
- *U.S. Mail:* Project Leader, Sheldon-Hart Mountain National Wildlife Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

FOR FURTHER INFORMATION CONTACT: Danielle Fujii-Doe, Refuge Manager, by email at *Sheldon-Hart@fws.gov* or by phone at 541–947–2731. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Introduction

We, the U.S. Fish and Wildlife Service (Service), intend to prepare a management plan (plan) for bighorn sheep (*Ovis canadensis*) for Hart Mountain National Antelope Refuge (refuge). We will also prepare an environmental impact statement to develop alternatives for management actions in the plan and evaluate the environmental effects of those actions. We provide this notice in compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 1531 *et seq.*) to advise the public, other Federal and State agencies, and Tribes of our intentions, and to obtain public comments and suggestions on the scope of the issues to consider in the planning process.

Background

Located in a remote area of south central Oregon, Hart Mountain National Antelope Refuge, managed by the Service, encompasses 278,000 acres of sagebrush-steppe habitat within the Great Basin and includes the 19,267-acre proposed Poker Jim Wilderness Area. Originally established in 1936 for the conservation and protection of the once-imperiled pronghorn (*Antilocapra americana*), the refuge also conserves habitat for many native, rare, and imperiled species of fish, wildlife, and plants that depend upon the sagebrush-steppe ecosystem.

Bighorn sheep are an iconic species native to Oregon and the refuge. Originally extirpated in Oregon by 1912, sheep were successfully reintroduced to the State in 1954, when 20 sheep were translocated to Hart Mountain. Since that time, refuge and Oregon Department of Fish and Wildlife (ODFW) staff have conducted annual surveys to track population variables, including number of sheep, lamb production and recruitment, and ram size/age class. The number of sheep counted on the refuge increased yearly from 1954, reaching a high of 350 to 415 sheep during the period 1982–1992. However, beginning in the 1990s, the number steadily declined to approximately 150 animals, and then remained relatively stable during the period 2009–2017. The last three annual surveys represent the most significant declines in population variables to date. The number of sheep counted dropped from 149 in 2017, to 100 in 2018, to 68 in 2019. Lamb production declined by approximately half from 54.4 lambs per 100 ewes in 2017, to 21.5 and 22.7 in 2018 and 2019, respectively. In addition, recruitment reached a low level in 2019, with no 1-year-old class I rams and only two oldest age class IV rams seen.

Sheep habitat encompasses approximately 34,000 acres on the western escarpment of the refuge (Hart Mountain and Poker Jim Ridge), including the proposed Poker Jim Wilderness Area. However, ecological trends over the last several decades, such as juniper encroachment and the spread of invasive herbaceous plants, may be resulting in the decline in the quality of sheep habitat.

In January 2019, ODFW, in cooperation with refuge staff, captured 21 sheep on the refuge. Nineteen were fitted with GPS collars to monitor movements and track adult survival. In addition, health-screening samples were obtained on all 21 sheep. The ODFW Wildlife Heath and Population Laboratory analyzed the health screening samples and submitted tonsillar swabs and blood serum for diagnostic tests to both Oregon State University and Washington Animal

Disease Diagnostics Laboratory in Pullman, Washington, to be screened for a number of pathogens, including *Mycoplasma ovipneumoniae* (*M. ovi*), a bacterium known to be associated with acute pneumonia mortality events. However, *M. ovi* was not detected in any of the samples, and there does not appear to be a clear association of the population decline with respiratory disease or other common diseases. Since January 2019, eight of 19 radio-collared sheep have died; six because of mountain lion predation, one killed legally by a hunter, and one from unknown causes.

Given rapidly declining sheep numbers and 2 years of poor lamb recruitment, the herd is at risk of extirpation from the refuge in the next few years unless appropriate management actions are taken. In response, ODFW suspended sheep hunting on the Refuge following the 2019 hunting season. Because there is considerable uncertainty about what the proximate and ultimate causes of this decline are, development of a management plan and EIS are warranted in order to analyze existing data and identify short- and long-term alternatives and actions needed to restore the bighorn sheep herd to a self-sustaining population level. Possible management actions include continued monitoring, management of the sheep and associated predator populations, and restoration and maintenance of habitat.

Preliminary Issues, Concerns, and Opportunities

Based on the fundamental principles of wildlife management, we have identified the following preliminary issues, concerns, and opportunities regarding the sheep population that we may address in the plan. Additional issues may be identified during the public scoping process.

- *Bighorn sheep population objectives.* What parameters should the Service use to define a self-sustainable population on the refuge? What criteria or triggers should the Service consider when deciding to implement or suspend management actions?
- *Bighorn sheep survival and mortality.* What actions can the Service take to improve sheep survival and lamb recruitment? What are the effects of the various sources of mortality—including disease, predation, and hunting—on the long-term viability of the sheep population? Given risks of disease introductions, is there a role for augmenting the sheep population?
- *Habitat quality and quantity.* What actions can the Service take to maintain and restore sheep habitat? How are western juniper expansion and invasive plant species (invasive annual grasses including cheatgrass) affecting the sheep population? Is there a role for prescribed fire to manage sheep habitats? Is natural water availability a limiting resource?
- *Potential alternatives and environmental analysis.* Potential alternatives include a focus on habitat, a focus on population management, or a combination of approaches. What alternatives for restoring the bighorn sheep population should the Service explore? Which components of the human environment should the Service emphasize in the environmental analysis?

Public Availability of Comments

All comments received from individuals become part of the official public record. We will handle all requests for such comments in accordance with the Freedom of Information Act and the CEQ's NEPA regulations at 40 CFR 1506.6(f). The Service's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments.

Charles Stenvall,

Acting Regional Refuge Chief, Pacific Region, Portland, Oregon.

[FR Doc. 2020–09255 Filed 5–7–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900 253G]

Notice of Intent To Prepare an Environmental Impact Statement for the Southern Bighorn Solar Project on the Moapa River Indian Reservation, Clark County, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Indian Affairs (BIA), as lead agency, in cooperation with the Moapa Band of Paiute Indians (Moapa Band), the Bureau of Land Management (BLM), and other agencies, intend to prepare an Environmental Impact Statement (EIS) that will evaluate a photovoltaic (PV) solar energy generation and storage projects on the Moapa River Indian Reservation (Reservation) and collector lines and access roads located on the Reservation, Reservation lands administered by BLM, and BLM lands. This notice announces the beginning of the scoping process to solicit public comments and identify potential issues related to the EIS. It also announces that two live streaming events will be held where the project team will introduce the project and be available by internet and by phone to document and discuss potential issues, alternatives, and mitigation to be considered in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by 11:59 p.m. on June 8, 2020. The dates and times of the virtual public scoping meetings will be published in the *Las Vegas Review-Journal* and *Moapa Valley Progress* 15 days before the scoping meetings.

ADDRESSES: You may mail, email, or hand carry written comments to Mr. Chip Lewis, BIA Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, Arizona 85004; telephone: (602) 379–6750; email: *Chip.Lewis@bia.gov.*

SUPPLEMENTARY INFORMATION: The proposed Federal action, taken under 25 U.S.C. 415, is the BIA's approval of two solar energy ground leases and associated agreements entered into by the Moapa Band with 300MS 8me LLC and 425LM 8me LLC (Applicants), both subsidiaries of 8minute Solar Energy. The agreements provide for construction, operation and maintenance (O&M), and eventual decommissioning of the PV electricity generation and battery storage facilities located entirely on the Reservation, in Clark County Nevada. The PV electricity generation and battery storage facilities would be located on up to 3,600 acres of tribal trust land and would have a combined capacity of up to 400 megawatts alternating current (MWac)—300 MWac for one project/phase, and 100 MWac for a second project/phase. Collector lines and access roads required for interconnection of the solar projects would be located on the Reservation, Reservation lands administered by the BLM, and BLM lands. Together, the proposed solar energy generation and storage facilities, collector lines, and other associated facilities will make up the two projects/phases of the Southern Bighorn Solar Project (SBSP). The proposed SBSP would require the BIA to approve a business lease and for both the BIA and the BLM to approve and authorize

rights-of-way (ROWs) for the electrical collector lines and access roads.

The SBSP would be constructed on up to 3,600 acres located within a 6,308-acre lease option area in Township (T) 16 South (S), Range (R) 64 East (E) that includes all or parts of Sections 12–14, 22–27, and 33–36; T16S R65E Sections 4–9, 16–18, 30, and 31; and T17S R64E Sections 10–12, Mount Diablo Baseline and Meridian, Nevada. Primary access to the Project would be provided by I–15, North Las Vegas Boulevard, and an existing improved access road on Reservation lands, Reservation lands administered by the BLM, and BLM lands. The overhead collector lines would connect the solar projects to the substation(s) within the boundaries of the previously approved Eagle Shadow Mountain Solar Project. From there, the electricity generated would connect to the existing gen-tie line and be delivered to the regional electrical grid at NV Energy's Reid Gardner Substation.

Construction of the 300MWac project/phase is expected to take approximately 14–16 months, and construction of the up to 100MWac project/phase is expected to take approximately 8–10 months. The two projects/phases may be constructed simultaneously or sequentially. The electricity generation and storage facilities are expected to be operated for up to 40 years under the terms of the leases. Major onsite facilities include multiple blocks of solar PV panels mounted on fixed tilt or tracking systems, pad mounted inverters and transformers, collector lines, up to 1,000 MW-hours of battery storage, access roads, and O&M facilities. Water will be needed during construction for dust control and a minimal amount will be needed during operations for administrative and sanitary water use and for panel washing. The water supply required for the Project would be leased from the Moapa Band.

The purposes of the proposed Project are, among other things, to: (1) Provide a long-term, diverse, and viable economic revenue base and job opportunities for the Moapa Band; (2) assist Nevada and neighboring states to meet their State renewable energy needs; and (3) allow the Moapa Band, in partnership with the Applicant, to optimize the use of the lease site while maximizing the potential economic benefit to the Tribe.

BIA will prepare the EIS in cooperation with the Moapa Band, BLM, Environmental Protection Agency, and possibly Nevada Department of Wildlife. In addition, the U.S. Fish and Wildlife Service (USFWS) and National Park Service will provide input on the analysis. The resulting EIS will aim to (1) provide agency decision makers, the Moapa Band, and the general public with a comprehensive understanding of the impacts of the proposed Project and alternatives on the Reservation; (2) describe the cumulative impacts of increased development on the Reservation; and (3) identify and propose mitigation measures that would minimize or prevent significant adverse impacts. Consistent with these objectives, the EIS will analyze the proposed Project and appurtenant features, viable alternatives, and the No Action alternative. Other alternatives may be identified in response to issues raised during the scoping process.

The EIS will provide a framework for BIA and BLM to make determinations and to decide whether to take the aforementioned Federal actions. In addition, BIA will use and coordinate the National Environmental Policy Act (NEPA) commenting process to satisfy its obligations under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Other federal agencies may rely on the EIS to make decisions under their authority and the Moapa Band may also use the EIS to make decisions under their Tribal Environmental Policy Ordinance. USFWS will review the EIS for consistency with the Endangered Species Act, as amended, and other implementing acts, and may rely on the EIS to support its decisions and opinions regarding the Project.

Issues to be addressed in the EIS analysis may include, but would not be limited to, Project impacts on water resources, biological resources, threatened and endangered species, cultural resources, Native American religious concerns, and aesthetics. In addition to those resource topics identified above, Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BIA's decision on the proposed Project, are invited to participate in the scoping process to identify additional issues to be addressed.

Submission of Public Comments

Please include your name, return address, and the caption ''EIS, Southern Bighorn Solar Project,'' on the first page of any written comments. You may also submit comments verbally during one of the virtual public scoping meeting presentations or provide written comments to the address listed above in the **ADDRESSES** section.

Public scoping meetings will be held to further describe the Project and identify potential issues and alternatives to be considered in the EIS. To help protect the public and limit the spread of the COVID–19 virus, virtual public meetings will be held, where a short presentation will be made and team members present to discuss and answer questions. The PowerPoint presentation will be posted to the project website prior to the virtual meetings. Those who cannot live stream the presentation would be able to access the meeting presentation and could join by telephone. Additionally, the live presentation will be recorded and made accessible for viewing throughout the scoping period. The first public scoping meeting will be held in the afternoon by video and telephone conference and the second public scoping meeting will be held in the evening by video and telephone conference. The dates and times of the public scoping meetings will be included in notices to be published in the, *Las Vegas Review-Journal* and *Moapa Valley Progress* 15 days before the meetings.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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.

Authority

This notice is published in accordance with 40 CFR 1501.7 of the Council of Environmental Quality regulations and 43 CFR 46.235 of the Department of the Interior Regulations implementing the procedural requirements of the NEPA (42 U.S.C. 4321 *et seq.*), and in accordance with the exercise of authority delegated to the Principal Deputy Assistant Secretary-Indian Affairs by part 209 of the Department Manual.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–09831 Filed 5–7–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20XL.5017AR.LLID933000. L54200000.PN0000.LVDID2004100. 4500143745]

Notice of Application for Recordable Disclaimer of Interest in Lands, Ada County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: An application has been filed with the Bureau of Land Management, Idaho State Office (BLM) by William Ditz, acting on behalf of the East Broadway Investment Company, an Idaho Limited Liability Company (EBIC), for a Recordable Disclaimer of Interest from the United States for land lying within railroad station ground right-of-way (ROW) no. IDI–253 in Ada County, Idaho. This notice is intended to inform the public of the pending application.

DATES: Comments on this application should be received by August 6, 2020.

ADDRESSES: Comments must be filed with June E. Shoemaker, Deputy State Director, Resources & Sciences, Bureau of Land Management, Idaho State Office, 1387 S Vinnell Way, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Supervisory Realty Specialist, at the above address, by phone at (208) 373–3863, or email at *jsullivan@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. Sullivan 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: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), the EBIC has filed an application for a Disclaimer of Interest for the following-described lands:

A parcel of land located in Government Lot 3 and the NE¼SW¼ of Section 7, T. 3 N., R. 1 E., Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at a 5/8″ rebar with an illegible cap marking the intersection of E 3rd Street and E Broadway Avenue;

Thence S 01° 21′ 54″ W, coincident with the centerline of said 3rd Street, a distance of 40.00 feet;

Thence N 88° 42′ 22″ W, 40.00 feet to the westerly right-of-way line of said E 3rd Street and the *POINT OF BEGINNING*;

Thence S 01° 21′ 54″ W, coincident with said westerly right-of-way line of E 3rd Street, a distance of 362.28 feet to the northerly right-of-way line of the Union Pacific Railroad;

Thence N 88° 30′ 19″ W, coincident with said northerly right-of-way line of the Union Pacific Railroad, a distance of 673.87 feet to the easterly right-of-way line of N Main Street;

Thence N. 00° 33′ 11″ E, coincident with said easterly right-of-way line of N Main Street, a distance of 359.94 feet to the southerly right-of-way line of E Broadway Avenue;

Thence S 88° 42′ 22″ E, coincident with said southerly right-of-way line of E Broadway Avenue, a distance of 678.97 feet to the *POINT OF BEGINNING*.

Said parcel contains 5.607 acres, more or less.

The above described land in section 7 is being acquired by the EBIC. As part of the proposed acquisition, Fidelity National Title Company is requiring EBIC to show that the United States no longer has any interest in the property.

Official United States land title records show that the described property is affected by railroad station ground right-of-way (ROW) no. IDI–253, which was issued by the United States to the Idaho Central Railroad on December 15, 1888, under the authority of the Railroad Act of March 3, 1875 (43 U.S.C. 934–939).

The official records further disclose that the described property was subsequently conveyed out of Federal ownership. On August 4, 1891, the United States issued patent no. 1065 to Joseph G. Reed for the E½SW¼ and W½SE¼ of Section 7, T. 3 N., R. 1 E., Boise Meridian, Idaho. On June 10, 1892, the United States issued patent no. 150 to Eliza A. Zenger for Lot 3 of Section 7, T. 3 N., R. 1 E., Boise Meridian, Idaho. Neither of the patents mention the previously issued railroad station ground ROW IDI–253.

The United States has no apparent claim to or interest in the described property because, under the authority of the Railroad Act of March 3, 1875, the Idaho Central Railroad, and any successors in interest, were granted the right to use the described lands for purposes appurtenant to the railroad. Further, upon abandonment, ROW interest previously held under the Railroad Act of March 3, 1875, devolves or transfers to the underlying landowner. The interest does not revert to the United States.

EBIC has reached agreement with the Union Pacific Railroad Company (successor-in-interest to Idaho Central Railroad) to purchase its remaining interest in the portion of railroad station ground ROW ID–253 affecting the described property. As such, station ground ROW IDI–253 will be abandoned, and the interest in the ROW will devolve to the current owners of the underlying property, which EBIC is acquiring. Issuance of a recordable disclaimer will remove a cloud of title to the land.

Comments, including names and street addresses of commentors, will be available for public review at the BLM Idaho State Office (see address above), during regular business hours, Monday through Friday, except Federal holidays. 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.

If no valid objection is received, a Disclaimer of Interest may be approved stating that the United States has no valid interest in the above-described land.

(Authority: 43 U.S.C. 1745)

June E. Shoemaker,

Idaho Deputy State Director, Resources & Sciences.

[FR Doc. 2020–09885 Filed 5–7–20; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030132; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Davis (UC Davis), has completed an inventory of human remains and associated funerary objects housed in the UC Davis Department of Anthropology Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native

Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UC Davis. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UC Davis at the address in this notice by June 8, 2020.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of California, Davis, Davis, CA. The human remains and associated funerary objects were removed from Calaveras County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by UC Davis professional staff in consultation with Indian Tribes. The following Tribes were consulted or invited to consult: Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Buena Vista Rancheria of Me-Wuk Indians of California; Cahto Tribe of the Laytonville Rancheria; California Valley Miwok Tribe, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians, California (previously listed as Dry Creek Rancheria of Pomo Indians of California); Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Habematolel Pomo of Upper Lake, California; Hopland Band of Pomo Indians, California (previously listed as Hopland Band of Pomo Indians of the Hopland Rancheria, California); Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as Jackson Rancheria of Me-Wuk Indians of California); Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California); Middletown Rancheria of Pomo Indians of California; Picayune Rancheria of Chukchansi Indians of California; Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California); Potter Valley Tribe, California; Redding Rancheria, California; Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as Redwood Valley Rancheria of Pomo Indians of California); Reno-Sparks Indian Colony, Nevada; Robinson Rancheria (previously listed as Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California); Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Susanville Indian Rancheria, California; Table Mountain Rancheria (previously listed as Table Mountain Rancheria of California); Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; Washoe Tribe of Nevada and California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches); and the Wilton Rancheria, California (hereafter referred to as ''The Tribes Consulted or Invited to Consult'').

History and Description of the Remains

In 1970, human remains representing, at minimum, five individuals were removed from a site near Mokelumne Hill in Calaveras County, CA (Accession 442). The burials were inadvertently discovered during the construction of a tennis court on private property. Field records indicate that two burials, an adult and a juvenile, were identified and exhumed. In 1995, UC Davis reported that the two burials represent a minimum of three individuals. In 2018, human remains recovered from the site were reviewed in consultation with one consulting Tribe. UC Davis determined the human remains represented a minimum of five individuals based on age classification. No known individuals were identified. The 47 associated funerary objects are 33 flakes, three cobble fragments, one quartz crystal, one mineral, seven faunal remains, and two bifaces.

The human remains have been determined to be Native American based on the archeological context of the site. Radiocarbon dates indicates that the burials date to approximately A.D. 134–410. Geographic, anthropological, archeological, historical, linguistic, and oral traditional sources provide evidence of cultural affiliation between the human remains and contemporary Miwok people. The following Indian Tribes identify as Eastern, Plains, or Sierra Miwok and are culturally affiliated with the above human remains and associated funerary objects: Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as Jackson Rancheria of Me-Wuk Indians of California); Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California (hereafter referred to as ''The Affiliated Tribes'').

Determinations Made by the University of California, Davis

Officials of the University of California, Davis have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five

individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 47 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Affiliated Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu,* by June 8, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Affiliated Tribes may proceed.

The University of California, Davis is responsible for notifying The Tribes Consulted or Invited to Consult that this notice has been published.

Dated: April 3, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–09909 Filed 5–7–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030074; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, City of Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum (PGM) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by June 8, 2020.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains and associated funerary objects were removed from Maricopa and Pinal counties, AZ, as well as unspecified locations within central or southern AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

The following human remains and associated funerary objects are associated with the Hohokam archeological culture (A.D. 1–1450).

Between 1938 and 1939, human remains representing, at minimum, two individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ, by personnel from the Salt River Valley Stratigraphic Survey (SRVSS) working out of PGM. These excavations occurred in trash mound 1 of the site. The human remains have been kept in the collections of PGM since they were excavated, and some were originally identified as faunal remains. The human remains are cremated. No known individuals were identified. The 29 associated funerary objects are 10 Sacaton red-on-buff partial and whole vessels; three Wingfield plain ware bowls, jar, and sherds; three awl fragments; one red-on-buff censer; one heavy-walled buff ware vessel; one lot faunal bone fragments; three projectile points; four shell ornaments; one lot pigment; one lithic; and one daub.

AZ U:9:1(ASM)/Pueblo Grande was a large village located on the north side of the Salt River, along Canal System Two, and was occupied throughout the Hohokam cultural sequence, reaching its greatest extent during the Classic period (A.D. 1150–1450).

In 1937 or 1938, human remains representing, at minimum, one individual were removed from site AZ T:12:2(PGM)/AZ T:12:1(ASM)/SRVSS Site 5/La Ciudad in Maricopa County, AZ, by personnel from the SRVSS working out of PGM. The individual was exposed in a sewer line trench or a well. The human remains have been in the collections of PGM since they were excavated, but were not identified until 2018, during a review of the faunal collection. No known individual was identified. No associated funerary objects are present.

AZ T:12:1(ASM)/La Ciudad was a large village located on the north side of the Salt River, along Canal System Two, and was occupied throughout the Hohokam cultural sequence (A.D. 1–1450).

In 1940, human remains and associated funerary objects representing, at minimum, 10 individuals were removed from site AZ T:12:4(PGM)/AZ T:12:220(ASM)/SRVSS Site 7/Las Cremaciones in Maricopa County, AZ, during excavations by personnel from the SRVSS working out of PGM. The human remains have been kept in the collections of PGM since they were excavated. Some of them were not

identified until 2018, during a review of the faunal collection. The human remains represent four cremations and six inhumations. The individuals range in age from infant to adult. No known individuals were identified. The 25 associated funerary objects are one bowl; one lot Santa Cruz red-on-buff jar sherds; four lots plain ware or red-on-buff sherds; three worked sherds; one lot faunal bone; two palettes; two projectile points; one faunal bone; one ceramic material; one Deadman's black-on-red sherd; one lot shell bracelet fragments; three worked shell; two lots lithics; one animal claw; and one awl fragment. The human remains likely date to the Pre-Classic period (A.D. 1–1150).

In 1939, human remains representing, at minimum, six individuals were removed from site AZ U:9:6(PGM)/SRVSS Site 12 in Maricopa County, AZ, by personnel from the SRVSS working out of PGM. These excavations occurred in a trash mound located in AZ U:9:6(PGM)/SRVSS Site 12, which is in the vicinity of AZ U:9:25(ASM)/Mesa Grande. The human remains have been kept in the collections of PGM since they were excavated. Some of them were originally identified as faunal remains. The human remains represent five inhumations and one cremation. All six individuals are believed to be adults; one is male, and the rest are of indeterminate sex. No known individuals were identified. The seven associated funerary objects are one Los Muertos polychrome bowl; two lots Wingfield red and plain ware sherds; one lot Salt Plain sherds; two faunal bone; and one mano.

AZ U:9:25(ASM)/Mesa Grande was a large village located on the south side of the Salt River, along Canal System Two, and reached its greatest extent during the Classic period (A.D. 1150–1450).

In March 1939, human remains representing, at minimum, two individuals were removed from site AZ T:12:6(PGM)/AZ T:12:73(ASM)/Pueblo Viejo/SRVSS Site 32 in Maricopa County, AZ, by personnel from the SRVSS working out of PGM. The human remains have been in the collections of PGM since they were excavated. The human remains are from inhumations, and belong to two young adult males. No known individuals were identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In April 1939, human remains representing, at minimum, two individuals were removed from a site in Maricopa County, AZ, by personnel from the SRVSS working out of PGM. These excavations are believed to have occurred in AZ T:11:1(PGM)/AZ T:11:39(ASM)/Cashion Site/SRVSS Site 41, but might have occurred in AZ U:9:15(PGM)/AZ U:9:13(ASM)/SRVSS Site 23. The human remains have been in the collections of PGM since they were excavated. The human remains are from inhumations, and belong to two adults, one male and one of indeterminate sex. No known individuals were identified. The one associated funerary object is a Gila plain ware ceramic sherd. The human remains likely date to the Pre-Classic period (A.D. 1–1150).

In 1939, human remains representing, at minimum, one individual were removed from site AZ U:10:9(PGM)/SRVSS Site 61 in Maricopa County, AZ, by personnel from the SRVSS working out of PGM. This site is in the vicinity of AZ U:10:2(ASM)/Germann Site. The human remains have been in the collections of PGM since they were excavated, and were originally identified as faunal remains. The human remains are from a cremation, and belong to an individual of indeterminate sex between juvenile to middle-aged adult. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In 1939, human remains representing, at minimum, one individual were removed from a site in Maricopa County, AZ, by personnel from the SRVSS working out of PGM. The individual was collected from the boundaries of AZ T:14:4(PGM)/SRVSS Site 77. The human remains have been in the collections of PGM since they were excavated, but they were not identified until 2018, during a review of the faunal collection. The human remains belong to a subadult or adult of indeterminate sex. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown date, likely between 1960 and 1990, human remains representing, at minimum, one individual were removed from Maricopa County, AZ, by a construction worker during the construction of the Cross-Cut canal. This discovery occurred in site AZ U:9:1(ASM)/Pueblo Grande. The human remains and associated funerary objects were brought to PGM on December 7, 1990. The human remains are cremated, and belong to an individual of indeterminate sex and age. No known individual was identified. The two associated funerary objects are two lithics, or worked flakes.

Between 1980 and 1981, human remains representing, at minimum, five individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ, during excavations by members of the Arizona Archaeological Society and PGM personnel. The human remains have been in the collections of PGM since they were excavated, but some of them were not identified until 2018, during a review of the faunal collection. The human remains include isolates and cremated remains. One of the individuals is a middle-aged adult, possibly female. The other four individuals are of indeterminate age and sex. No known individuals were identified. The 32 associated funerary objects are 14 pollen and flotation samples; two lots faunal bone; one lot unworked shell; three lots stone; 10 lots plain ware, red ware, buff ware, and intrusive sherds; one shell bracelet fragment; and one red-on-buff jar.

In 1967, human remains representing, at minimum, seven individuals were removed from site AZ T:12:1(ASM)/AZ:T:12:2(PGM)/La Ciudad in Maricopa County, AZ, by PGM personnel during a salvage project conducted prior to the construction of St. Luke's Hospital. The human remains have been in the collections of PGM since they were excavated. The human remains are from inhumations, and belong to two infants, three children, and two adults. All the individuals are of indeterminate sex. No known individuals were identified. The 25 associated funerary objects are 21 lots plain ware, red ware, red-on-buff sherds; two shell bracelet fragments; one reed impression; and one Salt Red bowl.

Between 1936 and 1939, human remains representing, at minimum, 53 individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ, by PGM personnel. These excavations occurred in multiple areas of the site, and the majority of this work was conducted under the supervision of Julian Hayden. The human remains have been in the collections of PGM since they were excavated, but some individuals were not identified until 2018, during a review of the faunal and unprovenanced collections. The human remains belong to 37 cremated individuals and 16 individuals from inhumations. The individuals range in age from fetal to old adult, and include both males and females. No known individuals were identified. The 115 associated funerary objects include 18 ceramic bowls including plain ware, red ware, red-on-buff; eight ceramic jars including plain ware, Black Mesa black-on-white; one ceramic pitcher; one seed jar; three scoops including red ware and red-on-buff; four environmental

samples; two lots textile fragments; one spindle whorl; 12 lots worked faunal bones including awls; eight lots shells; six lots shell jewelry including bracelets, pendants, beads; 24 lots ceramic sherds including plain ware, red ware, red-on-buff and polychrome; four lots faunal bones including red-tailed hawk burial; six vessel fragments/partial vessels; one piece stone jewelry; one worked sherd; one polishing stone; one lot charcoal; three lots white chalky substance (possibly burned caliche or shell); two axes; one hammerstone; one red-on-buff censer; three palettes; two lithics; and one figurine.

Between October and November 1939, human remains representing, at minimum, two individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ, by PGM personnel. These excavations occurred in a stratigraphic test pit within the platform mound. The human remains have been in the collections of PGM since they were excavated, but were not identified until 2018, during a review of the faunal and unprovenanced human remains collections. The human remains belong to an isolated adult of indeterminate sex and age, and the inhumation of a child who is approximately 18 months old and of indeterminate sex. No known individuals were identified. The 10 associated funerary objects include one red ware scoop; two shell jewelry; three shell beads; one lithic; one lot charcoal; and two faunal bones.

In the summer of 1966, human remains representing, at minimum, four individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated. During a review of the faunal collection in 2018, one of the individuals was identified. The human remains are from three inhumations and one cremation, and the individuals' ages range from fetal to adult. One of the individuals is possibly a male, while the other individuals are of indeterminate sex. No known individuals were identified. The 10 associated funerary objects include one Jeddito sherd; one spindle whorl; one point; one diorite ball; three bowls; two scoops; and one charred twig.

Between 1967 and 1968, human remains representing, at minimum, one individual were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. These excavations occurred south of the Grand Canal. The human remains have been in the collections of PGM since they were excavated, but were not identified until 2018, during a review of the faunal collection. The human remains belong to an isolated individual of indeterminate sex who is probably adult. No known individual was identified. The one associated funerary object is a soil sample.

In the summer of 1970, human remains representing, at minimum, seven individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated, but some were not identified until 2018, during a review of the faunal collection. The human remains are from four inhumations and three cremations. The individuals range in age from perinatal infant to adult. One individual is male, another is possibly female, the other five are of indeterminate sex. No known individuals were identified. The 35 associated funerary objects are one partial plain ware bowl; six lots buff ware, Wingfield, and plain ware sherds; one bowl; one faunal bone; one shell fragment; four samples; 16 lots red-on-buff, plain, and red ware sherds; one Wingfield plain ware seed jar; one plain ware bowl; one shell; one lot lithics; and one lot soils.

In the summer of 1971, human remains representing, at minimum, five individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated, but some were not identified until 2018, during a review of the faunal collection. The individuals are from three cremations, one inhumation, and some are isolated human remains. The individuals range in age from child to old adult. One individual is possibly male, and the other individuals are of indeterminate sex. No known individuals were identified. The eight associated funerary objects include one lot shell; one faunal bone; two samples; one bead; one plain ware bowl; one bowl fragment; and one decorated sherd.

In the summer of 1972, human remains representing, at minimum, three individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. These excavations occurred in the area to the northeast of the platform mound. The human remains have been in the collections of PGM since they were excavated, but were not identified until 2018, during a review of the faunal collection. The individuals are represented by isolated human remains belonging to individuals ranging in age from adolescent to adult. All of them are of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In the summer of 1973, human remains representing, at minimum, four individuals, were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated, but some were not identified until 2018, during a review of the faunal collection. The human remains represent three cremations and one inhumation. The age of individuals ranges from young child to adult, and all are of indeterminate sex. No known individuals were identified. The 17 associated funerary objects include one lot charcoal; one lot basalt flakes; eight lots sherds, Salt Red, Gila plain, Wingfield plain ware; two plain ware sherds; two Gila plain vessels; one red ware bowl; and two samples.

In the summer of 1977, human remains representing, at minimum, two individuals were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated, but some were not identified until 2018, during a review of the faunal collection. The human remains are isolated and belong to individuals ranging in age between child and adult, and all are of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

Between 1990 and 1992, human remains and associated funerary objects representing, at minimum, two individuals were removed from site AZ T:12:148(ASM)/La Villa in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated. The individuals are from two inhumations. One individual is a perinatal infant/fetus of indeterminate sex, and the other is possibly a female sub-adult or adult. No known individuals were identified. The 31 associated funerary objects are two faunal bones; two pollen samples; three soil samples; one flotation sample; five lots lithics; one metate fragment; one daub; 14 lots sherds; one fragmented Gila Butte bowl; and one fragmented Salt plain bowl.

AZ T:12:148(ASM)/La Villa was a large village located on the north side of the Salt River, and was occupied during the Pre-Classic period (A.D. 1–1150).

In January 1968, human remains representing, at minimum, one individual were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The individual was discovered by an employee of the Arizona State Highway Department. PGM personnel excavated the human remains and brought them to the Museum, where they entered the

collections of PGM. The human remains represent an inhumation, and belong to an older adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

In 1977, human remains representing, at minimum, one individual were removed from AZ T:12:70(ASM)/Pueblo Patricio in Maricopa County, AZ, by PGM personnel. These excavations occurred prior to the development of a City of Phoenix park at Heritage Square. This feature was not recorded in the project documentation. The human remains have been in the collections of PGM since they were excavated. The human remains represent a cremation, and belong to an adult who is possibly female. No known individual was identified. The five associated funerary objects include one Salt red bowl; three lots plain ware sherds; and one lot red ware sherds.

AZ T:12:70(ASM)/Pueblo Patricio was a large village located on the north side of the Salt River, and was occupied throughout most of the Hohokam cultural sequence (A.D. 1–1450).

In October 1936, human remains representing, at minimum, one individual were removed from site AZ T:12:148(ASM)/AZ T:12:5(PGM)/SRVSS Site 29/La Villa in Maricopa County, AZ. These excavations occurred on privately owned land. The human remains have been in the collections of PGM since they were excavated. The human remains represent an inhumation, and belong to a sub-adult or adult who is possibly female. No known individual was identified. The two associated funerary objects include one perforated faunal bone and one environmental sample.

In 1970, human remains representing, at minimum, two individuals were removed from site AZ U:9:67(ASM)/La Lomita in Maricopa County, AZ. The individuals were found eroding out of the Grand Canal. The human remains were identified in the collections of PGM in 1995. The human remains represent inhumations, and belong to two adults who are possibly male. No known individuals were identified. The five associated funerary objects include one ground stone and four lots red-on-buff and plain ware sherds.

AZ U:9:67(ASM)/La Lomita was a large village located on the north side of the Salt River, along Canal System Two, and was occupied during the Pre-Classic period (A.D. 1–1150).

In November 1939, human remains representing, at minimum, one individual were removed from a site in Maricopa County, AZ. The documentation is unclear regarding the excavator. The human remains were brought to PGM in 1939, where they have remained in the Museum's collections. The human remains represent an inhumation of an adult who is possibly female. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In or around 1942, human remains representing, at minimum, one individual were removed from the vicinity of AZ U:9:46(ASM) in Maricopa County, AZ, on property belonging to the privately-owned Hudson Ranch. The human remains have been at PGM since 1942. The human remains represent the partial inhumation of a male adult 25–30 years old. No known individual was identified. The six associated funerary objects include one Gila polychrome bowl; three lots of sherds including plain ware, red ware, and polychrome; one lot lithics; and one lot faunal bone. The human remains likely date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In 1962, human remains representing, at minimum, two individuals were found in the collections of PGM. Staff believed these human remains belonged to a cremation excavated from AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ, by Julian Hayden, but were unable to identify a known feature. The human remains represent a cremation of two individuals, and belong to a child of indeterminate sex and an adult male. No known individuals were identified. The one associated funerary object is a Gila plain ware jar.

In 1962, human remains representing, at minimum, one individual were likely removed from AZ were found in the collections of PGM. Staff believed these remains belonged to cremation excavated from AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ, by Julian Hayden, but were unable to identify a known feature. The human remains are cremated, and belong to a late adolescent or adult who is possibly female. No known individual was identified. The one associated funerary object is a Gila plain ware jar.

At an unknown time, human remains representing, at minimum, one individual were likely removed from AZ. In 1962, they were found in the collections of PGM. The human remains are cremated, and belong to a late adolescent or adult of indeterminate sex. No known individual was identified. The one associated funerary object is a Salt plain ware jar. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, two individuals were likely removed from AZ. In 1962, they were found in the collections of PGM. The human remains include a cremation and an inhumation of individuals of indeterminate sex between the ages of late adolescence and adulthood. No known individuals were identified. The three associated funerary objects are two plain ware sherds and one *Glycymeris* shell bracelet. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, two individuals were likely removed from AZ. In 1962, they were found in the collections of PGM. The human remains are cremated, and belong to a young adult who is possibly female and an adult of indeterminate sex. No known individuals were identified. The three associated funerary objects are one lot plain ware sherds; one stone; and one-piece *Glycymeris* shell (possibly a bracelet). The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, one individual were likely removed from AZ. In 1967, they were found in the collections of PGM. The human remains are cremated, and belong to an individual of indeterminate sex between the ages of older juvenile and adult. No known individual was identified. The two associated funerary objects include one Salt plain ware jar and one partial bone awl/hairpin. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, one individual were likely removed from AZ. In 1995, they were found in the collections of PGM. The human remains are cremated, and belong to an individual of indeterminate sex between the ages of child and adult. No known individual was identified. The four associated funerary objects include three lots plain ware/red-on-buff ceramic sherds and one seed. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, nine individuals were likely removed from AZ. In 1995, they were found in the collections of PGM. Some of the human remains are labeled with a catalog numbering system that suggests they may have been collected during the 1935 Public Works Administration excavations in the platform mound at

AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. The human remains are fragmentary, and come from inhumations and a cremation. The individuals range in age from fetal to adult, and all are of indeterminate sex. No known individuals were identified. The 13 associated funerary objects include six lots faunal bone; two lots plain ware ceramic sherds; one lot nacreous shell; two lot lithics ceramic sherds; and two lots pumpkin/squash seeds. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, one individual were removed from an unknown location, likely in AZ. In 1995, they were found in the collections of PGM. A note with the human remains stated that these human remains were on display in an exhibit case at PGM between 1974 and 1982. It appears that these human remains were part of a display of ''Hohokam-style'' inhumation created by the Museum. The other partial individuals used in the display were identified and reunited, however, the human remains represented by this particular individual were not located. The human remains are from an inhumation of an adult who is possibly male. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, two individuals were removed from an unknown location, likely in AZ. In 1995, they were found in the collections of PGM. The human remains are from an inhumation and cremation, and belong to adults of indeterminate sex. No known individuals were identified. The five associated funerary objects include three lots faunal bone; one lot burned *Laevicardium* and *Glycymeris* shell (possibly including a bracelet); and one lot Wingfield and Gila plain ceramic sherds. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, two individuals were removed from an unknown location, likely in AZ. In 1995, they were found in the collections of PGM. The human remains are from the cremation of two individuals, an infant or child and an adult. Both individuals are of indeterminate sex. No known individuals were identified. The three associated funerary objects include one lot faunal bone; one lot burned shell; and one lot ceramic sherds. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown date, human remains representing, at minimum, 58 individuals were likely removed from AZ. On multiple dates between 1962 and 1995, they were found in the collections of PGM. While there is no collecting information for these remains, their preservation is consistent with prehistoric Native American human remains. Moreover, 93% of the individuals in the collection of PGM are from the Hohokam archeological culture. Consequently, PGM has determined that, more likely than not, these individuals are from the Hohokam archeological cultural region. Fifty individuals are from inhumations and eight are from cremations. The human remains are fragmentary, and represent individuals of varying ages, sexes, and preservation. No known individuals were identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In 1986, human remains representing, at minimum, five individuals, were removed from site AZ T:12:137(ASM)/AZ T:12:16(PGM)/Las Canopas in Maricopa County, AZ, by personnel from PGM. The human remains have been in the collections of PGM since they were excavated. The human remains are all cremated, and belong to five individuals of indeterminate sex ranging in age from infant to adult. No known individuals were identified. The 13 associated funerary objects include one lot sherds; one lot daub; four lots plain and red-on-buff sherds; one palette; one partial jar; two stones; two lots shell including jewelry; and one lot sherds.

AZ T:12:137(ASM)/AZ T:12:16(PGM)/Las Canopas was a large village located on the south side of the Salt River, along Canal Seven, and was occupied throughout most of the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains, representing, at minimum, one individual were removed from an unknown location, likely in AZ. In 1962, the human remains were transferred to PGM by a Mrs. Leuba, whose address was in Phoenix. The human remains have been in the collections of PGM since they were received. The human remains represent an inhumation, and belong to a young adult male. No known individual was identified. The two associated funerary objects are one Salt red jar and one sherd. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

On May 17, 1976, human remains representing, at minimum, one individual were removed from within the boundaries of AZ T:12:24(PGM)/AZ T:12:412(ASM)/Casa Chica in Maricopa County, AZ. They were found during construction at the Holsum Bakery. It is unclear whether PGM personnel conducted the removal. The human remains have been in the collections of PGM since being received in 1976. The human remains represent an inhumation belonging to an adult who is possibly female. No known individual was identified. The two associated funerary objects include one Salt plain partial jar and one lot stone.

AZ T:12:24(PGM)/AZ T:12:412(ASM)/Casa Chica was a village located on the north side of the Salt River, and was occupied during the Hohokam cultural sequence (A.D. 1–1450).

Around 1962, human remains representing, at minimum, one individual were removed from within the boundaries of AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. They were found by construction crew while digging a sewer line trench at 44th Street and Van Buren Street. The individual was transferred to PGM in October 1962. The human remains have been in the collections of PGM since they were received. The human remains represent an inhumation, and belong to an individual of indeterminate sex between the ages of late adolescence and adulthood. No known individual was identified. The one associated funerary object is a Gila plain ware jar.

At an unknown time, human remains representing, at minimum, one individual were removed from an unknown location, likely in AZ, by a private citizen, Bob Householder. In 1972, Householder transferred the human remains to PGM. The only extant collecting information indicates that the human remains were recovered from a ''deep shaft.'' Research on the donor showed that he lived in Tucson and Phoenix from 1948 until at least 1984. His address at the time of transfer was in Phoenix, AZ, and his local phone number was listed on the donation record. The human remains represent the fragmentary inhumation of an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, one individual were removed from the vicinity of site AZ U:9:270(ASM) in Maricopa County, AZ. In 1995, they were found in the collections of PGM

with a note stating ''44th Street and University.'' There is no other extent collecting information. The human remains represent an inhumation of an adult female. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In June 1936, human remains representing, at minimum, two individuals were removed from just south of the platform mound at AZ U:9:1(ASM)/Pueblo Grande, in Maricopa County, AZ. The catalog card also states that an axe and a polychrome vessel were present with these remains, but they have not been located. The human remains were documented at PGM in 1965 and have been in the collections since that time. The human remains represent an inhumation of an adult who is probably female and a juvenile between the ages of 12–14 of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1983, human remains representing, at minimum, two individuals, were removed from site of AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. These excavations were conducted near the Cross-Cut Canal by personnel from PGM. The human remains have been in the collections of PGM since they were excavated. The human remains represent a cremation and an inhumation of two adult individuals, one of whom is possibly male. No known individuals were identified. The 29 associated funerary objects include six lots lithics; 11 lots ceramic sherds red-on-buff and plain ware; seven lots environmental samples; three lots faunal bone; and two lots shell.

In 1973, human remains representing, at minimum, six individuals were removed from AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. These excavations were conducted near the Cross-Cut Canal. The human remains have been in the collections of PGM since they were excavated. The human remains represent two inhumations and four cremations, and the individuals vary in age and sex. No known individuals were identified. The 53 associated funerary objects include one lot charcoal; seven partial vessels; one painted faunal bone; one lot ocher; one Wingfield jar; one shell; 17 lots plain, red, buff ware, and polychrome sherds; four lots faunal bone; five bowls; one Gila red ware jar; four lots lithics; five environmental samples; one clay impression; one projectile point; one disk; one lot shell beads; and one modeled spindle whorl.

At an unknown date, likely between 1929 and 1958, human remains representing, at minimum, one individual were removed from site AZ U:1:1(PGM) in Maricopa County, AZ. The nature of these excavations is unknown. The human remains were documented in the collections of PGM in 1965, and have been in the collections of PGM since they were documented. The human remains represent the inhumation of a young adult who is male. No known individual was identified. The one associated funerary object is a soil sample. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In 1958, human remains representing, at minimum, one individual were removed from site AZ U:1:2(PGM)/AZ U:1:159(ASM) in Maricopa County, AZ. The human remains were found eroding out of a wash, and were removed by a private citizen, who transferred the human remains to PGM. The human remains have been in the collections of PGM since they were received. The human remains represent the inhumation of an adult male. No known individual was identified. The one associated funerary object is a faunal bone. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown date, prior to 1965, human remains representing, at minimum, one individual were removed from Maricopa County, AZ. These human remains were found by a private citizen in a site assigned number AZ T:12:20(PGM) by PGM personnel. This site is close to site AZ T:12:3(ASM)/Las Moradas. The human remains were received by PGM on February 22, 1964, and have been in the collections of PGM since their receipt. The human remains represent the cremation of a young child of indeterminate sex. No known individual was identified. The one associated funerary object is a plain ware bowl. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown date, human remains representing, at minimum, one individual were removed from a grave found at a golf course in Ray, Pinal County, AZ. The human remains were transferred to PGM around 1965, by a Mrs. Dell Verrier. A note with the human remains stated ''Indian tooth.'' The human remains have been in the collections of PGM since they were received. The human remains are the isolated tooth of an individual. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In the mid-1900s, human remains representing, at minimum, one individual were removed from the Ryan Cattle Ranch to the east of Fort McDowell, along the Verde River in Maricopa County, AZ. On October 5, 1966, these human remains and associated funerary objects were transferred to PGM by a Mrs. W.A. Ryan. The human remains have been in the collections of PGM since they were received. The human remains represent the cremation of an individual of indeterminate sex who is between the ages of late adolescence and adulthood. No known individual was identified. The four associated funerary objects include one Wingfield plain bowl; one lot red-on-buff and plain ware sherds; one lot shell; and one lot faunal bone. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown date, likely during the middle 1900s, human remains representing, at minimum, one individual were removed from site AZ U:9:9(PGM), which is likely the same site as AZ U:9:184(ASM)/Pueblo Moroni, in Maricopa County, AZ, by Charles Coppedge. The human remains and associated funerary objects were brought to PGM around 1964, and have been in the collections of PGM since they were received. The human remains represent the cremation of a middle-aged adult who is possibly female. No known individual was identified. The eight associated funerary objects include five lots plain ware sherds; one lot charcoal; one Gila red bowl; and one shell bracelet fragment. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In July 1966, human remains representing, at minimum, seven individuals were removed from site AZ T:12:23(PGM) in Maricopa County, AZ. This site is in the vicinity of AZ T:12:1(ASM)/La Ciudad. The human remains were excavated by staff from PGM, and they have been at PGM since their excavation. The human remains represent seven inhumations of individuals ranging in age from perinatal/fetal to adult. No known individuals were identified. The four associated funerary objects include three lots plain ware and red-on-buff sherds; and one shell bracelet.

In 1967, human remains representing, at minimum, one individual were removed from site AZ T:12:23(PGM) in Maricopa County, AZ. The human remains were excavated by staff from St. Luke's hospital, and were transferred to

PGM. The human remains have been in the collections of PGM since they were excavated. The human remains represent an inhumation of a perinatal infant or fetus of indeterminate sex. No known individual was identified. The eight associated funerary objects include seven lots ceramic sherds including Tonto polychrome, red-on-buff, plain ware; and one Wingfield plain ware plate.

In March 1957, human remains representing, at minimum, one individual were removed from site AZ T:12:21(PGM) in Maricopa County, AZ. The individual was found during activities at the Allison Steel company. Although the site was assigned by PGM personnel, whether PGM personnel conducted the excavation is unclear. The human remains and associated funerary objects were brought to PGM in 1957, and have been kept in the collections of PGM since they were received. The human remains represent the inhumation of a sub-adult of indeterminate sex. No known individual was identified. The five associated funerary objects include two lots plain ware sherds and three environmental samples. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

Around 1972, human remains representing, at minimum, one individual were identified by a water and sewer crew while digging beneath 44th Street, north of Washington Street, which is within the boundaries of AZ U:9:1(ASM)/Pueblo Grande, in Maricopa County, AZ. The human remains were transferred to PGM in April 1972, and have been in the collections of PGM since they were received. The human remains represent the inhumation of an adult who is possibly male. No known individual was identified. The five associated funerary objects include one Salt plain pitcher; one Salt red bowl; one lot plain ware sherds; one faunal bone; and one shell fragment.

In 1972, human remains representing, at minimum, two individuals, were removed from site AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. These excavations occurred south of the Grand Canal. The human remains have been in the collections of PGM since they were excavated. The human remains represent the inhumation of a young adult female and a young-to-middle-aged adult of indeterminate sex. No known individuals were identified. The 11 associated funerary objects include five environmental samples; one lot ceramics; two plain ware bowls; one lot shell; one lithic; and one lot faunal bone.

At an unknown date, between 1934 and 1990, human remains representing, at minimum, one individual, were removed from within the boundaries of AZ U:9:1(ASM)/Pueblo Grande in Maricopa County, AZ. This individual was removed from the area east of the Cross-Cut Canal. The human remains were identified in the collection of the Museum in 1995. The human remains have been in the collections of PGM since they were received. The human remains represent the inhumation of an adult who is female. No known individual was identified. No associated funerary objects are present.

Between 1980 and 1994, human remains representing, at minimum, two individuals were removed by a private landowner from within the boundaries of AZ U:1:14(PGM)/AZ U:1:131(ASM)/Blue Wash Site in Maricopa County, AZ. In 1998, the human remains were transferred to PGM, and have been in the collections of PGM since they were received. The human remains represent the inhumations of two young children. No known individuals were identified. The 13 associated funerary objects include one ceramic bowl; one lot ceramics; two environmental samples, three lots stone/lithics; four lots ceramics; one lot metal; and one animal burial. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

On June 30, 1969, human remains representing, at minimum, one individual were removed from site AZ U:9:40(PGM) in Maricopa County, AZ. This site is in the vicinity of AZ U:9:46(ASM). The individual was found during construction activities by workers for Hallcrafts Homes. PGM staff conducted the excavations. The human remains have been in the collections of PGM since the excavations. The human remains are cremated, and belong to an individual of indeterminate age and sex. No known individual was identified. The five associated funerary objects include one red-on-buff jar; two lots plain ware sherds; one smudged sherd; and one sherd disk. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

In 2000, human remains representing, at minimum, three individuals were removed from site AZ T:12:37(ASM)/Casa Buena in Maricopa County, AZ. The human remains have been in the collections of PGM since they were excavated, but were originally identified as faunal remains. The human remains are isolated, and belong to three individuals of indeterminate sex. Two of the individuals are children and one is a sub-adult or adult. No known individuals were identified. No associated funerary objects are present.

AZ T:12:37(ASM)/Casa Buena was a village on the north side of the Salt River that dates at least to the Sedentary and Classic periods (A.D. 900–1450).

On August 2, 1957, human remains representing, at minimum, two individuals were removed from site T:12:1(ASM)/AZ:T:12:2(PGM)/La Ciudad in Maricopa County, AZ, by workers conducting a sewer excavation. Whether PGM personnel conducted excavations at the site is unclear. The human remains and associated funerary objects were brought to PGM in 1957, and have been in the collections of PGM since they were received. The human remains are from inhumations, and belong to a middle-aged or old adult who is possibly male, and to an individual of indeterminate age and sex. No known individuals were identified. The nine associated funerary objects include seven lots plain ware and red-on-buff sherds; one lot wood; and one plain ware jar.

On November 13, 1975, human remains representing, at minimum, one individual were found near Maryland Avenue and 20th Street in Phoenix, Maricopa County, AZ, by a citizen who reported the finding to Phoenix police. The police then brought the human remains to PGM. The human remains have been at PGM since they were received. The human remains are from an inhumation, and belong to a child 6–10 years old of indeterminate sex. No known individual was identified. The one associated funerary object is a plain ware or red ware sherd.

The human remains were discovered outside of known archeological site boundaries, but they likely date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

Between 1980 and 1994, human remains representing, at minimum, one individual were removed by a private landowner from site AZ U:1:14(PGM)/AZ U:1:131(ASM)/Blue Wash Site in Maricopa County, AZ. In 2011, the human remains were transferred to PGM, and they have been in the collections of PGM since they were received. The human remains represent the inhumation of an adult female. No known individual was identified. The two associated funerary objects are faunal remains, including a possible dog inhumation.

At an unknown time, human remains representing, at minimum, 18 individuals were removed from various locations, likely in AZ. In 2016 and 2017, these individuals were found in the unprovenanced faunal collection at PGM. There is no collecting information

for these individuals. The preservation of the human remains is consistent with prehistoric Native American human remains. Moreover, 93% of the individuals in the collection of PGM are from the Hohokam archeological culture. Consequently, PGM has determined that, more likely than not, these individuals are from the Hohokam archeological cultural region. The human remains are fragmentary. Ten of the individuals are from inhumations, and eight of the individuals are from cremations. The individuals are of varying ages and sexes. No known individuals were identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

On November 12, 1965, human remains representing, at minimum, two individuals were removed from site AZ T:12:1(ASM)/AZ:T:12:2(PGM)/La Ciudad in Maricopa County, AZ. The human remains were excavated by a private citizen and reported to police. In 1965, the human remains were brought to PGM, where they have remained. The human remains represent the inhumation of two adults; one is possibly male and the other is female. No known individuals were identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, one individual were likely removed from AZ. In 2008, they were transferred from the estate of Frances Horwich to PGM. The human remains have been in the collections of PGM since they were received, but they were not identified as human until 2017. The human remains represent the cremation of an adult male. No known individual was identified. The nine associated funerary objects include one palette fragment; two partial bowls; one partial jar; three lots ceramic sherds including red-on-buff; one awl fragment; and one lot lithics. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

Likely between 1920 and 1940, human remains representing, at minimum, one individual were removed from an unknown location, likely in AZ by Frank Larsen. Mr. Larsen was an active collector in the Salt and Gila River Valleys, and is associated with Frank Midvale. At an unspecified date, Matthew C. Thomas received items from the Larsen collection, and transferred some of them to the Arizona Archaeological Society (AAS). In May 2011, the AAS transferred two boxes of items from the Larsen collection to PGM. The human remains were not identified until 2018, during a review of the faunal collection. The human remains are isolated from an inhumation of an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

At an unknown time, human remains representing, at minimum, one individual were removed from an unknown location, likely in AZ. In 2011, the human remains were identified in the collection of PGM. Although there is no extant collecting information, the associated funerary objects are consistent with the Hohokam archeological culture. The human remains are cremated and belong to an adult male. No known individual was identified. The seven associated funerary objects include one bowl; two polishing stones; one raw shell; and three shell beads. The human remains date to sometime during the Hohokam cultural sequence (A.D. 1–1450).

The Ak-Chin Indian Community (previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'Odham Nation of Arizona comprise one cultural group known as the O'Odham. Cultural continuity between the prehistoric Hohokam archeological culture and present-day O'Odham peoples is supported by continuities in settlement pattern, architectural technologies, basketry, textiles, ceramic technology, and ritual practices. Oral traditions that are documented for the Ak-Chin Indian Community (previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'Odham Nation of Arizona support their cultural affiliation with Hohokam archeological sites in central and southern Arizona.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi clans migrated in the past. Oral traditions and material culture that are documented for the Hopi Tribe support their cultural affiliation with Hohokam sites in central and southern Arizona. Several Hopi clans and religious societies are derived from ancestors who migrated from the south, and likely identified with the Hohokam archeological culture.

Migration from portions of the Southwest to present-day Zuni are documented in the oral traditions of kivas, priesthoods, and medicine societies of the Zuni Tribe of the Zuni Reservation, New Mexico. These traditions support their affiliation with the central and southern Arizona Hohokam archeological culture. Historical linguistic analysis also suggests interaction between ancestral Zuni and Uto-Aztecan speakers during the late Hohokam period.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 282 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 596 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'Odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov,* by June 8, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Tribes that this notice has been published.

Dated: March 25, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–09910 Filed 5–7–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree and Environmental Settlement Agreement Under the Clean Air Act

On May 4, 2020, the United States Department of Justice lodged a proposed Consent Decree and Environmental Settlement Agreement (''Settlement Agreement'') in *In re PES Holdings, LLC, et al.,* Civil Action No. 19–11626 (Bankr. D. Del.), with the United States Bankruptcy Court for the District of Delaware.

The United States, on behalf of the United States Environmental Protection Agency (''EPA''), filed this Settlement Agreement with PES Holdings, LLC and its Debtor Affiliates (collectively the ''Debtors''), including Debtor Philadelphia Energy Solutions Refining and Marketing LLC (''PESRM''), to resolve a dispute about the obligations and liabilities of PESRM and related parties under the Clean Air Act's (''CAA'') Renewable Fuel Standard (''RFS'') program, which requires refiners to blend renewable fuels into gasoline or diesel fuel or obtain Renewable Identification Numbers (''RINs'') to meet Renewable Volume Obligations (''RVOs'') and a 2018 Consent Decree and Environmental Settlement Agreement in *In re PES Holdings, LLC, et. al.,* Case No. 18–10122 (KG) (''2018 Consent Decree'').

Under the Settlement Agreement, Debtors have agreed to purchase and retire up to 161,830,963 Quality Assurance Plan (''QAP'') verified Q–RINs to resolve Debtors' RINs liability under the 2018 Consent Decree and the CAA's RFS program. A Q–RIN is a type of RIN that a registered independent third-party auditor verified using an approved QAP, and in accordance with the audit process laid out in 40 CFR 80.1472. *See* 40 CFR 80.1401. The Debtors' Chapter 11 Plan (''Plan'') establishes a Liquidating Trust, which will, among other things, purchase and retire Q–RINs within 90 days of the Effective Date of the Settlement Agreement or the Plan, whichever occurs later, subject to an actual price paid cap of $10 million as provided in the Settlement Agreement. If PESRM, any Debtor, or the Liquidating Trust, receives an Excise Tax Refund from the United States, the Liquidating Trust will purchase and retire any remaining RIN balance within 90 days of receiving the refund; this is subject to the limitation that the Liquidating Trust's RIN retirement obligation ends when the Liquidating Trust has (a) retired the full amount of 161,830,963 Q–RINs, (b) purchased and retired $22 million worth of Q–RINs, or (c) purchased and retired $10 million worth of Q–RINs plus the number of Q–RINs worth the Excise Tax Refund from the United States if the refund is less than $12 million.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Section Chief, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *In re PES Holdings, LLC, et al.,* Civil Action No. 19–11626 (Bankr. D. Del.), DOJ Number 90–5–2–1–10993/2. All comments must be submitted no later than fifteen (15) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Section Chief, U.S. DOJ—ENRD—EES, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–09825 Filed 5–7–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Rhode Island

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit payment status under the EB program for Rhode Island.

The following change has occurred since the publication of the last notice regarding Rhode Island's EB status:

Rhode Island's 13-week insured unemployment rate (IUR) for the week ending April 11, 2020 was 5.49 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Rhode Island to be triggered ''on'' to an EB period that began April 26, 2020. The State will remain in an EB period for a minimum of 13 weeks.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202) 693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

SUPPLEMENTARY INFORMATION: The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–09914 Filed 5–7–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice on Reallotment of Workforce Innovation Opportunity Act (WIOA) Title I Formula Allotted Funds for Dislocated Worker Activities for Program Year (PY) 2019

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Workforce Innovation Opportunity Act, requires the Secretary of Labor (Secretary) to conduct reallotment of certain WIOA formula allotted funds based on ETA 9130 financial reports submitted by states as of the end of the prior PY. This notice publishes the dislocated worker PY 2019 funds for recapture by state and the amount to be reallotted to eligible states.

DATES: These funds are effective May 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Vitelli, Acting Administrator, U.S. Department of Labor, Office of Workforce Investment, Employment and Training Administration, Room C–4510, 200 Constitution Avenue NW, Washington, DC. Telephone (202) 693–3639 (this is not a toll-free number) or fax (202) 693–3981.

SUPPLEMENTARY INFORMATION: In the Fiscal Year (FY) 2019 Appropriations Act, Congress appropriated WIOA PY 2019 funds in two portions: (1) Funds available for obligation July 1, 2019 (*i.e.,* PY 2019 ''base'' funds), and (2) funds available for obligation October 1, 2019 (*i.e.,* FY 2020 ''advance'' funds). Together, these two portions make up the complete PY 2019 WIOA funding. Training and Employment Guidance Letter (TEGL) No. 16–18 announced WIOA allotments based on this appropriation and TEGL No. 16–17 alerted states to the recapture and reallotment of funds' provisions based on obligations of PY 2018 funding, as required under WIOA Section 132(c). This section and 127(c) of WIOA requires the Secretary of Labor (Secretary) to conduct reallotment of excess unobligated WIOA Adult, Youth, and Dislocated Worker formula funds based on ETA 9130 financial reports submitted by states at the end of the prior program year (*i.e.,* PY 2018).

WIOA regulations at 20 CFR 683.135 describe the procedures the Secretary uses for recapture and reallotment of funds. ETA will not recapture any PY 2019 funds for the Adult and Youth programs because there are no states where PY 2018 unobligated funds exceed the statutory requirements of 20 percent of state allotted funds. However, for the Dislocated Worker program, Puerto Rico had unobligated PY 2018 funds in excess of 20 percent of its allotment. Therefore, ETA will recapture a total of $2,677,483 of PY 2019 funding from Puerto Rico and reallot those funds to the remaining eligible states, as required by WIOA Section 132(c).

ETA will issue a Notice of Award to the states to reflect the recapture and reallotment of these funds. The adjustment of funds will be made to the FY 2020 advance portion of the PY 2019 allotments, which ETA issued in October 2019. The attached tables display the net changes to PY 2019 formula allotments.

WIOA and its implementing regulations do not provide specific requirements by which states must distribute realloted funds, so states have flexibility to determine the methodology used. For any state subject to recapture of funds, WIOA Section 132(c)(5) requires the Governor to prescribe equitable procedures for reacquiring funds from the state and local areas.

As mentioned, the recapture/reallotment adjustments will be made to the FY 2020 advance portion of the PY 2019 allotment. Therefore, for reporting purposes, states must reflect the recapture/reallotment amount (decrease or increase) in the ''Total Federal Funds Authorized'' line of any affected FY 2020 ETA 9130 financial reports (State Dislocated Worker Activities, Statewide Rapid Response, Local Dislocated Worker Activities) in a manner consistent with the method of distribution of these amounts to state and local areas used by the state. The state must include an explanation of the adjustment in the remarks section of the adjusted reports.

I. Attachment A

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES PY 2019 REALLOTMENT TO STATES

	Calculating reallotment amount			Impact on PY 2019 allotments		
	Excess unobligated PY 2018 funds to be recaptured from PY 2019 funds	Eligible states' PY 2018 [1] dislocated worker allotments	Reallotment amount for eligible states (based on eligible states' share of PY 2018 allotments)	Total original PY 2019 allotments before reallotment	Recapture/ reallotment adjustment to PY 2019 allotments	Revised total PY 2019 allotments
Alabama	$0	$19,403,477	$52,149	$18,309,732	$52,149	$18,361,881
Alaska	0	4,931,804	13,255	6,399,704	13,255	6,412,959
Arizona **	0	23,325,333	62,689	30,267,873	62,689	30,330,562
Arkansas	0	6,424,584	17,267	6,221,613	17,267	6,238,880
California	0	155,293,670	417,368	147,659,670	417,368	148,077,038
Colorado	0	10,206,542	27,431	10,049,482	27,431	10,076,913
Connecticut	0	14,714,935	39,548	14,170,098	39,548	14,209,646
Delaware	0	2,469,027	6,636	2,403,520	6,636	2,410,156
District of Columbia	0	6,506,323	17,486	8,442,862	17,486	8,460,348
Florida	0	53,879,224	144,806	52,151,777	144,806	52,296,583
Georgia	0	40,579,379	109,061	38,513,750	109,061	38,622,811
Hawaii	0	1,625,873	4,370	1,605,251	4,370	1,609,621
Idaho	0	1,975,683	5,310	1,957,840	5,310	1,963,150

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES PY 2019 REALLOTMENT TO STATES—Continued

	Calculating reallotment amount			Impact on PY 2019 allotments		
	Excess unobligated PY 2018 funds to be recaptured from PY 2019 funds	Eligible states' PY 2018 [1] dislocated worker allotments	Reallotment amount for eligible states (based on eligible states' share of PY 2018 allotments)	Total original PY 2019 allotments before reallotment	Recapture/ reallotment adjustment to PY 2019 allotments	Revised total PY 2019 allotments
Illinois	0	63,122,436	169,648	59,460,547	169,648	59,630,195
Indiana	0	14,131,852	37,981	13,667,363	37,981	13,705,344
Iowa	0	4,157,398	11,173	4,118,716	11,173	4,129,889
Kansas	0	4,687,349	12,598	4,621,465	12,598	4,634,063
Kentucky	0	17,824,530	47,905	16,798,451	47,905	16,846,356
Louisiana	0	20,809,229	55,927	21,222,160	55,927	21,278,087
Maine	0	2,691,605	7,234	2,599,954	7,234	2,607,188
Maryland	0	15,388,755	41,359	15,269,819	41,359	15,311,178
Massachusetts	0	15,932,959	42,821	15,775,499	42,821	15,818,320
Michigan	0	30,030,680	80,711	28,899,538	80,711	28,980,249
Minnesota	0	8,735,306	23,477	8,623,538	23,477	8,647,015
Mississippi	0	12,819,787	34,454	12,825,657	34,454	12,860,111
Missouri	0	14,197,509	38,157	13,734,131	38,157	13,772,288
Montana	0	1,566,557	4,210	1,586,432	4,210	1,590,642
Nebraska	0	2,406,312	6,467	2,406,131	6,467	2,412,598
Nevada	0	13,969,031	37,543	14,017,016	37,543	14,054,559
New Hampshire	0	1,764,499	4,742	1,776,723	4,742	1,781,465
New Jersey	0	32,143,202	86,388	31,170,385	86,388	31,256,773
New Mexico **	0	13,715,866	36,863	17,798,250	36,863	17,835,113
New York	0	51,705,216	138,963	50,835,990	138,963	50,974,953
North Carolina	0	30,287,711	81,401	29,115,622	81,401	29,197,023
North Dakota	0	814,876	2,190	825,733	2,190	827,923
Ohio	0	39,817,416	107,013	38,626,510	107,013	38,733,523
Oklahoma	0	7,752,077	20,835	7,581,568	20,835	7,602,403
Oregon	0	11,711,251	31,475	11,256,414	31,475	11,287,889
Pennsylvania	0	53,708,691	144,348	51,069,267	144,348	51,213,615
Puerto Rico	2,677,483	0	0	57,906,791	(2,677,483)	55,229,308
Rhode Island	0	4,145,795	11,142	3,965,517	11,142	3,976,659
South Carolina	0	15,568,291	41,841	14,906,311	41,841	14,948,152
South Dakota	0	1,167,155	3,137	1,177,885	3,137	1,181,022
Tennessee	0	19,170,626	51,523	18,173,009	51,523	18,224,532
Texas	0	62,335,256	167,532	61,050,104	167,532	61,217,636
Utah **	0	4,410,694	11,854	4,319,231	11,854	4,331,085
Vermont	0	862,723	2,319	866,255	2,319	868,574
Virginia	0	14,034,717	37,720	13,826,714	37,720	13,864,434
Washington	0	26,872,218	72,222	26,650,470	72,222	26,722,692
West Virginia	0	7,526,410	20,228	9,766,567	20,228	9,786,795
Wisconsin	0	11,810,606	31,742	11,437,989	31,742	11,469,731
Wyoming	0	1,102,839	2,964	1,087,106	2,964	1,090,070
State Total	2,677,483	996,235,284	2,677,483	1,038,970,000	0	1,038,970,000

** Includes Navajo Nation.
[1] PY 2018 allotment amounts are used to determine the reallotment amount eligible states receive of the recaptured amount.

II. Attachment B

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES PY 2019 REVISED ALLOTMENTS WITH REALLOTMENT—PY/FY SPLIT

	Total allotment			Available 7/1/19			Available 10/1/19		
	Original	Recapture/ reallotment	Revised	Original	Recapture/ reallotment	Revised	Original	Recapture/ reallotment	Revised
Alabama	18,309,732	52,149	18,361,881	3,187,290		3,187,290	15,122,442	52,149	15,174,591
Alaska	6,399,704	13,255	6,412,959	1,114,036		1,114,036	5,285,668	13,255	5,298,923
Arizona *	30,267,873	62,689	30,330,562	5,268,918		5,268,918	24,998,955	62,689	25,061,644
Arkansas	6,221,613	17,267	6,238,880	1,083,035		1,083,035	5,138,578	17,267	5,155,845
California	147,659,670	417,368	148,077,038	25,704,042		25,704,042	121,955,628	417,368	122,372,996
Colorado	10,049,482	27,431	10,076,913	1,749,376		1,749,376	8,300,106	27,431	8,327,537
Connecticut	14,170,098	39,548	14,209,646	2,466,678		2,466,678	11,703,420	39,548	11,742,968

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES PY 2019 REVISED ALLOTMENTS WITH REALLOTMENT—PY/FY SPLIT—Continued

	Total allotment			Available 7/1/19			Available 10/1/19		
	Original	Recapture/ reallotment	Revised	Original	Recapture/ reallotment	Revised	Original	Recapture/ reallotment	Revised
Delaware	2,403,520	6,636	2,410,156	418,396		418,396	1,985,124	6,636	1,991,760
District of Columbia	8,442,862	17,486	8,460,348	1,469,702		1,469,702	6,973,160	17,486	6,990,646
Florida	52,151,777	144,806	52,296,583	9,078,386		9,078,386	43,073,391	144,806	43,218,197
Georgia	38,513,750	109,061	38,622,811	6,704,329		6,704,329	31,809,421	109,061	31,918,482
Hawaii	1,605,251	4,370	1,609,621	279,436		279,436	1,325,815	4,370	1,330,185
Idaho	1,957,840	5,310	1,963,150	340,813		340,813	1,617,027	5,310	1,622,337
Illinois	59,460,547	169,648	59,630,195	10,350,669		10,350,669	49,109,878	169,648	49,279,526
Indiana	13,667,363	37,981	13,705,344	2,379,163		2,379,163	11,288,200	37,981	11,326,181
Iowa	4,118,716	11,173	4,129,889	716,971		716,971	3,401,745	11,173	3,412,918
Kansas	4,621,465	12,598	4,634,063	804,487		804,487	3,816,978	12,598	3,829,576
Kentucky	16,798,451	47,905	16,846,356	2,924,211		2,924,211	13,874,240	47,905	13,922,145
Louisiana	21,222,160	55,927	21,278,087	3,694,274		3,694,274	17,527,886	55,927	17,583,813
Maine	2,599,954	7,234	2,607,188	452,590		452,590	2,147,364	7,234	2,154,598
Maryland	15,269,819	41,359	15,311,178	2,658,113		2,658,113	12,611,706	41,359	12,653,065
Massachusetts	15,775,499	42,821	15,818,320	2,746,140		2,746,140	13,029,359	42,821	13,072,180
Michigan	28,899,538	80,711	28,980,249	5,030,724		5,030,724	23,868,814	80,711	23,949,525
Minnesota	8,623,538	23,477	8,647,015	1,501,153		1,501,153	7,122,385	23,477	7,145,862
Mississippi	12,825,657	34,454	12,860,111	2,232,642		2,232,642	10,593,015	34,454	10,627,469
Missouri	13,734,131	38,157	13,772,288	2,390,786		2,390,786	11,343,345	38,157	11,381,502
Montana	1,586,432	4,210	1,590,642	276,160		276,160	1,310,272	4,210	1,314,482
Nebraska	2,406,131	6,467	2,412,598	418,850		418,850	1,987,281	6,467	1,993,748
Nevada	14,017,016	37,543	14,054,559	2,440,030		2,440,030	11,576,986	37,543	11,614,529
New Hampshire	1,776,723	4,742	1,781,465	309,285		309,285	1,467,438	4,742	1,472,180
New Jersey	31,170,385	86,388	31,256,773	5,426,024		5,426,024	25,744,361	86,388	25,830,749
New Mexico*	17,798,250	36,863	17,835,113	3,098,253		3,098,253	14,699,997	36,863	14,736,860
New York	50,835,990	138,963	50,974,953	8,849,338		8,849,338	41,986,652	138,963	42,125,615
North Carolina	29,115,622	81,401	29,197,023	5,068,338		5,068,338	24,047,284	81,401	24,128,685
North Dakota	825,733	2,190	827,923	143,741		143,741	681,992	2,190	684,182
Ohio	38,626,510	107,013	38,733,523	6,723,958		6,723,958	31,902,552	107,013	32,009,565
Oklahoma	7,581,568	20,835	7,602,403	1,319,771		1,319,771	6,261,797	20,835	6,282,632
Oregon	11,256,414	31,475	11,287,889	1,959,474		1,959,474	9,296,940	31,475	9,328,415
Pennsylvania	51,069,267	144,348	51,213,615	8,889,946		8,889,946	42,179,321	144,348	42,323,669
Puerto Rico	57,906,791	(2,677,483)	55,229,308	10,080,197		10,080,197	47,826,594	(2,677,483)	45,149,111
Rhode Island	3,965,517	11,142	3,976,659	690,302		690,302	3,275,215	11,142	3,286,357
South Carolina	14,906,311	41,841	14,948,152	2,594,835		2,594,835	12,311,476	41,841	12,353,317
South Dakota	1,177,885	3,137	1,181,022	205,042		205,042	972,843	3,137	975,980
Tennessee	18,173,009	51,523	18,224,532	3,163,489		3,163,489	15,009,520	51,523	15,061,043
Texas	61,050,104	167,532	61,217,636	10,627,373		10,627,373	50,422,731	167,532	50,590,263
Utah*	4,319,231	11,854	4,331,085	751,875		751,875	3,567,356	11,854	3,579,210
Vermont	866,255	2,319	868,574	150,795		150,795	715,460	2,319	717,779
Virginia	13,826,714	37,720	13,864,434	2,406,902		2,406,902	11,419,812	37,720	11,457,532
Washington	26,650,470	72,222	26,722,692	4,639,214		4,639,214	22,011,256	72,222	22,083,478
West Virginia	9,766,567	20,228	9,786,795	1,700,127		1,700,127	8,066,440	20,228	8,086,668
Wisconsin	11,437,989	31,742	11,469,731	1,991,082		1,991,082	9,446,907	31,742	9,478,649
Wyoming	1,087,106	2,964	1,090,070	189,239		189,239	897,867	2,964	900,831
State total	1,038,970,000		1,038,970,000	180,860,000		180,860,000	858,110,000		858,110,000

*Includes funds allocated to the Navajo Nation.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–09912 Filed 5–7–20; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Michigan

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit payment status under the EB program for Michigan.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202) 693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

The following change has occurred since the publication of the last notice regarding Michigan's EB status:

• Michigan's 13-week insured unemployment rate (IUR) for the week ending April 11, 2020 was 5.10 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Michigan to be triggered ''on'' to an EB period that began April 26, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor.

In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–09911 Filed 5–7–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Connecticut

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit payment status under the EB program for Connecticut.

The following change has occurred since the publication of the last notice regarding Connecticut's EB status:

Connecticut's 13-week insured unemployment rate (IUR) for the week ending April 11, 2020 was 5.09 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Connecticut to be triggered ''on'' to an EB period that began April 26, 2020. The State will remain in an EB period for a minimum of 13 weeks.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202) 693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

SUPPLEMENTARY INFORMATION: The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–09913 Filed 5–7–20; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: LIGO Annual Review of Operations Virtual Site Visit for the Division of Physics (1208).

Date and Time: June 16, 2020; 7:00 a.m.–4:00 p.m.

Place: California Institute of Technology, 1200 E California Blvd., Pasadena, CA 91125.

Type of Meeting: Part-Open.

Contact Person: Mark Coles, Program Director, Division of Physics, National Science Foundation, 2415 Eisenhower Avenue, Room W 9219, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda (All Times PDT)

7:00 a.m.–7:30 a.m.
Executive Session (Closed)
7:30 a.m.–8:30 a.m.
Operations and Maintenance, Management
8:30 a.m.–9 00 a.m.
Interferometer Performance Enhancements
9:00 a.m.–9:10 a.m.
Break
9:10 a.m.–9:40 a.m.
EPO
9:40 a.m.–10:00 a.m.
A+ Upgrade
10:00 a.m.–10:30 a.m.
LSC
10:30 a.m.–11:00 a.m.
LIGO Computing and LSC
11:00 a.m.–11:30 a.m.
Lunch
11:30 a.m.–12:30 p.m.
Q&A
12:30 p.m.–2:00 p.m.
Executive Session (Closed)
2:00 p.m.–4:00 p.m.
Closeout presentation summary by panel

Reason for Closing: The work being reviewed during closed portions of the virtual site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 5, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–09902 Filed 5–7–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Environmental Impact Statement (EIS) for Interim Storage Partners' (ISP's) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than Class C (GTCC) waste, along with a small quantity of mixed oxide fuel. The proposed CISF would be located on an approximately 130-hectare (320-acre) site, within the approximately 5,666-hectare (14,000-acre) Waste Control Specialists (WCS) site in Andrews County, Texas. The proposed action is the issuance of an NRC license authorizing a CISF to store up to 5,000 metric tons of uranium (MTUs) [5,500 short tons] of SNF for a license period of 40 years. ISP plans to subsequently request amendments to the license to store an additional 5,000 MTU for each of seven expansion phases of the

proposed CISF (a total of eight phases), to be completed over the course of 20 years. The proposed facility could eventually store up to 40,000 MTUs [44,000 short tons] of SNF.

DATES: The NRC staff will hold public meetings on the draft EIS. The public meeting details will be announced in the near future. The staff will present the preliminary findings and receive public comments during these transcribed public meetings.

In reaction to the COVID–19 public health emergency, the NRC staff is providing an extended period of time for members of the public to submit comments on the draft EIS. Members of the public are invited to submit comments by September 4, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received by this date.

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–2016–0231. Address questions about NRC Docket IDs 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, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Email comments to: WCS_CISF_EIS@nrc.gov.*

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: James Park, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6954; email: *James.Park@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0231. An electronic copy of the draft EIS will be posted under Docket ID NRC–2016–0231 as supporting material.
- *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 draft EIS is available in ADAMS under Accession No. ML20122A220.
- *Project Webpage:* Information related to the ISP CISF project can be accessed on the NRC's ISP CISF web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html.*
- *Public Libraries:* A copy of the draft EIS will be made accessible at the following public libraries:
- Eunice Public Library, 1003 Ave. N, Eunice, NM 88231
- Hobbs Public Library, 509 N Shipp St., Hobbs, NM 88240
- Andrews County Library, 109 NW 1st Street, Andrews, TX 79714

A weblink to the electronic copy of the draft EIS will be placed on the Hobbs Public Library website, *http://www.hobbspubliclibrary.org/,* under ''News & Updates'' on that site.

B. Submitting Comments

Please include Docket ID NRC–2016–0231 in your comment submission. Written comments may be submitted during the draft EIS comment period as described in the **ADDRESSES** section of the document.

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. Discussion

The NRC is issuing for public comment the draft EIS for an application from ISP requesting a license that would authorize ISP to construct and operate a CISF for SNF and GTCC waste, along with a small quantity of mixed-oxide fuel, which are collectively referred to in the EIS as SNF, and composed primarily of spent uranium-based fuel.

The draft EIS for ISP's license application includes the NRC staff's preliminary analysis that evaluates the environmental impacts of the proposed action and the No-Action alternative to the proposed action. After comparing the impacts of the proposed action to those of the No-Action alternative, the NRC staff, in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations,* recommends the proposed action, which is the issuance of an NRC license to ISP to construct and operate a CISF at the proposed location to temporarily store up to 5,000 MTUs [5,500 short tons] of SNF for a licensing period of 40 years. This recommendation is based on (i) the ISP license application, which includes an environmental report and supplemental documents, and ISP's responses to the NRC staff's requests for additional information; (ii) the NRC staff's consultation with Federal, State, Tribal, local agencies, and input from other stakeholders; (iii) the NRC staff's independent staff review; and (iv) the NRC staff's assessments provided in the EIS.

Dated: May 4, 2020.

For the Nuclear Regulatory Commission.

Cinthya I. Roman-Cuevas,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2020–09795 Filed 5–7–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Tornado Missile Protection for Main Steam Vent Stacks and Wall 11

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing License Amendment No. 178 for Unit 3 and No. 177 for Unit 4 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively, the licensees, for which SNC has the authority to represent the licensees), for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

DATES: The amendments were issued on April 23, 2020.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. 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, 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. The request for the amendment was submitted by letter dated August 16, 2019, and supplemented February 14, 2020, and available in ADAMS under Accession Nos. ML19228A241 and ML20045D590, respectively.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing VEGP Units 3 and 4 License Amendment Nos. 178 and 177 to COLs NPF–91 and NPF–92, respectively. With the requested amendments, SNC proposed changes to the description and analysis in the Updated Final Safety Analysis Report (UFSAR) of the auxiliary building main steam safety valve (MSSV) vent stack openings and the auxiliary building Wall 11 openings for protection from tornado-generated missiles for both units. SNC stated that the changes include the evaluation of horizontal missiles targeting the MSSV vent stacks, the evaluation of vertical missiles targeting the MSSV vent stack openings, and the evaluation of missiles targeting the auxiliary building Wall 11 openings. SNC stated that the evaluations demonstrate that the tornado missiles will not prevent safe shutdown and will not result in an offsite release exceeding the limits defined in title 10 of the *Code of Federal Regulations* (10 CFR) 50.34.

SNC indicated that the requested amendment requires changes to the licensing basis documents for VEGP Units 3 and 4 in the form of departures from the plant-specific Design Control Document (DCD) Tier 2 information as incorporated into the UFSAR. SNC stated that no change was made to Tier 1, Tier 2*, or COL information; that this change involves a revision to plant-specific Tier 2 information that meets the criteria for a license amendment under 10 CFR part 52, appendix D, Section VIII.B.5.b(8), in that it was determined that the proposed change would result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses, and thus requires NRC approval for the Tier 2 departures.

II. License Amendment Request

By letter dated August 16, 2019, and supplemented February 14, 2020, available in ADAMS under Accession Nos. ML19228A241 and ML20045D590, respectively, SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

As documented in an SE dated April 23, 2020 (ADAMS Accession No. ML20050L183), the Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 22, 2019 (84 FR 56478). No comments were received during the 30-day comment period.

As documented in the SE, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

III. Conclusion

Using the reasons set forth in the combined SE, the staff approved the amendment and it was issued to SNC on April 23, 2020, as part of a combined package (ADAMS Package Accession No. ML20050J685).

Dated: May 5, 2020.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Vogtle Project Office Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–09894 Filed 5–7–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 11, 18, 25, June 1, 8, 15, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of May 11, 2020

There are no meetings scheduled for the week of May 11, 2020.

Week of May 18, 2020—Tentative

There are no meetings scheduled for the week of May 18, 2020.

Week of May 25, 2020—Tentative

There are no meetings scheduled for the week of May 25, 2020.

Week of June 1, 2020—Tentative

There are no meetings scheduled for the week of June 1, 2020.

Week of June 8, 2020—Tentative

There are no meetings scheduled for the week of June 8, 2020.

Week of June 15, 2020—Tentative

There are no meetings scheduled for the week of June 15, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 6, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–10047 Filed 5–6–20; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–128 and CP2020–135; MC2020–129 and CP2020–136]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 12, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–128 and CP2020–135; *Filing Title:* USPS Request to Add Parcel Return Service Contract 18 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 4, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 12, 2020.

2. *Docket No(s).:* MC2020–129 and CP2020–136; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 146 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 4, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 12, 2020.

This Notice will be published in the **Federal Register.**

Erica A. Barker,

Secretary.

[FR Doc. 2020–09888 Filed 5–7–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88806; File No. 10–237]

In the Matter of the Application of MEMX LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission

May 4, 2020.

I. Introduction and Procedural History

On September 9, 2019, MEMX LLC (''MEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Act''), seeking registration as a national securities exchange under Section 6 of the Act.[1] On October 23, 2019, MEMX submitted Amendment No. 1 to the application.[2] Notice of the application, as amended, was published for comment in the **Federal Register** on November 6, 2019.[3] In a letter dated January 31, 2020, MEMX consented to an extension of time for up to an additional 30 days from the date of publication of notice of its Form 1 application.[4] On February 26, 2020, MEMX submitted Amendment No. 2 to the application.[5] On March 3, 2020, MEMX consented to another 30-day extension of time.[6] The Commission received three comments on the application, along with two response letters from MEMX.[7] On March 26, 2020, MEMX consented to another 30-day extension of time.[8] On April 27, 2020, MEMX submitted Amendment No. 3 to the application.[9]

The Commission has reviewed the Exchange's registration application, as amended, together with the comment letters received, in order to make a determination whether to grant such registration. For the reasons set forth below, and based on the representations set forth in MEMX's Form 1, as amended, this order approves MEMX's Form 1 application, as amended, for registration as a national securities exchange.

II. Statutory Standards

Pursuant to Sections 6(b) and 19(a) of the Act,[10] the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.[11]

As discussed in greater detail below, the Commission finds that MEMX's application, as amended, for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of MEMX are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) Assure fair representation of the exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; [12] (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system; [13] (3) not permit unfair discrimination between customers, issuers, or dealers; [14] and (4) protect investors and the public interest.[15] The Commission also finds that the proposed rules of MEMX are consistent with Section 11A of the Act.[16] Finally, the Commission finds that MEMX's proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[17]

III. Discussion

A. Governance of MEMX

MEMX will be owned directly or indirectly by MEMX Holdings LLC (''MEMX Holdings''), a Delaware limited liability company. Specifically, MEMX Holdings will directly own 99.5% of the equity of MEMX and indirectly hold the remaining .5% of the equity of MEMX through its 100% ownership of MEMX SubCo LLC (''SubCo''). In turn, MEMX Holdings is owned by a group of investors that include broker-dealers and banks.

1. MEMX Board of Directors

The board of directors of MEMX (''Exchange Board'') [18] will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of MEMX as a self-regulatory organization (''SRO'').[19] Specifically:

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[1] 15 U.S.C. 78f. *See also* 15 U.S.C. 78s(a)(1) (stating that the Commission shall, ''[w]ithin ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents),'' grant the registration or institute proceedings to determine whether the registration should be denied).

[2] *See* Letter to Vanessa Countryman, Secretary, Commission, from Anders Franzon, General Counsel, MEMX, dated October 23, 2019. In Amendment No. 1, MEMX submitted updated portions of its Form 1, including revised Exhibits A–5 (Second Amended and Restated LLC Agreement of MEMX LLC), B (Rules of MEMX), C–2 (Third Amended and Restated LLC Agreement of MEMX Holdings, LLC), and C–4 (Amended and Restated LLC Agreement of MEMX SubCo LLC).

[3] *See* Securities Exchange Act Release No. 87436 (October 31, 2019), 84 FR 59854 (''Notice'').

[4] *See* Letter to Brett Redfearn, Director, Division of Trading and Markets, Commission, from Anders Franzon, General Counsel, MEMX, dated January 31, 2020, *available at https://www.sec.gov/comments/10-237/10237-6741997-207764.pdf. See also supra* note 1 (discussing the time for Commission action following publication of notice of an application for exchange registration).

[5] *See* Letter to Vanessa Countryman, Secretary, Commission, from Anders Franzon, General Counsel, MEMX, dated February 26, 2020, *available at https://www.sec.gov/rules/other/2019/memx/memx-form-1.htm.* In Amendment No. 2, MEMX updated portions of its Form 1, including revised Exhibits A–5 (Second Amended and Restated Limited Liability Company Agreement of MEMX), B (Rules of MEMX), C, C–2 (Fourth Amended and Restated Limited Liability Company Agreement of MEMX Holdings), C–6 (First Amended and Restated Limited Liability Company Agreement of MEMX Technologies LLC), J, and K.

[6] *See* Letter to Brett Redfearn, Director, Division of Trading and Markets, Commission, from Anders Franzon, General Counsel, MEMX, dated March 3, 2020, *available at https://www.sec.gov/comments/10-237/10237-6915230-211271.pdf.*

[7] Comments received in response to the Notice, and MEMX's responses thereto, are available at *https://www.sec.gov/comments/10-237/10-237.htm.*

[8] *See* Letter to Brett Redfearn, Director, Division of Trading and Markets, Commission, from Anders Franzon, General Counsel, MEMX, dated March 26, 2020, *available at https://www.sec.gov/comments/10-237/10237-7000570-214790.pdf.*

[9] *See* Letter to Vanessa Countryman, Secretary, Commission, from Anders Franzon, General Counsel, MEMX, dated April 27, 2020, *available at https://www.sec.gov/rules/other/2019/memx/memx-form-1.htm.* In Amendment No. 3, MEMX updated Exhibit A–5 (Second Amended and Restated Limited Liability Company Agreement of MEMX).

[10] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

[11] *See also supra* note 1 (discussing the time for Commission action following publication of notice of an application for exchange registration).

[12] *See* U.S.C. 78f(b)(3).

[13] *See* U.S.C. 78f(b)(5).

[14] *See id.*

[15] *See id.*

[16] 15 U.S.C. 78k–1.

[17] 15 U.S.C. 78f(b)(8).

[18] A Director may not be subject to statutory disqualification. *See* Second Amended and Restated Limited Liability Company Agreement of MEMX (''MEMX LLC Agreement''), Article VII, Section 7.6(d).

[19] *See* MEMX LLC Agreement, Article VII, Section 7.2. *See also* Form 1, Exhibit J.

- The Exchange Board initially will be composed of 10 directors; [20]
- one director will be the Chief Executive Officer of MEMX; [21]
- the number of Non-Industry Directors [22] will equal or exceed the sum of the Industry Directors [23] and Member Representative Directors; [24]
- at least two of the Non-Industry Directors shall also qualify as Independent Directors; [25]
- at least one of the Non-Industry Directors shall be representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer; and
- at least 20% of the directors on the Exchange Board will be Member Representative Directors.[26]

The initial directors of the Exchange Board will be appointed by MEMX Holdings and will serve until the first annual meeting of Company Members.[27] The first annual meeting of Company Members will be held within 90 days after the Commission grants MEMX's exchange registration.[28]

In addition, MEMX Holdings will appoint the initial Nominating Committee and Member Nominating Committee, consistent with each committee's compositional requirements, to nominate candidates for election to the Exchange Board.[29] The Nominating Committee and Member Nominating Committee, after completion of their respective duties for nominating directors for election to the Board for that year, will recommend candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.[30] MEMX members will have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.[31]

The Nominating Committee will nominate candidates for election to the Board.[32] For Member Representative Director positions, the Member Nominating Committee, composed solely of Member Representative Committee or Panel Members,[33] will solicit input from MEMX members and members may submit petition candidates.[34] If no candidates are nominated pursuant to a petition process, then the initial nominees approved and submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee.[35] If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to MEMX members for election to determine the final designees for any open Member Representative Director positions.[36] In the event of a contested election, the candidates who receive the most votes will be selected as the Member Representative Director designees by the Member Nominating Committee.[37]

The Commission believes that the MEMX governance provisions are consistent with the Act. In particular, the Commission believes that the requirement that the number of Member Representative Directors must be at least 20% of the Board and the means by which they will be chosen by MEMX members provides for the fair representation of members in the selection of directors and the administration of MEMX and therefore are consistent with Section 6(b)(3) of the Act.[38] As the Commission has previously noted, this requirement helps to ensure that members have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[39]

In addition, with respect to the requirements that the number of Non-Industry Directors equal or exceed the sum of the number of Industry Directors and Member Representative Directors, that at least two Non-Industry Directors shall also qualify as Independent Directors, and that at least one of the Non-Industry Directors shall be representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer, the Commission believes that the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,[40] which require in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.[41]

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[20] *See* MEMX LLC Agreement, Article VII, Section 7.3(a).

[21] *See* MEMX LLC Agreement, Article VII, Section 7.3(b)(i).

[22] ''Non-Industry Director'' means a Director who is an Independent Director or any other individual who would not be an Industry Director. *See* MEMX LLC Agreement, Article I, Section 1.1.

[23] ''Industry Director'' means, among other criteria, a Director who is or has been within the prior three years an officer, director or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer. *See* MEMX LLC Agreement, Article I, Section 1.1., for a description of all of the circumstances regarding when a Director would be considered an Industry Director.

[24] *See* MEMX LLC Agreement, Article VII, Section 7.3(b)(ii)(A). ''Member Representative Director'' means a Director who has been appointed as such to the initial Exchange Board pursuant to Section 7.4 of the MEMX LLC Agreement or elected by MEMX Holdings after having been nominated by the Member Nominating Committee or by an Exchange member pursuant to the MEMX LLC Agreement and confirmed as the nominee of Exchange members after majority vote of Exchange members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange member that is not a Unitholder Exchange Member. *See* MEMX LLC Agreement, Article I, Section 1.1.

[25] ''Independent Director'' means a Director who has no material relationship with the Exchange or any affiliate of the Exchange or any Exchange Member or any affiliate of any Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of MEMX or MEMX Holdings. *See* MEMX LLC Agreement, Article I, Section 1.1.

[26] *See* MEMX LLC Agreement, Article VII, Section 7.3(b)(ii)(B). *See also* Amendment No. 3, supra note 9 (in which MEMX amended Section 7.3(b)(ii).

[27] *See* MEMX LLC Agreement, Article VII, Section 7.3(f). ''Company Members'' means MEMX Holdings and SubCo. *See* MEMX LLC Agreement, Article I, Section 1.1.

[28] *See* MEMX LLC Agreement, Article VII, Section 7.3(f).

[29] *See* MEMX LLC Agreement, Article VIII, Section 8.7(b).

[30] *See id.*

[31] *See* MEMX LLC Agreement, Article VII, Section 7.4

[32] *See* MEMX LLC Agreement, Article VII, Section 7.4(a).

[33] ''Member Representative Committee or Panel Members'' means a member of any Committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Unitholder Exchange Member. *See* MEMX LLC Agreement, Article I, Section 1.1.

[34] *See* MEMX LLC Agreement, Article VII, Section 7.4(a). *See also* MEMX LLC Agreement, Article VII, Section 8.7(c).

[35] *See* MEMX LLC Agreement, Article VII, Section 7.4(e).

[36] *See id.*

[37] *See* MEMX LLC Agreement, Article VII, Section 7.4(f).

[38] 15 U.S.C. 78f(b)(3).

[39] *See, e.g.,* Securities Exchange Act Release Nos. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10–234) (order granting registration of Long Term Stock Exchange, Inc.) (''LTSE Order''); 79543 (December 13, 2016), 81 FR 92901, 92903 (December 20, 2016) (File No. 10–227) (order granting registration of MIAX PEARL, LLC) (''MIAX PEARL Order''); 68341 (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (File No. 10–207) (order granting the registration of Miami International Securities Exchange, LLC (''MIAX Exchange'')) (''MIAX Order''); 58375 (August 18, 2008), 73 FR 49498, 49501 (August 21, 2008) (File No. 10–182) (order granting the registration of BATS Exchange, Inc.) (''BATS Order''); and 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10–131) (granting the exchange registration of Nasdaq Stock Market, Inc.) (''Nasdaq Order'').

[40] 15 U.S.C. 78f(b)(3).

[41] *See, e.g.,* LTSE Order, *supra* note 39, at 21843; MIAX PEARL Order, *supra* note 39, at 92903; MIAX Order, *supra* note 39, at 73067; BATS Order, *supra* note 39, at 49501; and Nasdaq Order, *supra* note 39, at 3553.

Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unbiased perspectives, which may enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.

2. Interim Board

MEMX Holdings will hold a special meeting to appoint Interim Directors of the Board (''Interim Board''), which will include Interim Member Representative Directors.[42] Upon appointment of the Interim Directors, the Interim Board will meet the Board composition requirements set forth in the MEMX LLC Agreement.[43] The Interim Board members will serve only until the first annual meeting of Company Members, which will be held within 90 days after the Commission grants the Exchange's registration as a national securities exchange.[44] The Exchange represents that it will complete the full nomination, petition, and voting process set forth in the MEMX LLC Agreement, which will provide persons that are approved as MEMX members after the date that the Commission grants the Exchange's registration as a national securities exchange with the opportunity to participate in the selection of Member Representative Directors as promptly as possible after the effective date of the MEMX LLC Agreement.[45]

3. Exchange Committees

MEMX has proposed to establish several named committees of the Exchange Board, including: An Appeals Committee[46] and a Regulatory Oversight Committee,[47] as well as the Nominating Committee and Member Nominating Committee, discussed above.[48]

The Appeals Committee will consist of two Independent Directors, and one Member Representative Director.[49] Each member of the Regulatory Oversight Committee must be an Independent Director.[50]

The Commission believes that the MEMX proposed named committees, which are similar to the named committees maintained by other exchanges,[51] are designed to help enable the Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[52]

B. MEMX Holdings and Regulation of the Exchange

When MEMX commences operations as a national securities exchange, it will have all of the attendant regulatory obligations under the Act. In particular, MEMX will be responsible for the operation and regulation of its trading system and the regulation of its members. The Commission believes that certain provisions in both the MEMX and MEMX Holdings governing documents are designed to facilitate the ability of MEMX to fulfill its regulatory obligations and to help facilitate Commission oversight of MEMX. The discussion below summarizes some of these key provisions.

1. Ownership Structure; Ownership and Voting Limitations

As stated above, MEMX will be owned directly or indirectly by MEMX Holdings. The proposed Fourth Amended and Restated Limited Liability Company Agreement of MEMX Holdings (''MEMX Holdings LLC Agreement'') includes restrictions on the ability to own and vote units representing a fractional part of the interest in MEMX Holdings (''Units'').[53] These limitations are designed to prevent any party to the MEMX Holdings LLC Agreement from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as MEMX Holdings shall control, directly or indirectly, MEMX, no person,[54] either alone or together with its related persons,[55] will be permitted to beneficially own, directly or indirectly, of record or beneficially, shares constituting more than 40% of any class of Units.[56] A more restrictive condition will apply to the broker-dealer members of the Exchange, who will be prohibited from beneficially owning, directly or indirectly, either alone or together with their related persons, more than 20% of any class of Units.[57] If any party to the MEMX Holdings LLC Agreement purports to transfer[58] any Units or Unit Equivalents[59] in violation of these ownership limits, MEMX Holdings will be required (to the extent funds are legally available) to redeem the Units in excess of the applicable ownership limit.[60]

[42] *See* Form 1, Exhibit J.

[43] *See id. See also* MEMX LLC Agreement, Article VII, Section 7.3.

[44] *See* MEMX LLC Agreement, Article VII, Section 7.3(f).

[45] *See* Form 1, Exhibit J.

[46] *See* MEMX LLC Agreement, Article VIII, Section 8.1. The Appeals Committee will preside over all appeals related to disciplinary and adverse action determinations in accordance with MEMX rules. *See* MEMX LLC Agreement, Article VIII, Section 8.6.

[47] *See* MEMX LLC Agreement, Article VIII, Section 8.1. The Regulatory Oversight Committee will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the Chief Regulatory Officer and for recommending personnel actions involving the Chief Regulatory Officer and senior regulatory personnel. *See* MEMX LLC Agreement, Article VIII, Section 8.8(c).

[48] The Exchange Board could also establish additional committees. *See* MEMX LLC Agreement, Article VIII, Section 8.1. All committees of the Board will be subject to the control and supervision of the Board. *See id.*

[49] *See* MEMX LLC Agreement, Article VIII, Section 8.6.

[50] *See* MEMX LLC Agreement, Article VIII, Section 8.8(e).

[51] *See, e.g.,* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222) (order granting the registration of Investors' Exchange, LLC) (''IEX Order''); Article IV, Section 4.1 of the Eleventh Amended and Restated Bylaws of Cboe Exchange, Inc.

[52] 15 U.S.C. 78f(b)(1).

[53] ''Unit'' is defined in Article I, Section 1.1 of the MEMX Holdings LLC Agreement. These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. *See, e.g.,* IEX Order, *supra* note 51, and LTSE Order, MIAX PEARL Order, MIAX Order, and BATS Order, *supra* note 39; *see also* Securities Exchange Release Nos. 6068 (February 4, 2016) (File No. 10–221) (order granting exchange registration of ISE Mercury, LLC) (''ISE Mercury Order''); 70050 (July 26, 2013), 78 FR 46622, 46624 (August 1, 2013) (File No. 10–209) (order granting the exchange registration of ISE Gemini, LLC) (''ISE Gemini Order''); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE–2008–88) (Cboe demutualization order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR–NSX–2006–03) (NSX demutualization order); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26) (CHX demutualization order); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003–73) (Phlx demutualization order).

[54] *See* MEMX Holdings LLC Agreement, Article I, Section 1.1 (defining ''Person'').

[55] *See id.* (defining ''Related Persons'').

[56] *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(i). There are limited exceptions to these prohibitions. *See infra* notes 64–66 and accompanying text.

[57] *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(ii). This restriction, unlike others discussed below (*see infra* note 64 and accompanying text), cannot be waived. *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(b)(ii).

[58] *See* MEMX Holdings LLC Agreement, Article I, Section 1.1 (defining ''transfer'' in this context).

[59] *See id.* (defining ''Unit Equivalents'').

[60] *See* MEMX Holdings LLC Agreement, Article III, Section 3.7(c). The price of the redeemed Units or Unit Equivalents is also prescribed in the MEMX Holdings LLC Agreement. *See id.* The number of Units or Unit Equivalents to be redeemed is to be calculated after taking into account that the redeemed Units or Unit Equivalents will become treasury shares and will no longer be deemed to be outstanding. *See id.* It is further provided in the

Continued

In addition, no person, alone or together with its related persons, may, directly, indirectly, or pursuant to any agreement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than 20% of the voting power of the then issued and outstanding Units (''Voting Limitation'').[61] Further, no person, either alone or together with its related persons, under circumstances that would result in the Units that are subject to such agreement, plan, or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other arrangement would be to enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of Units that would represent more than 20% of the voting power of the then issued and outstanding Units.[62]

The MEMX Holdings Board will be permitted to waive the 40% ownership limitation and the 20% Voting Limitation pursuant to a resolution duly adopted by the MEMX Holdings Board by Supermajority Board Vote,[63] if it makes certain determinations.[64] Any such waiver will not be effective unless and until approved by the Commission.[65]

Any person that proposes to own Units in excess of the 40% ownership limitation, or to vote or grant any proxies or consents with respect to Units constituting more than 20% of the voting power of the then outstanding Units, will be required to deliver written notice to the MEMX Holdings Board of its intention.[66] The notice must be delivered to the MEMX Holdings Board not less than 45 days (or any shorter period to which the Board expressly consents) before the proposed ownership of such Units or the proposed vote.[67]

The MEMX Holdings LLC Agreement also contains provisions that are designed to further safeguard the ownership and voting limitations described above, or are otherwise related to direct and indirect changes in control. Specifically, any person that, either alone or together with its related persons beneficially owns, directly or indirectly (whether by acquisition or a change in the number of Units outstanding), of record or beneficially 5% or more of the then outstanding Units will be required to notify the MEMX Holdings Board in writing of such ownership.[68] Thereafter, such persons will be required to update MEMX Holdings of any increase or decrease of 1% or more in their previously reported ownership percentage.[69] Further, in the event of a merger or affiliation between MEMX Holdings members, the surviving member or surviving affiliated group will (1) if both such members had nominated a director that is serving on the MEMX Holdings Board at the time of their merger or affiliation, remove or cause the removal of one of such directors effective upon the consummation of such merger or affiliation, and (2) thereafter have the right to nominate only one director and the number of directors shall be reduced accordingly.[70]

The Exchange's LLC Agreement does not include the same change of control provisions that are present in the MEMX Holdings LLC Agreement because the MEMX LLC Agreement instead explicitly identifies its owners (MEMX Holdings and SubCo) by name as the Company Members of MEMX.[71] Thus, any changes in the ownership of MEMX would require the MEMX LLC Agreement to be amended. Any amendment to the MEMX LLC Agreement, including to ownership of the Exchange, would constitute a proposed rule change under Section 19(b) of the Act[72] and Rule 19b–4[73] thereunder that will be required to be filed with, or filed with and approved by, the Commission.[74] Moreover, pursuant to the MEMX LLC Agreement itself, any transfer of limited liability company interests of MEMX will be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act.[75]

Although MEMX Holdings is not directly responsible for regulation, its activities with respect to the operation of MEMX must be consistent with, and must not interfere with, the self-regulatory obligations of MEMX.[76] As described above, the provisions applicable to direct and indirect

MEMX Holdings LLC Agreement that any Units or Unit Equivalents that have been called for redemption may not be deemed outstanding Units or Unit Equivalents if a sum sufficient to redeem the Units or Unit Equivalents has been irrevocably deposited or set aside to pay the redemption price. From and after the redemption date (unless MEMX Holdings defaults in providing funds for the payment of the redemption price), the redeemed Units or Unit Equivalents that have been redeemed will become treasury shares, and all rights of the holder of the redeemed Units or Unit Equivalents in MEMX Holdings (except the right to receive from MEMX Holdings the redemption price against delivery to MEMX Holdings of evidence of ownership of the shares) will cease. *See id.* In addition, in the event that any redemption has resulted in any person owning such number of Units or Unit Equivalents that is in violation of the ownership limits, MEMX Holdings will be required to redeem those Units or Unit Equivalents pursuant to the limitation provisions. *See id.*

[61] *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(iii).

[62] *See id.* In addition, the quorum requirements of the MEMX Holdings board of directors (''MEMX Holdings Board'') will require the presence of (1) a Market Maker Director, (2) a Bank Director, and (3) a Retail Broker Director. *See* MEMX Holdings LLC Agreement, Article VIII, Section 8.6(a)(i). *See also* MEMX Holdings LLC Agreement, Article I, Section 1.1 (defining Market Maker Director, Bank Director, and Retail Broker Director). The Commission believes that this quorum provision will guard against undue influence over the affairs of MEMX Holdings by any particular category of MEMX Holdings investor.

[63] *See* MEMX Holdings LLC Agreement, Article I, Section 1.1 (defining ''Supermajority Board Vote'').

[64] *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(b)(ii). *See also supra* note 57 (concerning the inability to waive restrictions for broker-dealer members of the Exchange.) The required determinations are that such waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder; that such waiver is otherwise in the best interests of MEMX Holdings, its stockholders, and the Exchange; that such waiver will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and that such Person and its Related Persons are not subject to any applicable ''statutory disqualification'' within the meaning of Section 3(a)(39) of the Act. *See id. See also* MEMX Holdings LLC Agreement, Article III, Section 3.5(c). These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. *See, e.g.,* IEX Order, *supra* note 51, ISE Mercury Order and ISE Gemini Order, *supra* note 53; LTSE Order, MIAX PEARL Order, MIAX Order, and BATS Order, *supra* note 39; and Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order approving DirectEdge exchanges) (''DirectEdge Exchanges Order'').

[65] *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(b)(ii).

[66] *See* MEMX Holdings LLC Agreement, Article III, Section 3.5(d).

[67] *See id.*

[68] *See* MEMX Holdings LLC Agreement, Article III, Section 3.6(a). The notice will require the Person's full legal name; the Person's title or status and the date on which such title or status was acquired; the Person's and its Related Person's) approximate ownership interest in MEMX Holdings; and whether the person has power, directly or indirectly, to direct the management or policies of MEMX Holdings, whether through ownership of securities, by contract or otherwise. *See id.*

[69] *See* MEMX Holdings LLC Agreement, Article III, Section 3.6(b). Changes of less than 1% must also be reported to MEMX Holdings if they result in such Person crossing a 20% or 40% ownership threshold. *See id.* In addition, the Exchange's rules also impose limits on affiliation between the Exchange and a member of the Exchange. *See* MEMX Rule 2.10 (No Affiliation between Exchange and any Member).

[70] *See* MEMX Holdings LLC Agreement, Article VIII, Section 8.17(a). *See also* MEMX LLC Agreement, Article VII, Section 7.3(c)(v); and *supra* note 5 (concerning Amendment No. 2).

[71] *See* MEMX LLC Agreement, Schedule 1.

[72] 15 U.S.C. 78s(b).

[73] 17 CFR 240.19b–4.

[74] *See* MEMX LLC Agreement, Article XIX, Section 19.2.

[75] *See* MEMX LLC Agreement, Article XV, Section 15.1(a).

[76] *See, e.g.,* IEX Order, *supra* note 51.

changes in control of MEMX Holdings and MEMX, as well as the voting limitation imposed on owners of MEMX Holdings who also are MEMX members, are designed to help prevent any owner of MEMX Holdings from exercising undue influence or control over the operation of the Exchange and to help ensure that the Exchange retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has noted in the past, a member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.[77] A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, the Commission believes that these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

As noted above, the Commission received two comment letters on MEMX's Form 1 application, one of which addressed the regulatory independence of MEMX. The commenter ''welcomes the prospect of MEMX's entry'' but expressed that it ''hopes and expects that MEMX will [serve the interests of its member-owners] without compromising the broader interest of market participants and, ultimately, of investors.'' [78] The commenter said that it expects the Commission ''will hold the 'Members' Exchange' to the same regulatory standard to which is holds other SROs—which is to act for the benefit of all market participants and investors—rather than for the primary or exclusive benefit of its members.'' [79] In response, MEMX explained that it ''is committing significant resources to its regulatory program by investing in experienced personnel and proven surveillance technology'' and that it ''fully expects that the Commission will regulate MEMX consistent with other SROs and in accordance with the federal securities laws.'' [80]

Potential conflicts of interest arise across different types of exchange ownership structures. Broker-dealer ownership and control of an exchange, which is not novel, presents inherent conflicts of interest when exchanges both regulate their members and serve the commercial interests of their member-owners.[81]

The Commission has recognized that ''to be effective, an SRO must be structured in such a way that regulatory staff is unencumbered by inappropriate business pressure'' that could ''inhibit effective regulation and discourage vigorous enforcement against members.'' [82] To help ensure independent and empowered SRO regulatory operations, MEMX has, among other things, adopted a governance structure designed to mitigate the inherent conflict. Specifically, MEMX has an independent Chief Regulatory Officer that oversees the exchange's regulatory operations and that reports to an independent Regulatory Oversight Committee of the exchange board of directors. In addition, MEMX has a majority independent board of directors with other key independent board committees, such as the Regulatory Oversight Committee.[83]

Ownership and voting limits in the governing documents of the exchange and/or its holding company further protects the status of SRO independence. The provisions that MEMX has proposed, which are consistent with those in place across all exchanges today, are designed to prevent any direct or indirect owner from exercising control over the operation of the exchange as well as to ensure that the exchange and the Commission are able to carry out their regulatory obligations under the Act. These provisions impose limits on voting and ownership of exchange holding companies, with more stringent ownership limits imposed on member owners.[84]

As a registered exchange, MEMX will be subject to the same regulatory standards applicable to any other exchange regardless of the identity of the ultimate owners of that exchange. As discussed above and further below, MEMX has proposed to adopt industry-standard protections in a governance structure for itself and its holding company that is designed to preserve MEMX's self-regulatory independence by protecting MEMX from inappropriate business pressures, and the Commission believes these protections address the concerns raised by the commenter.

Finally, one commenter urged the Commission to consider whether it is ''incongruous'' for the Commission ''to freely permit'' large banks and broker-dealers, which, the commenter says, ''control much of the order flow . . . and which in many cases own or operate their own alternative trading systems,'' to own and operate an exchange without also permitting exchanges to own or operate broker-dealer venues on the same terms as banks and broker-dealers.[85] In response, MEMX noted that it has not proposed to own or operate an alternative trading system.[86] And whether exchanges should be permitted to own or operate broker-dealer venues on the same terms as banks and broker-dealers is beyond

[77] *See, e.g.,* ISE Mercury Order, *supra* note 53, and IEX Order, *supra* note 51; LTSE Order, MIAX PEARL Order, MIAX Order, and BATS Order, *supra* note 39; and DirectEdge Exchanges Order, *supra* note 64.

[78] Letter to Vanessa Countryman, Secretary, Commission, from John A. Zecca, Executive Vice President, Chief Legal Officer, and Chief Regulatory Officer, Nasdaq, Inc., dated December 19, 2019, *available at https://www.sec.gov/comments/10-237/10237-6571115-201079.pdf* (''Nasdaq Letter''), at 1–2.

[79] *Id.* at 2.

[80] Letter to Vanessa Countryman, Secretary, Commission, from Anders Franzon, General Counsel, MEMX, dated January 16, 2020 (''MEMX Letter 1''), at 1–2, *available at https://www.sec.gov/comments/10-237/10237-6668083-203948.pdf.* MEMX noted that while ''it does intend to provide cost savings to the industry,'' the benefit of those savings ''will not be limited to its member-owners or come at the expense of investment into regulatory oversight.'' *Id.* at 1.

[81] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (Concept Release Concerning Self-Regulation). Despite these inherent conflicts of interest, the federal securities laws reflect Congress' determination to rely on ''self-regulation'' as a fundamental component of U.S. market and broker-dealer regulation in which all broker-dealers are required to be members of an SRO that sets standards, conducts examinations, and enforces rules regarding its members. *See id.* at 71256. Among other benefits, self-regulation reduces costs while leveraging the expertise of those most familiar with the nuances of securities industry operations and also allows SROs to set prescriptive standards, including standards that exceed those imposed by the Commission, like business conduct standards. *See id.*

[82] *Id.* Nevertheless, the federal securities laws require member involvement in the overall governance and administration of an exchange. *See, e.g.,* 15 U.S.C. 78f(b)(3) (requiring an exchange, among other things, to provide to its broker-dealer members ''a fair representation of its members in the selection of its directors and administration of its affairs'').

[83] Each member of the Regulatory Oversight Committee will be an Independent Director. *See* Article VIII, Section 8.8(e) of the MEMX LLC Agreement.

[84] *See supra* notes 54–75 and accompanying text.

[85] *See* Nasdaq Letter, *supra* note 78, at 2.

[86] *See* MEMX Letter 1, *supra* note 80, at 1.

the scope of this order, which concerns MEMX's Form 1 application.

The Commission believes that MEMX's and MEMX Holdings' proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[87] In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

2. Regulatory Independence and Oversight

Although MEMX Holdings will not itself carry out regulatory functions, its activities with respect to the operation of MEMX must be consistent with, and must not interfere with, MEMX's self-regulatory obligations. In this regard, MEMX and MEMX Holdings propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of MEMX. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.[88] Specifically:

- The directors, officers, employees, and agents of MEMX Holdings must give due regard to the preservation of the independence of the self-regulatory function of MEMX and to its obligations to investors and the general public and must not take actions which would interfere with the effectuation of decisions by the Exchange Board relating to its regulatory functions (including disciplinary matters) or which would interfere with MEMX's ability to carry out its responsibilities under the Act.[89]
- MEMX Holdings must comply with the federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with the Commission, MEMX, Financial Industry Regulatory Authority, Inc. (''FINRA''), and any other SROs of which MEMX Execution Services LLC (''MEMX ES'') is a member, pursuant to and to the extent of their respective regulatory authority.[90] In addition, MEMX Holdings' officers, directors, employees, and agents must comply with the federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with: (1) The Commission and MEMX in respect of the Commission's oversight responsibilities regarding MEMX and the self-regulatory functions and responsibilities of MEMX; and (2) FINRA, any other SROs of which MEMX ES is a member, and MEMX ES in respect of FINRA's and any such other SRO's oversight responsibilities regarding MEMX ES.[91] MEMX Holdings must take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.[92]
- MEMX Holdings, and its officers, directors, employees, and agents must submit to the jurisdiction of the U.S. federal courts, the Commission, and MEMX, for purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, MEMX activities.[93]
- All books and records of MEMX reflecting confidential information pertaining to the self-regulatory function of MEMX (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by MEMX and its personnel, directors, officers, employees, and agents, and will not be used by MEMX for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any MEMX member) other than to personnel of the Commission, personnel of another self-regulatory organization performing regulatory services on behalf of MEMX, the processor operating pursuant to an effective national market system plan (*i.e.,* the Consolidated Audit Trail processor), and those personnel of MEMX, members of committees of the Exchange Board, members of the Exchange Board, or hearing officers and other agents of MEMX, to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of MEMX.[94] Similar provisions apply to MEMX Holdings and its directors, officers, employees, and agents.[95]
- The books and records of MEMX and MEMX Holdings must be maintained in the United States[96] and, to the extent they are related to the operation or administration of MEMX, MEMX Holdings' books and records will be subject at all times to inspection and copying by the Commission and MEMX.[97]
- Furthermore, to the extent they are related to the operation or administration of MEMX, the books, records, premises, officers, directors, employees, and agents of MEMX Holdings will be deemed to be the books, records, premises, officers, directors, employees, and agents of MEMX, for purposes of, and subject to oversight pursuant to, the Act.[98]
- MEMX Holdings will take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee or agent (as applicable) with MEMX Holdings to consent in writing to the applicability of

[87] 15 U.S.C. 78f(b)(1).

[88] *See, e.g.,* IEX Order, *supra* note 51; LTSE Order and MIAX Order, *supra* note 39; and DirectEdge Exchanges Order, *supra* note 64.

[89] *See* MEMX Holdings LLC Agreement, Article VIII, Section 8.18(b). Similarly, Article VII, Section 7.2(b) of the MEMX LLC Agreement requires the Exchange Board and each Director, when managing the business and affairs of MEMX, to consider the requirements of Section 6(b) of the Act and requires each Director, officer, or employee of MEMX to comply with the federal securities laws and regulations thereunder and cooperate with the Commission, and MEMX pursuant to its regulatory authority. Article VII, Section 7.2(c) of the MEMX LLC Agreement also requires the Exchange Board, when evaluating any proposal to take into account all factors that the Exchange Board deems relevant, to the extent deemed relevant: the potential impact on the integrity, continuity and stability of the national securities exchange operated by MEMX and the other operations of MEMX, on the ability to prevent fraudulent and manipulative acts and practices, and on investors and the public, and whether such proposal would promote just and equitable principles of trade, foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

[90] *See* MEMX Holdings LLC Agreement, Article XI, Section 11.3(h). MEMX ES is a subsidiary of MEMX Holdings that intends to register with the Commission as a broker-dealer and become a member of FINRA. *See id.*

[91] *See id.*

[92] *See id.*

[93] *See* MEMX Holdings LLC Agreement, Article XV, Section 15.12(b).

[94] *See* MEMX LLC Agreement, Article XIII, Section 13.1.

[95] The MEMX Holdings LLC Agreement provides that all books and records of MEMX reflecting confidential information pertaining to the self-regulatory function of MEMX that come into the possession of MEMX Holdings, and the information contained in those books and records, will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. *See* MEMX Holdings LLC Agreement, Article XII, Section 12.2(c). The MEMX and MEMX Holdings governing documents acknowledge that requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such information or limit the ability of officers, directors, employees, or agents of MEMX or MEMX Holdings to disclose such information to the Commission or MEMX. *See* MEMX LLC Agreement, Article XIII, Section 13.1 and MEMX Holdings LLC Agreement, Article XII, Section 12.2(c).

[96] *See* MEMX LLC Agreement, Article XIII, Section 13.1(a); and MEMX Holdings LLC Agreement, Article XII, Section 12.2(a).

[97] *See* MEMX Holdings LLC Agreement, Article XII, Section 12.2(b).

[98] *See id.*

provisions regarding non-interference, confidentiality, books and records, compliance and cooperation, jurisdiction, and regulatory obligations, with respect to their activities related to MEMX.[99]

• The MEMX Holdings LLC Agreement requires that, so long as MEMX Holdings controls MEMX, any changes to that document must be submitted to the Exchange Board for approval, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with and effective by operation of law, or filed with, and approved by, the Commission.[100]

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of MEMX's regulatory function and facilitate the ability of MEMX to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[101]

One commenter questioned whether the indirect owners of MEMX would be able to access the trading and regulatory records of MEMX.[102] The commenter asserted that access by such member-owners to such records could pose ''significant conflicts of interest'' because they ''directly compete with other exchange members.''[103] In response, MEMX stated that Section 13.1 of the MEMX LLC Agreement expressly provides that confidential information pertaining to the self-regulatory function of MEMX ''shall not be made available to any person (including, without limitation, any Exchange Member) . . . .'' [104] MEMX stated that this language means that ''no member of the Exchange, including members that indirectly own the Exchange, will have access to regulatory and trading records of the Exchange.'' [105] Further, MEMX noted that other exchanges have identical confidentiality language in their governing documents.[106] The Commission believes that MEMX has appropriately addressed the commenter's concern, as the proposed governing documents will prohibit MEMX's ultimate owners from accessing the trading and regulatory records of MEMX.

Further, Section 19(h)(1) of the Act [107] provides the Commission with the authority ''to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance . . . '' with any such provision by its members (including associated persons thereof). If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1),[108] these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

Even in the absence of the governance provisions described above, under Section 20(a) of the Act,[109] any person with a controlling interest in MEMX would be jointly and severally liable with and to the same extent that MEMX is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act [110] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act [111] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to MEMX Holdings.

3. Regulatory Oversight Committee

The regulatory operations of MEMX will be monitored by the Regulatory Oversight Committee of the Exchange Board. As mentioned above, the Regulatory Oversight Committee will consist only of Independent Directors.[112] The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of MEMX's regulatory and SRO responsibilities, assessing MEMX's regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing MEMX's regulatory plan and the overall effectiveness of MEMX's regulatory functions.[113]

Further, the Chief Regulatory Officer (''CRO'') of MEMX will have general supervision over MEMX's regulatory operations, including responsibility for overseeing MEMX's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which MEMX is a party.[114] The Regulatory Oversight Committee, in consultation with the Chief Executive Officer of MEMX, will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the CRO and for recommending personnel actions involving the CRO and senior regulatory personnel.[115]

4. Regulatory Funding and Services

As a prerequisite for the Commission's granting of an exchange's

[99] *See* MEMX Holdings LLC Agreement, Article VIII, Section 8.18(b).

[100] *See* MEMX Holdings LLC Agreement, Article XV, Section 15.9(a).

[101] 15 U.S.C. 78f(b)(1).

[102] *See* Letter to Vanessa Countryman, Secretary, Commission, from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE Group, Inc., dated January 15, 2020, *available at https://www.sec.gov/comments/10-237/10237-6668143-203793.pdf* (''NYSE Letter''), at 1–2. The commenter cited to Section 13.3(a) of the Second Amended and Restated Limited Liability Agreement of MEMX LLC, which would permit MEMX Company Members to access, inspect, and copy books and records and to inspect facilities, subject to the confidentiality provisions of Section 13.1. The commenter stated that MEMX Company Members included MEMX Holdings and SubCo, both of which were owned by MEMX's member-owners.

[103] *Id.* at 1–2.

[104] Letter to Vanessa Countryman, Secretary, Commission, from Anders Franzon, General Counsel, MEMX, dated February 11, 2020 (''MEMX Letter 2''), *available at https://www.sec.gov/comments/10-237/10237-6795399-208386.pdf,* at 2.

[105] *See id.*

[106] *See id.* at 3.

[107] *See* 15 U.S.C. 78s(h)(1).

[108] 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

[109] 15 U.S.C. 78t(a).

[110] 15 U.S.C. 78t(e).

[111] 15 U.S.C. 78u–3.

[112] *See supra* note 50 and accompanying text.

[113] *See* MEMX LLC Agreement, Article VIII, Section 8.8(a).

[114] *See* MEMX LLC Agreement, Article IX, Section 9.3.

[115] *See* MEMX LLC Agreement, Article VIII, Section 8.8(c). To the extent that the Chief Executive Officer of MEMX has any indirect supervisory responsibility for the role or function of the CRO, including but not limited to, implementation of the budget for the regulatory function or regulatory personnel matters, the Regulatory Oversight Committee will take all steps reasonably necessary to ensure that the Chief Executive Officer does not compromise the regulatory autonomy and independence of the CRO or the regulatory function. *See* MEMX LLC Agreement, Article VIII, Section 8.8(d).

application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.[116] Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and rules thereunder and the rules of the exchange.[117] The discussion below summarizes how MEMX proposes to conduct and structure its regulatory operations.

a. Regulatory Funding

To help ensure that MEMX has and will continue to have adequate funding to be able to meet its responsibilities under the Act, MEMX represents that, if the Commission approves MEMX's application for registration as a national securities exchange, MEMX Holdings will allocate sufficient assets to MEMX to enable the Exchange's operation.[118] Specifically, MEMX represents that MEMX Holdings will make a cash contribution to MEMX of $5,000,000, ''in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.'' [119]

MEMX also represents that such cash and in-kind contributions from MEMX Holdings will be adequate to operate MEMX, including the regulation of the Exchange, and that MEMX Holdings and MEMX will enter into an agreement that requires MEMX Holdings to provide adequate funding for the Exchange's operations, including the regulation of the Exchange.[120]

Further, any ''Regulatory Funds'' received by MEMX will not be used for non-regulatory purposes or distributed to MEMX Holdings, but rather will be applied to fund the regulatory operations of MEMX, or, as applicable, used to pay restitution and disgorgement to customers.[121] Any excess non-regulatory funds, as solely determined by MEMX, will be remitted to MEMX Holdings in accordance with the MEMX LLC Agreement.[122]

b. Regulatory Contract with FINRA

Although MEMX will be an SRO with all of the attendant regulatory obligations under the Act, it has represented to the Commission that it intends to enter into a regulatory services agreement (''RSA'') with FINRA, under which FINRA as a regulatory services provider will perform certain regulatory functions on MEMX's behalf.[123] Specifically, MEMX expects that such services will include performance of investigation, disciplinary, and hearing services.[124] Notwithstanding the RSA, MEMX will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because MEMX anticipates entering into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that will be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of MEMX on a final RSA that specifies the services that will be provided to MEMX.

The Commission believes that it is consistent with the Act for MEMX to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.[125] These functions are fundamental elements of a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions for MEMX.[126] However, MEMX, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on MEMX's behalf.[127] In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of MEMX to perform its regulatory functions.[128] Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for MEMX, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by MEMX.[129]

c. Rule 17d–2 Agreements

Section 19(g)(1) of the Act,[130] among other things, requires every SRO registered as either a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members.[131] Rule 17d–2 of the Act permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.[132] These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. For example, the Commission recently declared effective a plan to allocate regulatory responsibilities between FINRA and the Long-Term Stock Exchange, Inc. (''LTSE'') pursuant to which FINRA assumes examination and enforcement

[116] *See* 15 U.S.C. 78f(b)(1).

[117] *See id. See also* Section 19(g) of the Act, 15 U.S.C. 78s(g).

[118] *See* Form 1, Exhibit I.

[119] *See id.*

[120] *See id.* MEMX represents that this agreement will provide that MEMX will receive all fees, including regulatory fees and trading fees, payable by MEMX's members, as well as any funds received from any applicable market data fees and tape revenue, and will further provide that MEMX Holdings will reimburse MEMX for its costs and expenses to the extent that the Exchange's assets are insufficient to meet its costs and expenses. *See id.*

[121] *See* MEMX LLC Agreement, Article XVII, Section 17.4(b). Article I, Section 1.1 of the MEMX LLC Agreement defines ''Regulatory Funds'' as ''fees, fines, or penalties derived from the regulatory operations of [MEMX],'' but such term does not include ''revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of [MEMX], even if a portion of such revenues are used to pay costs associated with the regulatory operations of [MEMX].'' This definition is consistent with the rules of other SROs. *See, e.g.,* LTSE Bylaws, Article I(bb); Amended and Restated By-Laws of MIAX Exchange, Article 1(ll); By-Laws of NASDAQ PHLX LLC, Article I(ii); and By-Laws of NASDAQ BX, Inc., Article I(ii).

[122] *See* Form 1, Exhibit I.

[123] *See* Form 1, Exhibit L. *See also* MEMX Rule 9.8.

[124] *See* Form 1, Exhibit L.

[125] For example, LTSE, IEX, MIAX Exchange, MIAX PEARL, LLC, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc. (''Cboe EDGX''), and Cboe BZX Exchange, Inc. (''Cboe BZX'') have entered into RSAs with FINRA.

[126] *See, e.g.,* LTSE Order, *supra* note 39; IEX Order, *supra* note 51; DirectEdge Exchanges Order, *supra* note 64; and Nasdaq Order, *supra* note 39. The Commission is not approving the RSA or any of its specific terms.

[127] *See* 15 U.S.C. 78s(g)(1).

[128] For example, if failings by FINRA have the effect of leaving MEMX in violation of any aspect of MEMX's self-regulatory obligations, MEMX would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. *See, e.g.,* LTSE Order, *supra* note 39; IEX Order, *supra* note 51; Nasdaq Order and BATS Order, *supra* note 39; and DirectEdge Exchanges Order, *supra* note 64.

[129] *See, e.g.,* LTSE Order, *supra* note 39; IEX Order, *supra* note 51; and Nasdaq Order, *supra* note 39.

[130] 15 U.S.C. 78s(g)(1).

[131] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[132] *See* 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (''common members''). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) Receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

responsibility for broker-dealers that are members of both FINRA and LTSE with respect to the rules of LTSE that are substantially similar to the applicable rules of FINRA, as well as certain specified provisions of the federal securities laws.[133]

A Rule 17d–2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[134] MEMX has represented to the Commission that it will join all applicable plans, including Rule 17d–2 plans for the allocation of regulatory responsibilities.[135] Similar to other exchanges, the Commission understands from MEMX that it will enter into a bilateral Rule 17d–2 agreement covering common members of MEMX and FINRA. This agreement will allocate to FINRA regulatory responsibility, with respect to common members, for specified regulatory and enforcement matters arising out of specified common rules and specified provisions of the Act and the rules and regulations thereunder. In addition, the Commission is conditioning operation of MEMX as an exchange on MEMX first joining the applicable multilateral Rule 17d–2 plans, including the multi-party Rule 17d–2 plan for the allocation of regulatory responsibilities with respect to certain Regulation NMS and Consolidated Audit Trail Rules and the multi-party Rule 17d–2 plan for the surveillance, investigation, and enforcement of common insider trading rules.[136]

Because MEMX anticipates entering into these Rule 17d–2 agreements, it has not made provision to fulfill the regulatory obligations that will be undertaken by FINRA and other SROs under these agreements with respect to common members.[137] Accordingly, the Commission is conditioning the operation of MEMX on approval by the Commission of a Rule 17d–2 agreement that allocates the above specified matters to FINRA, and the approval of an amendment to the existing multi-party Rule 17d–2 plans specified above to add MEMX as a party.

C. MEMX Trading System

MEMX will operate a fully automated electronic order book, and will not maintain or operate a physical trading floor. Only broker-dealer members of MEMX and entities that enter into market access arrangements with members (collectively, ''Users'') will have access to the MEMX system.[138] Users will be able to electronically submit orders to buy or sell securities traded on the Exchange through a variety of systems.[139] MEMX will allow firms to register as market makers with affirmative and negative market making obligations.[140]

Users may submit orders to the Exchange as Limit Orders, Market Orders, or Pegged Orders.[141] Orders may be submitted with the following time-in-force instructions, as applicable: Immediate-or-Cancel; Day; Fill-or-Kill; Good 'til Time, and Regular Hours Only.[142] Users may submit orders with the display instructions of Displayed or Non-Displayed, but all orders eligible for display will be automatically defaulted to Displayed unless a User elects otherwise.[143] A Limit Order with a Displayed instruction also may include a Reserve Quantity.[144] Displayed orders will be displayed on an anonymous basis at a specified price.[145] Orders may be entered as a Round Lot, Odd Lot, or Mixed Lot.[146] In addition, a User may attach a Minimum Execution Quantity instruction to the order.[147] Users also may choose to designate orders as Book Only or Post Only.[148] MEMX's proposed order types and instructions are similar to order types and instructions approved by the Commission and currently available on other national securities exchanges.[149]

One of MEMX's proposed order instructions is novel and not based on the existing rules of other exchanges. Specifically, in connection with a Limit Order submitted with a Reserve Quantity instruction, a member may attach a Random Replenishment instruction.[150] In addition to randomizing the size of the refreshed displayed portion, this instruction will allow the User to elect to have the MEMX system randomly replenish the displayed replenishment quantity at different time intervals ranging up to one millisecond following each execution that triggers replenishment.[151]

The MEMX system will continuously and automatically match orders pursuant to price/time priority. For equally-priced trading interest in time priority, MEMX will give first priority to the portion of a Limit Order with a displayed instruction over Limit Orders with a non-displayed instruction, Pegged Orders, and Reserve Quantity of Limit Orders.[152] With respect to the price of executions that would occur on MEMX, the MEMX system is designed to comply with the order protection requirements of Rule 611 of Regulation NMS [153] by requiring that, for any

[133] See Securities Exchange Act Release No. 86587 (August 7, 2019), 84 FR 39883 (August 12, 2019) (File No. 4–747). *See also, e.g.,* Securities Exchange Act Release Nos. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (FINRA/MIAX Exchange/MIAX PEARL); 77321 (March 8, 2016), 81 FR 13434 (March 14, 2016) (File No. 4–697) (FINRA/ISE Mercury, LLC); 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014) (File No. 4–678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (August 1, 2013) (File No. 4–663) (FINRA/Topaz Exchange n/k/a ISE Gemini, LLC); 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4–575) (FINRA/Boston Stock Exchange, Inc. (''BSE'')); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4–569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4–536) (National Association of Securities Dealers, Inc. (''NASD'') n/k/a FINRA) and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4–529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4–517) (NASD/Nasdaq).

[134] *See* Rule 17d–2 Adopting Release, *supra* note Error! Bookmark not defined.

[135] *See* Form 1, Exhibit E, at 15.

[136] *See* Securities Exchange Act Release Nos. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618); and 86542 (August 1, 2019), 84 FR 38679 (August 7, 2019) (File No, 4–566).

[137] For common members, the regulatory obligations will be covered by the Rule 17d–2 agreements, and for MEMX members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

[138] To obtain authorized access to the MEMX system, each User must enter into a User Agreement with MEMX. *See* MEMX Rule 11.3(a).

[139] For a discussion of the means of access to MEMX, *see* MEMX Form 1, Exhibit E, Section 1.

[140] *See* MEMX Rules 11.17 through 11.20. MEMX's rules relating to market makers are similar to the rules of other national securities exchanges. *See, e.g.,* Cboe EDGX Rules 11.17 through 11.20.

[141] *See* MEMX Rule 11.8(a)–(c). Limit Orders may be designated as Intermarket Sweep Orders. *See* MEMX Rule 11.8(b)(5). Pegged Orders may be designated as either a Primary Peg or a Midpoint Peg. *See* MEMX Rules 11.6(h) and 11.8(c).

[142] *See* MEMX Rules 11.6(o) and 11.8.

[143] *See* MEMX Rules 11.6(c) and 11.8(a)–(c). Market Orders and Pegged Orders are not eligible for display. *See* MEMX Rules 11.8(a)(3) and 11.8(c)(3).

[144] *See* MEMX Rules 11.6(k), and 11.8(b)(4).

[145] *See* MEMX Rule 11.10(b).

[146] *See* MEMX Form 1, Exhibit E, Section 2, and MEMX Rules 11.6(q) and 11.8(a)–(c).

[147] *See* MEMX Rules 11.6(f) and 11.8(a)–(c).

[148] *See id.*

[149] *See, e.g.,* Cboe EDGX Rules 11.6 and 11.8. While MEMX Rule 11.10, Interp .02(b), which offers batch cancel functionality, is similar to Cboe EDGX Rule 11.10, Interp .02(b), MEMX uses the term ''batch cancel functionality,'' while Cboe EDGX uses the term ''purge port'' and Cboe EDGX specifies that a user can ''simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports,'' while MEMX's provision specifies that a user can ''simultaneously cancel all or a subset of its orders in one or more symbols.''

[150] *See* MEMX Form 1, Exhibit E, Section 2(a), and MEMX Rule 11.6(k)(1)(A).

[151] *See id.*

[152] *See* MEMX Rule 11.9(a)(2). The highest-priced order to buy (lowest-priced order to sell) will have priority over all other orders to buy (sell) in all cases. Rule 11.9 describes how orders will be ranked based on time when orders to buy (sell) are entered into the MEMX system at the same price.

[153] 17 CFR 242.611.

execution to occur on MEMX during regular trading hours, the price must be equal to, or better than, the Protected NBBO unless an exception to Rule 611 applies.[154] Orders may be executed on the Exchange during the Market Session or during Pre- and Post-Market Sessions; [155] however, some order types and functionality are available only during the Market Session.[156] Orders also may be entered during the Early Order Entry Session, but are not eligible for execution until the start of the Pre-Market Session or Market Session, depending on the time-in-force instructions.[157] MEMX will conduct an opening process at the start of its Market Session, and Users who wish to participate in the opening process may enter designated orders for queuing in the system.[158]

In addition, MEMX's rules are designed to address locked and crossed markets, as required by Rule 610(d) of Regulation NMS,[159] in that they are designed not to disseminate interest that would lock or cross a protected quote, require Users to reasonably avoid displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.[160] One commenter questioned whether MEMX's proposed rules adequately specify how resting orders would be processed when locked or crossed by an away market quote and whether resting depth-of-book orders that have been locked or crossed by an away market and then become the best-ranked orders on MEMX would be transmitted to the securities information processor (''SIP'') at their original price.[161] In response, MEMX disagreed that its proposed rules are unclear in these regards and noted that its applicable rules are based on the rules of other exchanges.[162] The Commission believes that MEMX addressed the commenter's first question by stating that, under MEMX Rule 11.6(j)(1)(A)(ii), it ''is clear that an order displayed by MEMX would not be re-priced if another market locked or crossed an order displayed by MEMX, as a locking or crossing quote would not allow MEMX to re-rank and display such an order at a more aggressive price.'' [163] In respect of the commenter's second point, the Commission believes that MEMX addressed the commenter's concern, as MEMX stated that its proposed rules ''are clear regarding its dissemination of quotations to the SIP'' and noted that it ''searched the rules of NYSE and other exchanges for additional language describing such an example or details regarding special handling in such a scenario, but such search has been fruitless.'' [164]

In addition, MEMX will offer outbound routing functionality though its affiliated routing broker-dealer, MEMX ES.[165] A member's use of the order routing functionality provided by the Exchange's affiliated routing broker-dealer is entirely optional and members may use other broker-dealers to route out to other market centers.[166]

The Commission finds that MEMX's trading rules are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.[167]

With regard to MEMX's proposed Random Replenishment feature, the rule is largely based on similar functionality offered by other exchanges with the addition of one unique feature.[168] Specifically, in addition to randomizing the displayed replenishment size, a User also may elect to have the MEMX system replenish the displayed replenishment quantity at different time intervals ranging up to one millisecond following the execution that triggered replenishment. The Commission believes that this feature is consistent with the Act because it is designed to protect investors consistent with the general purpose of Reserve Quantity orders and Random Replenishment functionality, which the Commission has previously approved for use on other exchanges.[169] Specifically, replenishing the display quantity at random time intervals may make reserve interest harder to detect, which could incentivize investors to rest larger-size reserve interest on the Exchange. Importantly, the non-displayed portion of an order subject to the time interval Random Replenishment will remain fully executable prior to the replenishment of a User's displayed quantity.[170] Accordingly, to the extent this feature encourages investors to provide more liquidity, other market participants could correspondingly benefit from having access to that additional liquidity.

As noted above, MEMX proposes to offer routing services to its Users through its affiliated broker-dealer, MEMX ES.[171] The Commission previously has stated that an exchange-affiliated outbound router, as a ''facility'' of the exchange, will be subject to the exchange's and the Commission's regulatory oversight, and that the exchange will be responsible for ensuring that the affiliated outbound routing function is operated consistent with Section 6 of the Act and the exchange's rules.[172] For example, in approving an exchange with an affiliated outbound routing broker, the Commission previously noted that ''[a] conflict of interest would arise if the national securities exchange (or an affiliate) provided advantages to its broker-dealer that are not available to other members.'' [173] The Commission further explained that ''advantages, such as greater access to information, improved speed of execution, or enhanced operational capabilities in dealing with the exchange, might constitute unfair discrimination under the Act.'' [174]

[154] *See* MEMX Rules 1.5(y) (defining ''Protected NBBO'') and 11.10(a)(2).

[155] MEMX's Market Session will run from 9:30 a.m. ET to 4:00 p.m. ET, its Pre-Market Session will run from 7:00 a.m. ET to 9:30 a.m. ET, and its Post-Market Session will run from 4:00 p.m. ET to 8:00 p.m. ET. *See* MEMX Rules 1.5(o), (w), and (x), respectively.

[156] *See* MEMX Rules 11.8(a)–(c). MEMX's Early Order Entry Session will run from 6:00 a.m. ET to 7:00 a.m. ET. *See* MEMX Rule 1.5(i).

[157] *See* MEMX Rule 11.1(a).

[158] *See* MEMX Rule 11.7.

[159] 17 CFR 242.610(d).

[160] *See* MEMX Rule 11.10(f). *See also* MEMX Rule 11.6(a) (allowing Users to attach a Cancel Back instruction to immediately cancel an order when, if displayed, it would create a violation of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)), and MEMX Rules 11.6(j) and 11.8(b)(8) (relating to price sliding functionality to avoid violations of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)).

[161] *See* NYSE Letter, *supra* note 102, at 2–3 and Letter to Vanessa Countryman, Secretary, Commission, from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE Group, Inc., dated April 7, 2020 (repeating its question about how MEMX handles depth-of-book orders that become the best-ranked orders on MEMX in a specific scenario described by NYSE).

[162] *See* MEMX Letter 2, *supra* note 104, at 3.

[163] *Id.* at 4.

[164] *Id.*

[165] *See* MEMX Rule 2.11.

[166] *See id.*

[167] *See* 15 U.S.C. 78f(b)(5). MEMX's trading rules, including its rules relating to market makers, order types and instructions, priority, execution, and opening processes, are similar to existing exchanges' trading rules. *See, e.g.,* Chapter XI of the Cboe EDGX rule book.

[168] *See, e.g.,* Cboe EDGX Rule 11.6(m)(1)(A).

[169] *See id.*

[170] *See* MEMX Form 1, Exhibit E, Section 2(a), and MEMX Rule 11.6(k)(1)(A).

[171] *See* MEMX Rule 2.11.

[172] *See, e.g.,* Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (August 19, 2010) (granting BATS Y Exchange's request to register as a national securities exchange).

[173] Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225, 55233 (November 1, 2001) (PCX–00–25) (order approving Archipelago Exchange (''ArcaEx'') as the equities trading facility of PCX Equities, Inc.) (''ArcaEx Order'').

[174] *Id.*

MEMX's proposed outbound routing rule is similar to rules the Commission has approved for other exchanges that utilize affiliated routing brokers.[175] In particular, MEMX's affiliated broker-dealer does not have any structural or informational advantages in its provision of routing services as compared to a third-party broker-dealer member of MEMX performing a similar function for itself or others.[176] Accordingly, the Commission believes that the outbound routing functionality of MEMX is consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customer, issuers, brokers or dealers.[177]

As a national securities exchange, MEMX will be a trading center whose quotations can be ''automated quotations'' under Rule 600(b)(3).[178] MEMX has designed itself to qualify by being an ''automated trading center'' under Rule 600(b)(4) whose best-priced, displayed quotation will be a ''protected quotation'' under Rules 600(b)(57) and 600(b)(58), and for purposes of Rule 611.[179] One commenter requested that MEMX clarify the calculation of its consolidated quote, which would be disseminated by the SIP.[180] Specifically, the commenter asked whether displayed odd-lot orders at more than one price point on MEMX would be aggregated in the MEMX quote provided to the SIP for dissemination.[181] In response, MEMX noted that its proposed rule is based on rules of other exchanges, but agreed that additional clarity in the rules could be beneficial and so submitted clarifying rule text in Amendment No. 2.[182] MEMX will aggregate displayed odd-lot orders on the MEMX order book across price levels for transmission to the SIPs as the MEMX best ranked bid or offer, when applicable.[183] Specifically, MEMX added paragraph (b)(2) to Rule 11.9 which provides that, pursuant to Rule 602 of Regulation NMS, the Exchange will transmit to the appropriate SIP the highest (lowest) price to buy (sell) wherein the aggregate size of all displayed buy (sell) interest in the MEMX system greater (less) than or equal to that price is one round lot or greater, and that the aggregate size of all displayed buy (sell) interest in the MEMX system greater (less) than or equal to that price will be transmitted rounded down to the nearest round lot.[184] The Commission believes that MEMX's proposed rule, as revised in Amendment No. 2, is clear and substantially similar to the rules of other exchanges governing aggregation and display of odd-lot orders.[185]

To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, other trading centers will be required to have sufficient notice of new protected quotations, as well as all necessary information and technical specifications.[186] The Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating MEMX's best bid and best offer as a protected quotation as soon as possible but no later than 90 days after the date of this order, or such later date as MEMX begins operation as a national securities exchange. The Commission has taken the same position with other new equities exchanges.[187]

D. Discipline and Oversight of Members

As noted above, one prerequisite for the Commission's grant of an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.[188] Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the federal securities laws and rules thereunder and the rules of the exchange.[189] As also noted above, pursuant to an RSA with FINRA, FINRA will perform many of the initial disciplinary processes on behalf of MEMX.[190] For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to MEMX rules. Appeals from disciplinary decisions will be heard by the MEMX Appeals Committee,[191] and the MEMX Appeals Committee's decision shall be final.[192] In addition, the Exchange Board on its own initiative may order review of a disciplinary decision.[193]

The MEMX LLC Agreement and MEMX rules provide that the Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws and rules.[194] The Exchange's rules also permit MEMX to sanction members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.[195] MEMX's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.[196] Accordingly, as a condition to the operation of MEMX, a Minor Rule Violation Plan (''MRVP'') filed by MEMX under Act Rule 19d–1(c)(2) must be declared effective by the Commission.[197]

The Commission finds that the MEMX LLC Agreement and rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act[198] in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of MEMX provide it with the ability to comply, and with the ability to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and

[175] *See, e.g.,* Cboe EDGX Rule 2.11.

[176] *See* MEMX Rule 2.11. For example, MEMX's rule provides that the Exchange shall have procedures and controls to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities, including MEMX ES. *See* MEMX Rule 2.11(a)(5).

[177] *See* 15 U.S.C. 78f(b)(5).

[178] *See* MEMX Rule 11.10(b).

[179] *See* 17 CFR 242.600(b)(57)–(58) and 17 CFR 242.611.

[180] *See* NYSE Letter, *supra* note 102, at 2.

[181] *See id.*

[182] *See* MEMX Letter 2, *supra* note 104, at 2, n.8 and accompanying text.

[183] *See id.* at 3. MEMX further stated that it ''believes this is the same process now used by most exchanges and the proposed MEMX rule will be based on rules of other exchanges.'' *Id.*

[184] *See* MEMX Rule 11.9(b)(2).

[185] *See, e.g.,* Nasdaq Rule 4756(c)(2) and NYSE Arca Rule 7.36–E(b)(3).

[186] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7–10–04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

[187] *See, e.g.,* BATS Order at 49505, *supra* note 39, and DirectEdge Exchanges Order at 13163, *supra* note 64.

[188] *See* 15 U.S.C. 78f(b)(1).

[189] *See id.*

[190] *See supra* notes 123–124 and accompanying text. *See also* MEMX Rule 9.8 (noting that MEMX and FINRA are parties to a regulatory contract, pursuant to which FINRA will perform certain functions described in Chapter 9 on behalf of MEMX).

[191] *See* MEMX Rule 8.10(b).

[192] *See id.*

[193] *See* MEMX Rule 8.10(c).

[194] *See generally* MEMX LLC Agreement, Article XVII and MEMX Rules Chapters 7 and 8.

[195] *See* MEMX Rule 8.1(a).

[196] *See* MEMX Rule 8.15.

[197] 17 CFR 240.19d–1(c)(2).

[198] 15 U.S.C. 78f(b)(6) and (b)(7).

regulations thereunder, and the rules of MEMX.[199]

E. Trading on MEMX Pursuant to Unlisted Trading Privileges

MEMX does not intend to be a primary listing market for securities. Accordingly, MEMX has not proposed rules that would allow it to primarily list any securities at this time. Instead, MEMX has proposed to trade securities pursuant to unlisted trading privileges (''UTP''). MEMX Rule 14.1 establishes the Exchange's authority to trade securities on a UTP basis. MEMX Rule 14.1(a) provides that MEMX may extend UTP to any security that is an NMS stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Act.[200] MEMX Rule 14.1(a) further provides that any such security would be subject to all MEMX rules applicable to trading on MEMX, unless otherwise noted.

MEMX Rule 14.1(b) establishes additional rules for trading of UTP Exchange Traded Products, which are defined in MEMX Rule 1.1. MEMX Rule 14.1(b) provides that MEMX will distribute an information circular prior to the commencement of trading in a UTP Exchange Traded Product that generally would include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the Exchange Traded Product, (b) the Exchange's rules that would apply to the Exchange Traded Product and (c) information about the dissemination of value of the underlying assets or indices. MEMX Rule 14.1(b)(2) establishes certain requirements for members that have customers that trade UTP Exchange Traded Products.[201] MEMX Rule 14.1(b)(4) also establishes certain requirements for any member registered as a market maker in an UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities. MEMX Rule 14.1(b)(5) provides that the Exchange's surveillance procedures for Exchange Traded Products traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems.

The Commission finds that the Exchange's proposed approach to the trading of securities on a UTP basis, as set forth in MEMX Rule 14.1, is consistent with Section 12(f) of the Act and Rule 12f–5 thereunder.[202] Rule 12f–5 under the Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[203] MEMX Rule 14.1 includes a provision that any security traded UTP on the Exchange ''shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.'' The provisions in MEMX Rule 14.1 are substantively the same as the existing rules of NYSE National, Inc.[204] Accordingly, pursuant to Section 12(f) of the Act and Rule 12f–5 thereunder, MEMX will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

F. Section 11(a) of the Act

Section 11(a)(1) of the Act [205] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[206] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [207] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, MEMX requested that the Commission concur with MEMX's conclusion that MEMX members that enter orders into the MEMX trading system satisfy the conditions of Rule 11a2–2(T).[208] For the reasons set forth below, the Commission believes that MEMX members entering orders into the MEMX trading system could satisfy the requirements of Rule 11a2–2(T).

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[209] MEMX has represented that MEMX does not have a physical trading floor, and the MEMX trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.[210] The Commission believes that the MEMX trading system satisfies this off-floor transmission condition.

The second condition states that the member and any associated person not participate in the execution of its order after the order has been transmitted. MEMX represented that at no time following the submission of an order is

[199] *See* 15 U.S.C. 78f(b)(1).

[200] 15 U.S.C. 78*l*(f).

[201] MEMX Rule 14.1(b)(2)(A) states that MEMX Rule 14.1(b)(2) applies to UTP Exchange Traded Products that are the subject of an order by the Commission exempting the series from certain prospectus delivery requirements under Section 24(d) of the 1940 Act, and are not otherwise subject to prospectus delivery requirements under the Securities Act. MEMX Rule 14.1(b)(2)(B) requires members to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products. MEMX Rule 14.1(b)(2)(C) requires members to provide a prospectus to a customer requesting a prospectus.

[202] 15 U.S.C. 78*l*(f); 17 CFR 240.12f–5.

[203] *See* 17 CFR 240.12f–5. *See also* Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (File No. S7–4–95) (adopting Rule 12f–5 under the Act).

[204] *See* NYSE National Rule 5.1.

[205] 15 U.S.C. 78k(a)(1).

[206] 17 CFR 240.11a2–2(T).

[207] This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

[208] *See* Letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated January 31, 2020 (''MEMX 11(a) Letter'').

[209] *See, e.g.,* Nasdaq Order, *supra* note 39; ArcaEx Order, *supra* note 173; Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving Nasdaq Options Market options trading); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[210] *See* MEMX 11(a) Letter, *supra* note 208.

a member or an associated person of the member able to acquire control or influence over the result or timing of the order's execution.[211] According to MEMX, the execution of a member's order is determined solely by what quotes and orders are present in the system at the time the member submits the order, and the order priority based on the MEMX rules.[212] Accordingly, the Commission believes that a MEMX member and its associated persons do not participate in the execution of an order submitted to the MEMX trading system.[213]

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities, such as the MEMX trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[214] MEMX has represented that the design of the MEMX trading system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to MEMX.[215] Based on MEMX's representation, the Commission believes that the MEMX trading system satisfies this condition.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[216] MEMX members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[217]

G. Exemption From Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

MEMX proposes to incorporate by reference certain FINRA rules as MEMX rules.[218] Thus, for those MEMX rules, Exchange members will comply with the MEMX rule by complying with the FINRA rule referenced therein. In connection with its proposal to incorporate FINRA rules by reference, MEMX requested, pursuant to Rule 240.0–12,[219] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those MEMX rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.[220] MEMX represents in its letter that, as a condition to the exemption, it will provide written notice to its members whenever a proposed rule change to a FINRA rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.[221]

Using its authority under Section 36 of the Act,[222] the Commission is hereby granting MEMX's request for an exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that MEMX proposes to incorporate by reference.[223] This exemption is conditioned upon MEMX providing written notice to its members whenever FINRA proposes to change a rule that MEMX has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules of more than one SRO.

H. Conclusion

It is ordered that the application of MEMX for registration as a national securities exchange be, and it hereby is, granted.

It is furthered ordered that operation of MEMX is conditioned on the satisfaction of the requirements below:

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[211] *See id.* MEMX notes that a member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. The Commission has stated that the non-participation condition is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'') (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[212] *See* MEMX 11(a) Letter, *supra* note 208.

[213] *See, e.g.,* BATS Order at 49505, *supra* note 39, and DirectEdge Exchanges Order at 13164, *supra* note 64.

[214] *See, e.g.,* BATS Order at 49505, *supra* note 39, and DirectEdge Exchanges Order at 13164, *supra* note 64. In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution condition of Rule 11a2–2(T). *See* 1979 Release, *supra* note 209.

[215] *See* MEMX 11(a) Letter, *supra* note 208.

[216] *See, e.g.,* BATS Order at 49505, *supra* note 39 and DirectEdge Exchanges Order at 13164, *supra* note 64. In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 211 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[217] MEMX represented that it will advise its membership through the issuance of an Information Circular that those members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption. *See* MEMX 11(a) Letter, *supra* note 208.

[218] *See* Letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated September 9, 2019 (''Exemption Request Letter''). MEMX proposes to incorporate by reference the following FINRA rules: (1) FINRA Rule 2210 (Communications with the Public) via MEMX Rule 3.5 (Communications with the Public); (2) the definition of a research report in FINRA Rule 2241, via MEMX Rule 3.l3(b)(3); (3) the 12000 and 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes) via MEMX Rules 9.1, 9.2, 9.4, 9.5 and 9.8; (4) FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Accounts) via MEMX Rule 9.3 (Predispute Arbitration Agreements); (5) the 14000 Series of the FINRA Manual (Code of Mediation Procedures) via MEMX Rule 9.7 (Mediation); and (6) FINRA Rule 5270 (Frontrunning of Block Transactions), via MEMX Rule 12.14 (Frontrunning of Block Transactions).

[219] *See* 17 CFR 240.0–12.

[220] *See* Exemption Request Letter, *supra* note 218.

[221] *See* Exemption Request Letter, *supra* note 218. MEMX will provide such notice through a posting on the same website location where MEMX posts its own rule filings pursuant to Rule 19b–4 under the Act, within the required time frame. The website posting will include a link to the location on the FINRA website where FINRA's proposed rule change is posted. *See id.*

[222] 15 U.S.C. 78mm.

[223] The Commission previously exempted other exchanges from the requirement to file proposed rule changes under Section 19(b) of the Act. *See, e.g.,* IEX Order, *supra* note 51; ISE Mercury Order, *supra* note 53; MIAX Order, MIAX Pearl Order, and BATS Order, *supra* note 39; DirectEdge Exchanges Order, *supra* note 64.

A. *Participation in National Market System Plans.* MEMX must join the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS; the Regulation NMS Plan to Address Extraordinary Market Volatility; the Plan for the Selection and Reservation of Securities Symbols; and the National Market System Plan Governing the Consolidated Audit Trail.

B. *Intermarket Surveillance Group.* MEMX must join the Intermarket Surveillance Group.

C. *Minor Rule Violation Plan.* A MRVP filed by MEMX under Rule 19d–1(c)(2) must be declared effective by the Commission.[224]

D. *Rule 17d–2 Agreement.* An agreement pursuant to Rule 17d–2 [225] that allocates regulatory responsibility for those matters specified above [226] must be declared effective by the Commission, or MEMX must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. *Participation in Multi-Party Rule 17d–2 Plans.* MEMX must become a party to the multi-party Rule 17d–2 agreement concerning the surveillance, investigation, and enforcement of common insider trading rules and the agreement concerning certain Regulation NMS and Consolidated Audit Trail Rules.

F. *RSA.* MEMX must finalize the provisions of the RSA with its regulatory services provider, as described above, that will specify the MEMX and Commission rules for which the regulatory services provider will provide certain regulatory functions, or MEMX must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

It is further ordered, pursuant to Section 36 of the Act,[227] that MEMX shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA rules that MEMX proposes to incorporate by reference into MEMX's rules, subject to the conditions specified in this Order.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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[224] 17 CFR 240.19d–1(c)(2).

[225] 17 CFR 240.17d–2.

[226] *See supra* notes 135–136 and accompanying text.

[227] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88805; File No. SR–NASDAQ–2020–025]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Listed Companies With a Temporary Limited Exception From Certain Shareholder Approval Requirements in Nasdaq Rules 5635(c) and (d)

May 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a rule, operative through, and including, June 30, 2020, to provide listed companies with a temporary exception from certain shareholder approval requirements, as described below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Given current market conditions, Nasdaq proposes to provide listed companies with a temporary exception, limited in scope and time, from certain shareholder approval requirements, as described below.

In December 2019, COVID–19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending.[3] By March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic.[4] To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel and closed non-essential businesses.

These necessary measures also have affected equity markets, which have seen significant declines.[5] In response, governments around the world have acted swiftly and decisively to provide relief to regulated entities and are undertaking efforts to stabilize the economy and assist affected companies and their employees.[6] The Commission,

[3] *See, e.g.,* Chairman Jay Clayton, Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure (Jan. 30, 2020), *available at https://www.sec.gov/news/public-statement/clayton-mda-2020–01–30.* (''Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.'').

[4] *See* WHO Director-General's Opening Remarks at the Media Briefing on COVID–19 (March 11, 2020), *available at https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020.*

[5] In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. *See also* Phil Mackintosh, *Putting the Recent Volatility in Perspective,* available at *https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective-2020–03–05* (''Analysts showed that we saw the fastest 'correction' in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of $3.6 trillion.'')

[6] *See, e.g.,* the list of actions undertaken by the Board of Governors of the Federal Reserve System at *https://www.federalreserve.gov/covid-19.htm. See also* Families First Coronavirus Response Act, Public Law 116–127 and Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136.

in particular, has recognized the importance of functioning markets in this environment [7] and has granted issuers and broker-dealers relief and extensions from existing deadlines, in order to allow these entities, as well as the Commission itself, to focus on fighting the deadly virus and preserving functioning capital markets.[8]

Amidst this market uncertainty, Nasdaq proposes to temporarily modify certain of its rules in an effort to streamline listed companies' access to capital. Specifically, Nasdaq proposes to adopt Listing Rule 5636T to provide a limited temporary exception to the shareholder approval requirements in Listing Rule 5635(d) (Transactions other than Public Offerings) [9] and, in certain narrow circumstances, a limited attendant exception to Listing Rule 5635(c) (Equity Compensation).[10]

Shareholder Approval Requirements

The Nasdaq shareholder approval rules generally require companies to obtain approval from shareholders prior to issuing securities in connection with: (i) Certain acquisitions of the stock or assets of another company; [11] (ii) equity-based compensation of officers, directors, employees or consultants; [12] (iii) a change of control; [13] and (iv) a 20% Issuance at a price less than the Minimum Price.[14]

One unavoidable consequence of the actions being taken to reduce the spread of COVID–19 is a reduction, or complete interruption, in revenue for many companies. For example, many communities have mandated that all restaurants and entertainment facilities close for a period of time. Similarly, companies in the travel sector have seen significant declines in bookings even if they are allowed to continue to operate. Thus, these businesses will have no or greatly reduced revenue to offset the operating costs or increased costs associated with the crisis. As such, investors may be reluctant to enter into new equity transactions, unless they are compensated for the risk through discounts to the trading price of a security, and companies may be forced by current circumstances to raise money through equity financings that require shareholder approval under Nasdaq's rules. At the same time, other companies have sudden, unexpected cash needs as they undertake new or accelerated initiatives designed to address the loss of business and supply shortages caused by COVID–19.

While an exception is currently available within Nasdaq's rules for companies in financial distress where the delay in securing stockholder approval would seriously jeopardize the financial viability of the company,[15] that exception is not helpful in most situations arising from the COVID–19 pandemic. For example, while a company may need additional cash so that it can continue to pay employees during a period of decreased or no revenue, the company's viability may not otherwise be in jeopardy.[16] Further, the accelerated need for funds, as well as the significantly curtailed operations of many businesses, may make impractical the requirement to mail notice to all shareholders ten days prior to issuing securities. As such, Nasdaq is concerned that this exception does not adequately address the capital raising needs of listed companies under current conditions.

Proposed COVID–19 Exception

In view of the above, Nasdaq proposes to create a new temporary exception from the shareholder approval requirements in Listing Rule 5635(d), accompanied by a limited exception from Listing Rule 5635(c) by adopting Listing Rule 5636T. This proposed exception would be available until and including June 30, 2020. Nasdaq notes that to rely on this exception, the company must execute a binding agreement governing the issuance of the securities, submit the notices required by Listing Rules 5636T(b)(5)(A) and (e), and obtain the required approval from Nasdaq under Listing Rule 5636T(b)(5)(B)(ii) (if applicable), as described below, no later than June 30, 2020. The issuance of the securities governed by such agreement in reliance on the exception in Listing Rule 5636T may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement. If the company does not issue securities within 30 calendar days, as described above, it may no

[7] *See, e.g.,* Chairman Jay Clayton, *The Deep and Essential Connections Among Markets, Businesses, and Workers and the Importance of Maintaining those Connections in our Fight Against COVID–19* (March 24, 2020) available at *https://www.sec.gov/news/public-statement/statement-clayton-covid-19-2020-03-24* (''The Securities and Exchange Commission and other financial regulators are focused on two overriding and interrelated issues. First, we are facing an unprecedented national challenge — a health and safety crisis that requires all Americans, for the sake of all Americans, to significantly change their daily behavior and, for many, to make difficult personal sacrifices. Second, the recognition that the continuing, orderly operation of our markets is an essential component of our national response to, and recovery from, COVID–19. The interrelationship between these issues cannot be overstated. Our health care, pharmaceutical, manufacturing, transportation, telecommunications and many other private-sector industries are critical to our collective response to COVID–19. The thousands of firms and entrepreneurs in these industries—and the millions of employees and contractors—that are working around the clock to fight COVID–19 depend on continued access to payments and credit.'').

[8] *See SEC Coronavirus (COVID–19) Response* available at *https://www.sec.gov/sec-coronavirus-covid-19-response,* which is being updated regularly with additional actions taken by the Commission. As of April 14, 2020, the Commission response includes (but is not limited to): Providing conditional relief for certain publicly traded company filing and proxy delivery obligations (March 4 and 25, 2020); granting relief to reporting deadlines and in-person meeting requirements for investment companies (March 13, 2020); extending the industry compliance period for Consolidated Audit Trail reporting due to the fact that ''disruptions as a result of COVID–19 have placed new stresses and competing priorities on the infrastructure and staff required to implement the Consolidated Audit Trail'' (March 16, 2020); extending filing deadlines for certain reports required under Regulation A and Regulation Crowdfunding (March 26, 2020); and providing temporary relief for Business Development Companies investing in small and medium-sized businesses (April 8, 2020).

[9] Listing Rule 5635(d) states that shareholder approval is required prior to a 20% Issuance at a price that is less than the Minimum Price. The ''Minimum Price'' is defined in Rule 5635(d)(1)(A) as the lower of: (i) The Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of the binding agreement; or (ii) the average Nasdaq Official Closing Price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the binding agreement. A ''20% Issuance'' is defined in Rule 5635(d)(1)(B) as a transaction, other than a public offering as defined in IM–5635–3, involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.

[10] Listing Rule 5635(c) requires shareholder approval, with certain exceptions, prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants.

[11] *See* Listing Rule 5635(a) (Acquisition of Stock or Assets of Another Company).

[12] *See* Listing Rule 5635(c) (Equity Compensation).

[13] *See* Listing Rule 5635(b) (Change of Control).

[14] *See* Listing Rule 5635(d) (Transactions other than Public Offerings). *See also* footnote 9 above.

[15] *See* Listing Rule 5635(f). Reliance by the company on a financial viability exception must expressly be approved by the company's audit committee, or a comparable body of the board of directors comprised solely of independent, disinterested directors, and the company must obtain Nasdaq's approval prior to proceeding with the transaction. In addition, companies are required to mail a letter (as opposed to relying solely on a press release or Form 8–K, which are also required, or a website posting) at least ten days prior to issuing securities in the exempted transaction alerting shareholders to the company's omission to seek the shareholder approval that would otherwise be required.

[16] Similarly a company that needs capital to undertake, for example, a new initiative designed to test for COVID–19 or to develop a vaccine may not otherwise be facing a threat to its viability.

longer rely on the exception in Listing Rule 5636T.

Under proposed Listing Rule 5636T(b), the exception is limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID–19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID–19; or (iv) seriously jeopardize the financial viability of the enterprise. In addition to demonstrating that the transaction meets one of the foregoing requirements, in order to rely on the exception, the company would also have to demonstrate to Nasdaq that the need for the transaction is due to circumstances related to COVID–19 and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. Nasdaq also proposes, similar to the requirement for the financial viability exception, to require that the company's audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors expressly approve reliance on this exception. Nasdaq also proposes to require such committee or a comparable body of the board of directors comprised solely of independent, disinterested directors to determine that the transaction is in the best interest of shareholders.

Unlike the requirement for the financial viability exception, no prior approval of the exception by Nasdaq would be required if the maximum issuance of common stock (or securities convertible into common stock) issuable in the transaction is less than 25% of the total shares outstanding and less than 25% of the voting power outstanding before the transaction; and the maximum discount to the Minimum Price at which shares could be issued is 15% (the ''Safe Harbor Provision''). Nasdaq notes that transactions that involve issuance of warrants exercisable for shares of common stock are not eligible for the Safe Harbor Provision.

For transactions that do not fall within the Safe Harbor Provision, the Nasdaq Listing Qualifications Department must approve the company's reliance on the exception before the company can issue any securities in the transaction. This approval will be based on a review of whether the company has established that it complies with the requirements of Listing Rule 5636T(b) (and Listing Rule 5636T(c) if applicable). Upon completion of the review of the company's submission, the Nasdaq Listing Qualifications Department will notify the company in writing whether the company's reliance on the exception was approved.

To provide shareholders with advance notice of the transaction, Nasdaq proposes to adopt Listing Rule 5636T(d), which would require a company relying on the proposed exception to make a public announcement by filing a Form 8–K, where required by SEC rules, or by issuing a press release disclosing as promptly as possible, but no later than two business days before the issuance of the securities:

- The terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);
- that shareholder approval would ordinarily be required under Nasdaq rules but for the fact that the Company is relying on an exception to the shareholder approval rules; and
- that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors expressly approved reliance on the exception and determined that the transaction is in the best interest of shareholders.[17]

In addition, Nasdaq has long interpreted Listing Rule 5635(c) to require shareholder approval for certain sales to officers, directors, employees, or consultants when such issuances could be considered a form of ''equity compensation.'' Nasdaq has heard from market participants that investors often require a company's senior management to put their personal capital at risk and participate in a capital raising transaction alongside the unaffiliated investors. Nasdaq believes that as a result of uncertainty related to the ongoing spread of the COVID–19 virus, listed companies seeking to raise capital may face such requests. Accordingly, Nasdaq proposes that the temporary exception allow such investments under limited circumstances.

To that end, Nasdaq proposes to adopt Listing Rule 5636T(c), which would provide for an exception from shareholder approval under Listing Rule 5635(c) for an affiliate's participation in the transaction described in Listing Rule 5636T(b) provided the affiliate's participation in the transaction was specifically required by unaffiliated investors. In addition, to further protect against self-dealing, the proposed Listing Rule 5636T(c) would limit such participation to a de-minimis level—each affiliate's participation must be less than 5% of the transaction and all affiliates' participation collectively must be less than 10% of the transaction.[18] Finally, any affiliate investing in the transaction must not have participated in negotiating the economic terms of the transaction.

Listing Rule 5250(e)(2) requires a company to notify Nasdaq at least 15 calendar days prior to certain events, including when the company issues any common stock, or any security convertible into common stock in a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis (the ''Notification''). The Notification allows Nasdaq additional time to review the proposed transaction and assure that it complies with the shareholder approval requirements, including those in Listing Rules 5635(c) and (d). Absent a rule change, transactions described in proposed Listing Rules 5636T(b) and (c) would require such advance notification. Because a transaction satisfying the proposed temporary rule will be excepted from certain provisions of the shareholder approval rules, Nasdaq believes that notification 15 days prior to issuance is unnecessary. Accordingly, Nasdaq proposes to adopt Listing Rule 5636T(e) to provide that a company that relies on the exception in this Rule 5636T is not subject to the 15 day prior notification requirement described in Rule 5250(e)(2) but must still provide notification required by that rule to Nasdaq, along with a supplement, as required by Listing Rule 5636T(b)(5)(A), certifying in writing that the company complied with all requirements of Listing Rule 5636T(b), and Listing Rule 5636T(c) if applicable. Such submissions must be made, as promptly as possible, but no later than the time of the public announcement required by Listing Rule 5636T(d) and in no event later than June 30, 2020, in accordance with Listing Rule 5636T(a). In such certification, Nasdaq expects the company to describe with specificity how it complies with Listing Rule

[17] *See* Listing Rule 5635(f) requiring similar disclosure, for a transaction for which a company relied on the financial viability exception, alerting shareholders to the omission to seek the shareholder approval that would otherwise be required.

[18] *Cf.* Listing Rule IM–5405–1(a)(3) similarly limiting affiliates' participation in certain pre-listing trasactions in order for such transactions to constitute compelling evidence of the company's value.

5636T(b), and Listing Rule 5636T(c) if applicable. For transactions described in Listing Rule 5636T(b)(5)(B)(ii) that require approval of the Nasdaq Listing Qualifications Department before the company can issue any securities in reliance on Listing Rule 5636T, Nasdaq expects companies to submit the Notification, and a supplement required by Listing Rule 5636T(b)(5)(A), with enough time to allow Nasdaq to complete its review of the submissions.[19] The proposed rule also will remind companies that a transaction that violates other Nasdaq rules could subject the company to delisting and Nasdaq Staff would review transactions covered by proposed Listing Rule 5636T for compliance with all other Nasdaq listing requirements. As noted below, the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Listing Rule 5635(c) (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), acquisitions in Listing Rule 5635(a) and a change of control in Listing Rule 5635(b).

Finally, Nasdaq proposes to aggregate issuances of securities in reliance on the exception in proposed Listing Rule 5636T with any subsequent issuance by the company, other than a public offering under IM–5635–3, at a discount to the Minimum Price if the binding agreement governing the subsequent issuance is executed within 90 days of the prior issuance. Accordingly, if following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval will be required under Rule 5635(d) prior to the subsequent issuance.

Nasdaq believes that this temporary suspension will permit companies to raise capital quickly to continue running their businesses and address the immediate health crisis caused by the COVID–19 pandemic, including its impact on their employees, customers, and communities. Nasdaq notes that the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Listing Rule 5635(c) (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), acquisitions in Listing Rule 5635(a) and a change of control in Listing Rule 5635(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. As a result of uncertainty related to the ongoing spread of the COVID–19 virus, the prices of securities listed on U.S. exchanges are experiencing significant volatility. Nasdaq believes that the proposed rule change is designed to remove an impediment to companies addressing certain immediate capital needs as a result of the COVID–19 pandemic and reduce uncertainty regarding the ability of companies to raise money quickly through equity financings during the current highly unusual market conditions and general economic disruptions. Nasdaq believes that in this way, the proposed rule change will protect investors, facilitate transactions in securities, and remove an impediment to a free and open market. All companies listed on the Exchange would be eligible to take advantage of the proposed suspension.

In addition, Nasdaq believes the proposed rule change is designed to protect investors by limiting the exception from the shareholder approval requirements to situations where the need for the transaction is due to circumstances related to COVID–19 and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The exception is also limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID–19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID–19; or (iv) seriously jeopardize the financial viability of the enterprise. Further, the proposed rule requires that the company's audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders.

Nasdaq also notes that to the extent the company relies on the Safe Harbor Provision instead of Nasdaq's review and approval of the company's reliance on the exception, as described above, the maximum issuance of common stock (or securities convertible into common stock) issuable in the transaction must be less than 25% of the total shares outstanding and less than 25% of the voting power outstanding before the transaction; and the maximum discount to the Minimum Price at which shares could be issued is 15%.

Notwithstanding the proposed exception from certain shareholder approval requirements, as described above, important investor protections will remain as the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Listing Rule 5635(c) (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), acquisitions in Listing Rule 5635(a) and a change of control in Listing Rule 5635(b).

Finally, Nasdaq notes that the proposed rule is a temporary exception from certain shareholder approval requirements, as described above, operative through, and including, June 30, 2020.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All companies listed on the Exchange would be eligible to take advantage of the proposed suspension. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns Nasdaq has observed surrounding the application of the shareholder approval requirements, as described above, to companies listed on Nasdaq. Other exchanges can craft relief based on their own rules and observations.

[19] Nasdaq notes that in such cases the company may not issue any securities until it receives the approval from the Nasdaq Listing Qualifications Department, which may take more than two days. Of course, if the Nasdaq Listing Qualifications Department does not approve reliance on the exception, any issuance of securities must comply with the shareholder approval requirements in Listing Rule 5635.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange stated that waiver of the operative delay would allow companies to quickly raise money through equity financings to maintain operations or financial viability, compensate its workforce, or undertake new initiatives in response to COVID–19 during the current highly unusual market and economic conditions and ongoing uncertainty relating to the global spread of the COVID–19 virus. In addition, the Exchange stated that the proposed exception from the shareholder approval requirements is limited to situations where the need for the transaction is due to circumstances related to COVID–19 and the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The Exchange stated that the proposed exception is further limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID–19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID–19; or (iv) seriously jeopardize the financial viability of the enterprise. The Exchange also noted that the proposed rule requires that the company's audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders. Finally, the Exchange stated that the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Listing Rule 5635(c) (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), acquisitions in Listing Rule 5635(a) and a change of control in Listing Rule 5635(b).

The Commission notes that while the proposed rule change would provide a temporary exception to certain shareholder approval requirements, it is limited to situations where the need for the transaction is related to COVID–19 circumstances and only where the delay in obtaining shareholder approval meets one of the four specified conditions for the transaction set forth in the temporary rule and described above. In addition, the Commission notes that there are important investor protections built into the proposed temporary rule. For example, the exception from the shareholder approval requirements is limited to situations where the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. In addition, the proposed rule change requires that the company's audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors expressly approve reliance on the exception and determine that the transaction is in the best interest of shareholders. Companies that are using the Safe Harbor Provision, and therefore do not need prior Exchange approval, will also be limited to a maximum issuance of less than 25% of the total shares outstanding and voting power outstanding before the transaction and a maximum discount to the Minimum Price of no more than 15%. Further, the Commission notes that shareholder approval would continue to be required for transactions that do not qualify for the proposed temporary exception, such as for acquisitions of stock or assets of another company (Nasdaq Rule 5635(a)), for changes of control (Nasdaq Rule 5635(c)), and for equity compensation (Nasdaq Rule 5635(c)), except in the limited circumstances provided for in Rule 5636T(c)). The Commission also notes that the proposal is a temporary measure designed to allow companies to raise necessary capital quickly in response to current, unusual market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [27] 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–NASDAQ–2020–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–025. This file number should be included on the subject line if email is used. To help the

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

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–NASDAQ–2020–025 and should be submitted on or before May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09827 Filed 5–7–20; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, May 13, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: May 6, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–10049 Filed 5–6–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88807; File No. 265–33]

Asset Management Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Asset Management Advisory Committee will hold a public meeting on May 27, 2020, by remote means. The meeting will begin at 9:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The meeting will include a discussion of matters relating to the subcommittees and to COVID–19 and the asset management industry.

DATES: The public meeting will be held on May 27, 2020. Written statements should be received on or before May 22, 2020.

ADDRESSES: The meeting will be held by remote means and webcast on *www.sec.gov.* Written statements may be submitted by any of the following methods. To help us process and review your statement more efficiently, please use only one method. At this time, electronic statements are preferred.

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–33 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Vanessa Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–33. This file number should be included on the subject line if email is used. The Commission will post all statements on the Commission's website at (*http://www.sec.gov/comments/265-33/265-33.htm*).

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. For up-to-date information on the availability of the Public Reference Room, please refer to *https://www.sec.gov/fast-answers/answerspublicdocshtm.html* or call (202) 551–5450.

All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christian Broadbent or Mark Uyeda, Senior Special Counsels, Sirimal Mukerjee, Branch Chief, or Angela Mokodean, Senior Counsel, at (202) 551–6720, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Dalia Blass, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: May 5, 2020.

Vanessa A. Countryman,

Committee Management Officer.

[FR Doc. 2020–09862 Filed 5–7–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88792; File No. SR–OCC–2020–802]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Related To Proposed Changes to The Options Clearing Corporation's Framework for Liquidity Risk Management

May 1, 2020.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[3] notice is hereby given that on April 6, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in in connection with proposed changes to amend OCC's Rules, adopt a new Liquidity Risk Management Framework (''LRMF''), and revise OCC's Clearing Fund and stress testing methodology (''Methodology Description'') to enhance OCC's management of liquidity risk and the sizing and monitoring of OCC's liquidity resources. Specifically, the proposed changes would:

(1) Establish a new LRMF document to provide a comprehensive overview of OCC's liquidity risk management practices and govern OCC's policies and procedures as they relate to liquidity risk management;

(2) enhance OCC's Methodology Description to describe OCC's approach to stress testing and determining the adequacy, sizing and sufficiency of its liquidity resources;

(3) modify OCC's authority to set and increase the Clearing Fund Cash Requirement;

(4) implement a new two-day notice period for substitutions for Clearing Fund cash in excess of a Clearing Member's minimum requirement;

(5) enhance OCC's Rules and Contingency Funding Plan for collecting additional liquidity resources when a Clearing Member Group's projected or actual liquidity risk exceeds certain defined thresholds;

(6) amend Chapter VI of the Rules to allow OCC to require cash margin as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process;

(7) amend Chapter X of the Rules to clarify OCC's authority to borrow Clearing Fund assets for liquidity risk management purposes;

(8) amend Chapter III of the Rules regarding the financial requirements applicable to Clearing Members to require that Clearing Members maintain adequate procedures and controls to ensure that it can meet its obligations when owed in connection with membership; and

(9) make a number of other clarifying, conforming, and organizational changes to OCC's Rules, Risk Management Framework Policy (''RMF Policy''), Clearing Fund Methodology Policy (''CFM Policy''), Collateral Risk Management Policy, Counterparty Credit Risk Management Policy (''CCRM Policy''), and Default Management Policy as described herein.

The proposed amendments to OCC's Rules can be found in Exhibit 5A. The proposed LRMF and Methodology Description have been submitted in confidential Exhibits 5B and 5C, respectively. Proposed changes to the RMF Policy, CFM Policy, Collateral Risk Management Policy, CCRM Policy, and Default Management Policy (collectively, ''Risk Policies'') have been submitted in confidential Exhibits 5D–5H. Material proposed to be added to the Rules, Methodology Description, and OCC Risk Policies as currently in effect is marked by underlining, and material proposed to be deleted is marked in strikethrough text. The LRMF has been submitted without marking to facilitate review and readability of the document as it is being submitted in its entirety as new rule text.

All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

As a central counterparty (''CCP''), OCC is exposed to liquidity risk, which is the risk that a counterparty, whether a participant or other entity, will have insufficient funds to meet its financial obligations as and when expected, although it may be able to do so in the future.[5] OCC's primary liquidity demands in a Clearing Member default originate from settlement obligations related to mark-to-market settlements on securities financing and futures transactions, expiring options, and liquidation of the Clearing Member's portfolio. Given the critical role OCC plays within the U.S. financial markets, it is vital that OCC maintains a robust framework for managing its liquidity risks. Such a framework should set forth the manner in which OCC effectively identifies, measures, monitors, and manages its liquidity risk. This includes, but is not limited to, how

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[5] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures* (April 16, 2012), available at *http://www.bis.org/publ/cpss101a.pdf.*

OCC: (1) Maintains sufficient liquid resources in all relevant currencies that enable OCC to meet its intraday, same-day, and multiday settlement obligations; (2) maintains a reliable and diverse set of committed liquidity resources with the flexibility and capacity to increase those resources should circumstances warrant; (3) conducts daily stress testing of potential liquidity demands under a wide range of historical and hypothetical scenarios; (4) maintains a contingent funding plan that allows OCC to collect additional liquidity resources when potential liquidity demands exceed liquidity resources; and (5) maintains a reliable and diverse set of liquidity providers and settlement banks that are risk managed through a comprehensive onboarding and monitoring process.

OCC maintains liquidity resources in the form of its ''committed liquidity facilities'' [6] and a minimum cash contribution requirement for its Clearing Fund to ensure that it can meet its daily forecasted settlement obligations. From a committed liquidity facility perspective, OCC currently endeavors to maintain immediate liquid resources to meet observed peak settlements generated by any Clearing Member Group with a high degree of confidence. OCC also requires its Clearing Members to collectively contribute $3 billion in cash to the Clearing Fund to provide an additional source of committed liquidity to OCC.

OCC sizes its liquidity resources based on historically observed liquidity demands and analysis of potential large forecasted liquidity demands. In certain cases, OCC's primary liquidity demands can be forecasted, and as a result, OCC currently establishes certain limits to ensure that it can detect aggregations of risk approaching its risk tolerances and mitigates these risks by requiring that the Clearing Member(s) driving the risk fulfill a specified portion of their margin requirement in cash (as discussed in further detail below). OCC forecasts its future daily settlement activity under normal market conditions (*e.g.,* mark-to-market settlements and settlements resulting from the expiration of derivatives contracts) and compares such demands to its resources to ensure that it will maintain a positive liquidity position to meet settlement obligations.

Proposed Changes

OCC is proposing a number of enhancements to its rules intended to strengthen its overall resiliency, particularly with respect to OCC's management of liquidity risk and the sizing and monitoring of OCC's liquidity resources. Specifically, the proposed changes would:

(1) Establish a new LRMF document to provide a comprehensive overview of OCC's liquidity risk management practices and govern OCC's policies and procedures as they relate to liquidity risk management;

(2) enhance OCC's Methodology Description to describe OCC's approach to stress testing and determining the adequacy, sizing and sufficiency of its liquidity resources;

(3) modify OCC's authority to set and increase the Clearing Fund Cash Requirement;

(4) implement a new two-day notice period for substitutions for Clearing Fund cash in excess of a Clearing Member's minimum requirement;

(5) enhance OCC's Rules and Contingency Funding Plan for collecting additional liquidity resources when a Clearing Member Group's projected or actual liquidity risk exceeds certain defined thresholds;

(6) amend Chapter VI of the Rules to allow OCC to require cash margin as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process;

(7) amend Chapter X of the Rules to clarify OCC's authority to borrow Clearing Fund assets for liquidity risk management purposes;

(8) amend Chapter III of the Rules regarding the financial requirements applicable to Clearing Members to require that Clearing Members maintain adequate procedures and controls to ensure that it can meet its obligations when owed in connection with membership; and

(9) make a number of other clarifying, conforming, and organizational changes to the OCC Rules and Risk Policies as described herein.

1. Liquidity Risk Management Framework

OCC proposes to adopt a new LRMF to set forth the manner in which OCC effectively measures, monitors, and manages its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. Specifically, the LRMF would describe: (1) The identification of OCC's liquidity risks; (2) the categories and types of OCC's liquidity resources; (3) the stress testing and sizing of OCC's liquidity resources; (4) OCC's Contingency Funding Plan for collecting additional liquidity resources from Clearing Members; (5) the risk management of supporting institutions (*e.g.,* settlement banks, custodian banks, and liquidity providers) that may present liquidity risks to OCC; and (6) the governance and reporting requirements concerning OCC's liquidity risk management. The proposed LRMF would govern OCC's policies and procedures as they relate to liquidity risk management and is described in further detail below.

Identification of Liquidity Risk

The LRMF would describe the primary liquidity risks OCC faces, which occur between the point of a Clearing Member default and the completion of the liquidation and settlement of the defaulted Clearing Member's obligations. OCC collects its credit resources with an assumption of a two-day margin period of risk, and potential liquidity obligations are evaluated using that same concept and assuming the liquidation processes detailed in OCC's Default Management Policy.[7] If the liquidity demands result from a Clearing Member as part of an external cross-margin relationship, then potential liquidity obligations are evaluated in accordance with the provisions of the applicable cross-margin agreement. The potential liquidity obligations arising from a Clearing Member default that may require OCC to make same-day settlement obligations during the period between default and the conclusion of a liquidation of a defaulting Clearing Member's portfolio are included when estimating the size of OCC's liquidity demands for purposes of sizing its liquidity resources. These obligations may include mark-to-market obligations on futures and stock loan positions, trade premiums, cash-settled exercise and assignment (''E&A'') activity, auction payments, settlements resulting from the E&A of physically-settled options, and funding of OCC's liquidation agents.

The LRMF would describe other factors and considerations identified by OCC that are not part of its liquidity resource determinations, such as margin deficits and other payments associated with a liquidation (*e.g.,* brokerage, bank, and legal fees). These factors are not included in OCC's liquidity resource determinations because, by their nature, they do not generally create immediate

[6] OCC's committed liquidity facilities may be comprised of both bank and non-bank committed facilities.

[7] *See* Securities Exchange Act Release No. 82310 (December 13, 2017), 82 FR 60265 (December 19, 2017) (SR–OCC–2017–010) (Order Approving Proposed Rule Change Relating to The Options Clearing Corporation's Default Management Policy).

liquidity demands that could impede settlement. OCC also does not consider hedging costs in its liquidity resource determinations because OCC's primary goal is to liquidate positions prior to the need for hedging, and hedging would only be employed if OCC's liquidation activities were unexpectedly delayed. In addition, the LRMF would identify other liquidity risks that are not included in its liquidity resource sizing evaluation but have a potential impact on the management of liquidity risk, such as liquidity provider failures, custodian or settlement bank failures or operational disruptions, and concentration risks from settlement banks and liquidity providers. These risks are mitigated through various tools and processes discussed further below.

Liquidity Resources

The proposed LRMF would describe the various categories and types of liquidity resources maintained by OCC, including the qualifying liquid resources (as defined in Exchange Act Rule 17Ad–22(a)(14)) [8] maintained by OCC to meet its minimum liquidity resource requirement for effecting same-day, intraday and multiday settlement of OCC's payment obligations. Under the proposed LRMF, OCC would maintain the following categories of liquidity resources: (1) ''Base Liquidity Resources,'' (2) ''Available Liquidity Resources,'' (3) ''Required Liquidity Resources,'' and (4) ''Other Liquidity Resources.'' The proposed LRMF would set forth OCC's requirements for Base Liquidity Resources, which are comprised of qualifying liquid resources in the form of assets that are readily available and convertible into cash through prearranged funding arrangements [9] and required Clearing Fund cash on deposit.[10] Base Liquidity Resources would be set at an amount determined by OCC's Board of Directors (''Board'') based on comprehensive analysis including stress testing so that OCC maintains sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. The LRMF would also describe how OCC ensures that it is continuously able to access the full amount of its committed liquidity facilities. Further, the LRMF would require that any borrowing from Base Liquidity Resources must be approved by OCC's Executive Chairman, Chief Executive Officer, or Chief Operating Officer (collectively referred to as the ''Office of the Chief Executive Officer,'' ''Office of the CEO,'' or ''OCEO'').

The LRMF would further describe how OCC uses the Clearing Fund as a source of liquidity (either directly or by using Clearing Fund assets to borrow or obtain funds from third parties) in the event a Clearing Member defaults on an obligation to OCC, in the event any bank or securities or commodities clearing organization defaults on its obligations to OCC, or to facilitate OCC's completion of same-day settlement obligations in the event of an operational disruption at a bank or securities or commodities clearing organization, consistent with OCC's Rules.[11]

The proposed LRMF also defines OCC's Available Liquidity Resources, which are comprised of OCC's Base Liquidity Resources plus Clearing Fund cash deposits in excess of the minimum required amount.[12] These resources are intended to supplement OCC's Base Liquidity Resources and are included in the calculation to determine liquidity resources available to OCC on a given day. As described further below, OCC would generally require a two-day notification period if a Clearing Member requests to substitute Government Securities for cash deposits above their minimum requirement. Once the substitution request is made, OCC would remove the cash deposits in question from subsequent Contingency Funding Plan calculations.

The proposed LRMF would describe OCC's Required Liquidity Resources, which are comprised of OCC's Available Liquidity Resources plus any amount of cash margin deposits of a Clearing Member Group required under the Contingency Funding Plan (described in further detail below). These required cash margin deposits supplement OCC's Base Liquidity Resources and are only included as a Required Liquidity Resource for the Clearing Member Group from which they are called.

In addition, the LRMF would describe Other Liquidity Resources, which are those liquid resources that may or may not be available to OCC in a default situation (*e.g.,* non-compulsory cash deposits of the defaulting Clearing Member; other margin deposits of the defaulting Clearing Member, including letters of credit, Government Securities, and Government Sponsored Entity securities that may be liquidated for same-day or next day settlement). Other Liquidity Resources are not committed resources; therefore, they are not included in OCC's Base, Available, or Required Liquidity Resource calculations. These resources may, however, be available in a default situation and could be used to address foreseeable liquidity shortfalls that would not be covered by OCC's committed resources and help OCC seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.

In addition, the LRMF would describe generally how OCC would utilize its liquidity resources in accordance with its Default Management Policy and the actions OCC would take if it needs to increase its liquidity resources to respond to changing business or market conditions (such as increasing the Clearing Fund Cash Requirement pursuant to Rule 1002(a) or using any uncommitted accordion [13] features embedded in any syndicated credit facility).

[8] 17 CFR 240.17Ad–22(a)(14).

[9] As noted above, OCC endeavors to maintain committed liquidity facilities with both bank and non-bank counterparties. OCC currently maintains a committed credit facility syndicated among various commercial banks. OCC also attempts to maintain committed repurchase agreements, which may be with both bank and non-bank counterparties. Under the proposed LRMF, OCC would endeavor to enter into agreements with liquidity providers (*i.e.,* committed lines of credit and committed repurchase agreements) that do not contain material adverse change (''MAC'') provisions. In the event OCC is unable to obtain an agreement without a MAC provision, OCC would attempt to enter into other prearranged funding agreements. In order to qualify as Base Liquidity Resources, these other arrangements must be highly reliable in extreme but plausible market conditions, as determined by OCC's Board, following a review conducted prior to execution, and on an ongoing basis, but not less than annually.

[10] OCC Rule 1002(a)(i) currently requires Clearing Members to collectively contribute $3 billion in U.S. dollar cash, the currency of all OCC liquidity obligations, to the Clearing Fund, which is held at either the Federal Reserve Bank of Chicago or a commercial bank approved as an OCC cash custodian. Cash held at a commercial bank may be invested in overnight reverse repurchase agreements.

[11] *See* Securities Exchange Release No. 82296 (December 12, 2017), 82 FR 59685 (December 15, 2017) (SR–OCC–2017–806). *See also* Securities Exchange Release No. 82501 (January 12, 2018), 83 FR 2843 (January 19, 2018) (SR–OCC–2017–808).

[12] These excess amounts are only included in Available Liquidity Resources by the amount the required Clearing Fund size exceeds the minimum Clearing Fund sized as determined by OCC Rule 1001(b). Cash deposits in excess of a Clearing Member's total Clearing Fund requirement would not be included.

[13] An accordion is an uncommitted expansion of the credit facility generally on the same terms as the credit facility.

Stress Testing and Liquidity Resource Sizing

The proposed LRMF would describe OCC's overall approach to liquidity stress testing and liquidity resource sizing. Under the proposed LRMF, OCC would perform daily stress testing using standard and predetermined parameters and assumptions. The proposed approach to liquidity stress testing would rely on the stressed scenarios and prices generated under OCC's current stress testing and Clearing Fund methodology.[14] The scenarios used are pre-identified by OCC's Stress Test Working Group (''STWG'') and the output of these scenarios would be used for liquidity resource evaluation and would be reviewed daily by OCC's Financial Risk Management department (''FRM'').[15] The stress tests in question consider a range of relevant stress scenarios and possible price changes in liquidation periods, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; (3) the default of one or multiple members; (4) forward-looking stress scenarios; and (5) reverse stress tests aimed at identifying extreme default scenarios and extreme market conditions for which the OCC's resources would be insufficient.

Under the proposed LRMF, the minimum amount of OCC's Base Liquidity Resources would be determined by OCC's Board based on a recommendation from OCC's Risk Committee. On an annual basis (or more frequently as needed),[16] FRM would present to the Board and Risk Committee an analysis summarizing the projected liquidity demands OCC may face under a variety of stress scenarios, including the sufficiency of OCC's Base Liquidity Resources against OCC's liquidity risk tolerance, extreme historical scenarios such as a 1987 historical market event and 2008 historical market event, and certain scenarios used to size OCC's Clearing Fund.[17] This analysis may also include the results of a comprehensive review of any parameters and assumptions used by OCC's stress testing system, the output of which is used to project potential liquidity demands under stressed market conditions.[18] In addition, the analysis may include the current composition of OCC's various liquidity resources and recommended changes, if applicable.

OCC's approach to liquidity stress testing and the proposed changes to OCC's Methodology Description are discussed in further detail below.

Contingency Funding Plan

The proposed LRMF would describe OCC's Contingency Funding Plan, which enables OCC to: (1) Collect additional liquidity resources from a Clearing Member Group when that Clearing Member Group's projected or actual liquidity risk exceeds certain thresholds or (2) quickly supplement OCC's Available Liquidity Resources outside of the annual sizing process, should the circumstances warrant. The Contingency Funding Plan and associated OCC Rule changes are discussed in more detail in the ''Contingency Funding Plan'' section below.

Supporting Institutions

OCC's management of liquidity risk is dependent on a number of supporting institutions, such as settlement banks, custodian banks, central banks, and liquidity providers. The LRMF would describe OCC's overall framework for monitoring, managing, and limiting its risks and exposures to theses supporting institutions, which is primarily governed by OCC's CCRM Policy.[19] This includes rigorous onboarding and monitoring processes, including but not limited to: (1) Conducting initial and ongoing due diligence to confirm each commercial institution meets OCC's financial and operational standards; (2) confirming that each commercial institution has access to liquidity to meet its commitments to OCC; (3) monitoring and managing direct, affiliated, and concentrated exposures; and (4) meeting with these commercial institutions and conducting operational reviews as required by OCC's policies and procedures. The proposed LRMF would also set forth OCC's requirements for performing due diligence to confirm it has a reasonable basis to believe each of its liquidity providers has (1) sufficient information to understand and manage the potential liquidity demands of OCC and its associated liquidity risk and (2) the capacity to perform as required under its commitments, including the execution of periodic test borrows no less than once every 12 months to measure the performance and reliability of the liquidity facilities. The proposed LRMF would also describe OCC's use of accounts and services at the Federal Reserve Bank of Chicago, and in particular, its use of accounts at the Federal Reserve Bank of Chicago to custody funds to reduce counterparty credit risks.

Governance and Reporting

The proposed LRMF would set forth the governance, review, monitoring, and reporting activities performed by OCC with respect to liquidity risk management. On a daily basis, FRM would be responsible for reviewing the results of OCC's liquidity stress test exposures and the sufficiency of OCC's Base Liquidity Resources and Required Liquidity Resources, including the adequacy of such resources in covering OCC's risk tolerance. The chair of the STWG or the Executive Vice President of FRM would immediately escalate any material issues identified with respect to the adequacy of OCC's liquidity resources to the Credit and Liquidity Risk Working Group (''CLRWG'') [20] to determine if it would be appropriate to recommend a change the size of OCC's Base Liquidity Resources in accordance with relevant procedure(s).

On at least a monthly basis, FRM would prepare reports that provide

[14] *See infra* notes 22 and 23 and associated text.

[15] Under the proposed LRMF and Methodology Description, the output of these stress test scenarios would assume that the National Securities Clearing Corporation (''NSCC'') accepts and guarantees all E&A activity under the Stock Options and Futures Settlement Agreement by and between OCC and NSCC. *See* OCC Rule 901 and Securities Exchange Act Release No. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR–OCC–2017–013) (Order Approving Proposed Rule Changes Concerning the Adoption of a New Stock Options and Futures Settlement Agreement Between the National Securities Clearing Corporation and The Options Clearing Corporation) and Securities Exchange Act Release No. 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR–OCC–2017–804) (Notice of No Objection to Advance Notices Concerning the Adoption of a New Stock Options and Futures Settlement Agreement Between the National Securities Clearing Corporation and The Options Clearing Corporation). OCC plans to submit separate regulatory filings to address liquidity risk that may be posed by limited scenarios where NSCC may not accept and guaranty all E&A transactions associated with a defaulted Clearing Member.

[16] See the ''Governance and Reporting'' section below, which discusses the proposed process for reporting and escalating material issues identified with respect to the adequacy of OCC's liquidity resources.

[17] Given the different coverage standards used by OCC to calculate its credit and liquidity resources (*i.e.,* Cover 2 versus Cover 1, respectively) and the potential limitations on the frequency with which OCC would be able to adjust the size of certain of its liquidity resources (*e.g.,* its committed credit facilities and repurchase agreements), the Board and Risk Committee could consider the analysis provided in part, or its entirety, for the purposes of determining the size of Base Liquidity Resources.

[18] These parameters and assumptions are routinely reviewed by STWG, on at least a monthly basis.

[19] *See* Securities Exchange Act Release No. 82312 (December 13, 2017), 82 FR 60242 (December 19, 2017) (SR–OCC–2017–009) (Order Approving Proposed Rule Change Relating to The Options Clearing Corporation's Counterparty Credit Risk Management Policy).

[20] If escalation to the CLRWG is not practical, issues would be escalated to OCC's Management Committee.

details and trend analysis of daily stress tests with respect to the Base Liquidity Resources, including the results of daily stress tests and a review of the adequacy of OCC's liquidity resources, and provide these reports to the STWG. The STWG would perform a comprehensive review of the existing stress test results and scenarios, and their underlying parameters and assumptions, the output of which is used to project liquidity demands, and consequently evaluate their appropriateness for determining the level of liquidity resources that OCC must maintain under current and evolving market conditions and consider proposed enhancements to the scenarios used for stress testing based on the results of this comprehensive review. Such an analysis would be conducted more frequently than monthly when products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by OCC's participants increases significantly.[21] In addition, FRM would be responsible for preparing a summary of the adequacy of OCC's Base and Available Liquidity Resources, as well as actions taken under the Continency Funding Plan, and results from its monthly comprehensive review to provide to OCC's Management Committee and Risk Committee to demonstrate compliance with OCC's minimum liquidity resource requirements. If needed, any issues that are detected with respect to the adequacy of OCC's Base Liquidity Resources would be promptly escalated to the Management Committee intra-month pursuant to FRM procedures. In the performance of monthly review of liquidity results and analysis, and when considering whether escalation is appropriate, due consideration would be given to the intended purpose of the proposed LRMF to: (1) Assess the adequacy of, and adjust as necessary, OCC's Base Liquidity Resources; (2) support compliance with the minimum requirements under applicable regulations; and (3) and any other relevant aspects of OCC's liquidity risk management.

On at least an annual basis, FRM would assesses the adequacy of OCC's stress testing methodology, the output of which is used to evaluate OCC's liquidity resource risks. Proposed changes resulting from such review would be sent to the Risk Committee for approval. In addition, the CLRWG would be responsible for reviewing the LRMF and any and liquidity resource sizing recommendations, with proposed changes resulting from such review being sent to the Risk Committee for approval. Finally, on at least an annual basis, OCC's Model Validation Group would perform a review of risk methodologies and the usage of any models to inform the management of liquidity risk.

2. Liquidity Stress Testing

OCC proposes to enhance its management of liquidity risk by introducing a new approach to stress testing and determining the adequacy, sizing, and sufficiency of its liquidity resources. OCC's liquidity stress testing would be based on output of its current stress testing and Clearing Fund methodology,[22] which would be used to project OCC's potential liquidity demands under stressed market conditions.

Current Stress Testing Approach for Clearing Fund

OCC determines its Clearing Fund size based on the results of stress tests conducted daily using standard predetermined parameters and assumptions. These daily stress tests consider a range of relevant stress scenarios and possible price changes in liquidation periods, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; and (3) the default of one or multiple Clearing Members. OCC also conducts reverse stress tests for informational purposes aimed at identifying extreme default scenarios and extreme market conditions for which the OCC's financial resources may be insufficient.

As set forth in the Methodology Description, the methodology includes two primary types of scenarios: ''Historical Scenarios'' and ''Hypothetical Scenarios.'' Historical Scenarios attempt to replicate historical events in current market conditions, which includes the set of currently existing securities, their prices, and volatility levels. These scenarios provide OCC with information regarding pre-defined reference points determined to be relevant benchmarks for assessing OCC's exposure to Clearing Members and the sufficiency of its financial resources. Hypothetical Scenarios represent events in which market conditions change in ways that have not yet been observed. The Hypothetical Scenarios are derived using statistical methods (*e.g.,* draws from estimated multivariate distributions) or created based on a mix of statistical techniques and expert judgment (*e.g.,* a 15% decline in market prices and 50% increase in volatility). These scenarios give OCC the ability to change the distribution and level of stress in ways necessary to produce an effective forward-looking stress testing methodology. OCC uses these pre-determined stress scenarios in stress tests, conducted on a daily basis, to determine OCC's risk exposure to each Clearing Member Group by simulating the profits and losses of the positions in their respective account portfolios under each such stress scenario.

OCC performs daily stress testing using a wide range of scenarios, both Hypothetical and Historical, designed to serve multiple purposes. OCC's stress testing inventory contains scenarios designed to: (1) Determine whether the financial resources collected from all Clearing Members collectively are adequate to cover OCC's risk tolerance (''CF Adequacy Scenarios''); (2) establish the monthly size of the Clearing Fund necessary for OCC to maintain sufficient pre-funded financial resources to cover losses arising from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure to OCC as a result of a 1-in-80 year hypothetical market event (''CF Sizing Scenarios''); (3) measure the exposure of the Clearing Fund to the portfolios of individual Clearing Member Groups, and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources so that OCC continues to maintain sufficient financial resources to guard against potential losses under a wide range of stress scenarios, including extreme but plausible market conditions (''CF Sufficiency Scenarios'');[23] and (4)

[21] FRM would maintain procedures for determining whether, and in what circumstances, such intra-month reviews shall be conducted, and which officers have responsibility for making the determination.

[22] *See* Securities Exchange Act Release No. 83714 (July 26, 2018), 83 FR 37570 (August 1, 2018) (SR–OCC–2018–803) (Notice of No Objection to Advance Notice, as Modified by Amendments No. 1 and 2, Concerning Proposed Changes to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology) and Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (August 2, 2018) (SR–OCC–2018–008) (Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology).

[23] Under OCC Rule 609, the Policy, and the Methodology Description, if a CF Sufficiency Stress Test identifies exposures that exceed 75% of the current Clearing Fund requirement less deficits (the ''75% threshold'' or ''Sufficiency Stress Test Threshold 1''), OCC may require additional margin deposits from the Clearing Member Group(s) driving the breach. All such margin calls must be approved by a Vice President (or higher) of FRM;

monitor and assess the size of OCC's pre-funded financial resource against a wide range of stress scenarios that may include extreme but implausible and reverse stress testing scenarios (''CF Informational Scenarios'').

Proposed Liquidity Stress Testing

OCC proposes to revise its Methodology Description to enable OCC to use the output of its current stress testing methodology to determine the adequacy, sizing, and sufficiency of OCC's liquidity resources. The proposed revisions to the Methodology Description would primarily address the construction and aggregation of stress test portfolios and add a new section to discuss how OCC would calculate its stressed liquidity demands.

Portfolio Construction and Aggregation

The revised Methodology Description would describe how OCC endeavors to construct Clearing Member portfolios and aggregate results consistent with business practices that would be followed in an actual liquidation of a defaulter's portfolio. Currently, the Methodology Description describes OCC's process for creating the ''Synthetic Accounts'' used in credit stress testing. When aggregating results for credit purposes, the focus is on calculating the liquidating value of the portfolio. OCC would revise the Methodology Description to describe OCC's process for portfolio construction and aggregation for liquidity stress testing purposes under the proposed LRMF. Specifically, the Methodology Description would be revised to highlight the importance of the timing of the cashflows from the liquidation since an offsetting debit and credit may occur on different days thus creating a liquidity demand when there is no credit demand. The Methodology Description would also be revised to clarify that Clearing Member positions are held in accounts based on a business type classification and/or by cross margining relationships with other clearing houses, and in many instances, Clearing Members maintain several accounts of the same business type.

OCC also proposes to revise the Methodology Description to streamline the description of how OCC aggregates positions into stress test accounts and closes certain positions out to account for differences in aggregation for credit and liquidity purposes. For example, Rule 1106(d) provides that, in lieu of closing long positions and short positions in the same series of cleared contract carried by a suspended Clearing Member through closing transactions on an Exchange, OCC is permitted to close long and short positions of a suspended Clearing Member in the same series by offset. OCC refers to this process of closing long and short positions in the same series in the same account type as ''netting'' [24] and closing long and short positions in the same series between account types as ''internalization.'' [25] For internalization, proceeds associated with the close out would be debited and credited, as applicable, between the account types involved and the proceeds would be tracked and included in subsequent calculations of the liquidating value associated with each account type.[26] The aggregation of results from an account to a Clearing Member or Clearing Member Group level is designed to follow how OCC would account for the proceeds during an actual Clearing Member liquidation. For instance, positions and collateral credited to a particular type of Clearing Member account (*e.g.,* customer, firm or market-maker) are, depending on the account type, potentially subject to a lien [27] in favor of OCC. Specifically, OCC's By-Laws and Rules contemplate that the positions and collateral in an account may be subject to a ''general lien'' [28] or a ''restricted lien'' [29] in favor of OCC. It is also the case that in some instances there is no lien in favor of OCC (*e.g.,* segregated long options positions in the customers' account).[30] These liens (or the absence of any lien) are respected when summing results from a business account type level to the Clearing Member level, and then all Clearing Member results are summed to a Clearing Member Group level; however, OCC may not use a credit of one legal entity to offset losses of another affiliated legal entity.

Liquidity Stress Testing

OCC proposes to revise the Methodology Description to describe how OCC would use the output from its current stress testing system to measure and monitor the sufficiency of OCC's liquidity resources. The Methodology Description would be revised to generally summarize OCC's LRMF and to set forth key assumptions in the construction of its liquidity calculations. For example, for purposes of its liquidity calculations, OCC would assume: (1) A liquidation horizon of two days (which aligns with its two-day margin period of risk); (2) that a Clearing Member default occurs sometime after the collection of collateral on the day before the default (D–1) up to or at settlement on day of default (D); (3) that cash-settled option liquidity demands due on the morning of default are conservatively calculated using gross positions; (4) NSCC normally guarantees the settlement of any E&A transactions; [31] (5) OCC accounts for liquidity demands as required by relevant cross-margin agreements; (6) that auction bids are

however, if the margin call imposed on an individual Clearing Member exceeds $500 million, OCC's Stress Testing and Liquidity Risk Management group (''STLRM'') must provide written notification to the Office of the CEO.

[24] For example, a customer account may be long 10 contracts and short 5 contracts in the same series. After netting, the customer account will be long 5 contracts in the series, but there is no need to transfer a marking price associated with the effective sale of the 5 long contracts because the closure by offset is accomplished within the same account type.

[25] For example, if the customer account is long 10 contracts in a particular series and the firm account is short 5 contracts in the same series, OCC would effectively create an ''internalized transaction'' to sell 5 contracts in the series from the customer account and purchase 5 contracts in the series from the firm account. OCC would debit the firm account for the marking price associated with the sale of the 5 contracts and credit the customer account in connection with the purchase. As a matter of the positions in the series maintained in each account, after the internalization, there would be 5 contracts remaining in the customer account and no positions in the firm account.

[26] *Id.*

[27] Pursuant to Article I, Section 1L(3) of OCC's By-Laws, a ''lien'' is a ''security interest'' as defined in applicable provisions of the Uniform Commercial Code as in effect in the relevant jurisdictions and, where used in respect of OCC's security interest in cleared contracts carried in the account of Clearing Members, shall include an ''issuer's lien'' within the meaning of the 1977 amendments to the Uniform Commercial Code.

[28] ''General lien'' means that OCC has a security interest in all or specified assets in a Clearing Member account as security for all of the Clearing Member's obligations to OCC regardless of the source or nature of such obligations. *See* Article I, Section 1G(1) of OCC's By-Laws.

[29] A ''restricted lien'' is a security interest of OCC in specified assets (including any proceeds thereof) in an account of a Clearing Member with OCC as security for the Clearing Member's obligations arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all confirmed trades effected through such account or group of accounts, short positions maintained in such account or group of accounts, and exercise notices assigned to such account or group of accounts. *See* Article I, Section 1R(7) of OCC's By-Laws.

[30] *See* Article VI, Section 3(e) of OCC's By-Laws.

[31] OCC also projects liquidity demands for using a liquidation agent to act as a ''substitute broker'' for informational purposes. ''Substitute broker'' refers to the use of another OCC clearing member that remains in good standing at NSCC and that, on OCC's behalf, will facilitate settlement of OCC's delivery obligations of the E&A transactions at NSCC.

represented by stressed prices at the contract level; (7) that credits that occur on the first day of a liquidation persist and are available to offset debits on subsequent days; (8) that auction proceeds settle on D+2; (9) liquidity demands associated with Specific Wrong Way Risk (''SWWR'') positions are included in the appropriate calculations; and (10) early exercise is not assumed in estimating liquidity demands.[32]

Under the proposed approach, OCC would assume that positions [33] with an expiration date of D+1 or greater will be liquidated via auction. With respect to collateral positions, accounts with excess collateral would be evaluated and adjusted since excess collateral may be withdrawn prior to default. If there is excess collateral, the portfolio would be adjusted by removing excess cash, letters of credit, government securities, and valued securities in that order until no excess collateral remains. In addition, any option positions expiring on D–1 or D would be evaluated for moneyness,[34] and then assumed to be liquidated through normal OCC cash settlement processes or through physical settlement at NSCC. Moreover, under the proposed approach, credits from earlier dates would only reduce debits for later dates when evaluating liquidity demands.

As discussed above, the proposed approach to liquidity stress testing would assume that NSCC accepts and guarantees all E&A activity under the Stock Options and Futures Settlement Agreement by and between OCC and NSCC.[35] In the unlikely event there is a rejection by NSCC, OCC would attempt to use a liquidation agent acting as a substitute broker to settle the E&A activity through NSCC. This method of settlement would not be used in OCC's liquidity resource sizing assumptions, but OCC would monitor the potential liquidity demands through the use of informational stress test scenarios, which would be part of OCC's daily stress testing and monitored and reported regularly to the STWG.

OCC's proposed approach to liquidity stress testing would utilize output from its current stress testing methodology, and the same scenarios would be used for Sufficiency and Adequacy stress testing. OCC would perform daily liquidity risk stress testing using standard and predetermined parameters and assumptions, and the output of these scenarios would be used for liquidity resource evaluation and reviewed daily by FRM. Specifically OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, and the output would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's Base and Available Liquidity Resources against OCC's liquidity risk tolerance (''Adequacy Scenarios''); (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches of certain thresholds under OCC's Contingency Funding Plan (''Sufficiency Scenarios''); and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios (''Informational Scenarios''). Under the proposed LRMF, Adequacy Scenarios would be used to evaluate OCC's Base Liquidity Resources against OCC's risk tolerance of a 1-in-50-year market event at a 99.5% confidence interval over a two-year look back period. The output of Sufficiency Scenarios would be used to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources under a wide range of historical and hypothetical stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan (discussed further below). The output of Informational Scenarios would be used to assess OCC's liquidity under a variety of extreme stress conditions, both plausible and implausible, as well as reverse stress tests.[36]

OCC also proposes to make other conforming and organizational changes to the Methodology Description to reflect the implementation of the new liquidity stress testing approach and make other non-substantive clarifications to the document. For example, OCC would reorganize the document to relocate content specific to credit stress testing to sections of the document focused only on credit stress testing. OCC would also make clarifying and conforming changes to differentiate the usage of Adequacy, Sizing, Sufficiency, and Informational Scenarios for credit and liquidity purposes. OCC also proposes changes to more accurately describe the scope of volatility instruments cleared by OCC. In addition, OCC would clarify that in most SWWR stress test scenarios, SWWR Equity and ETN charges computed for margins are added to stress scenario profit and loss calculations in order to account for SWWR in the stress testing system.[37] OCC would also remove duplicative language regarding Idiosyncratic Scenarios, Sizing Scenarios, and certain key assumptions from the executive summary of the Methodology Description as this information is covered in greater detail later in later sections of the document.

[32] OCC recognizes that early exercises may potentially be incentivized by certain situations, such as a favorable present value of interest income that can be earned on strike premium over the remaining life of a contract for deep in-the-money puts or with dividend capture strategies on call contracts, where the dividend amount exceeds the costs associated with purchasing the underlying stock and a related put contract having an identical strike and expiration. However, OCC believes standard expiration is generally more meaningful than early exercise risk when calculating the liquidity risk associated with E&A activity. For example, OCC reviewed early exercises during a period of market stress, specifically, the days leading up to, and immediately following, the events of February 5, 2018. In comparison to all long equity put option open interest during this period, OCC found that less than one percent of equity put contracts were exercised early on February 5, 2018 and February 6, 2018, as opposed to the standard monthly February expiration, where a total of approximately six percent of equity calls and five percent of equity puts were exercised on February 16, 2018.

[33] Neither stock loan nor futures would be included in this calculation. Stock loan positions are handled through a separate buy-in/sell-out process. Futures positions are included in the auction portfolio, but mark-to-market calculations capture the liquidity risk that arises from futures.

[34] The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price.

[35] *See supra* note 15.

[36] Under the LRMF, the output of Informational Scenarios may inform decisions about the adequacy of OCC's liquidity resources but would not be directly used to make decisions regarding the size of OCC's liquidity resources. Informational Scenarios may, however, be re-categorized as Adequacy or Sufficiency upon the approval of the Risk Committee.

[37] *See* Securities Exchange Act Release No. 87673 (December 6, 2019), 84 FR 67981 (December 12, 2019) (SR–OCC–2019–807) (Notice of No Objection To Advance Notice Related to Proposed Changes to The Options Clearing Corporation's Rules, Margin Policy, Margin Methodology, Clearing Fund Methodology Policy, and Clearing Fund and Stress Testing Methodology To Address Specific Wrong-Way Risk) and Securities Exchange Act Release No. 87718 (December 11, 2019), 84 FR 68992 (December 17, 2019) (SR–OCC–2019–010) (Order Approving Proposed Rule Change Related to Proposed Changes to the Options Clearing Corporation's Rules, Margin Policy, Margin Methodology, Clearing Fund Methodology Policy, and Clearing Fund and Stress Testing Methodology To Address Specific Wrong-Way Risk).

3. Clearing Fund Cash Requirement

Current Rules

Pursuant to OCC Rule 1002(a), Clearing Members are required to collectively contribute $3 billion in cash to the Clearing Fund. In addition, OCC's Executive Chairman, Chief Executive Officer, and Chief Operating Officer each have the authority, upon providing notice to the Risk Committee, to temporarily increase the amount of cash required to be maintained in the Clearing Fund up to an amount that includes the size of the Clearing Fund for the protection of OCC, Clearing Members or the general public. Any such determination must (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Moreover, any temporary increase in the Cash Clearing Fund Requirement must be reviewed by the Risk Committee as soon as practical (but in any event, such review must occur within 20 calendar days of such increase) and, if such temporary increase is still in effect, the Risk Committee shall determine whether (A) the increase in the Cash Clearing Fund Requirement is no longer required, or (B) OCC's rules should be modified to ensure that OCC continues to maintain sufficient liquidity resources.

In addition, Interpretation and Policy .03 to Rule 1002 Clearing Fund currently requires that any increase in the Cash Clearing Fund Requirement be satisfied no later than one hour before the close of the Fedwire on the business day following the issuance of an instruction to increase cash contributions.

Proposed Changes

OCC proposes to amend Rule 1002(a) to modify its authority to set and to temporarily increase the minimum amount of cash required in its Clearing Fund.[38] The proposed change is intended to provide OCC with the flexibility to periodically set its Base Liquidity Resources and to adjust Base Liquidity Resources in response to changing market and business conditions to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times. OCC's Board would have the authority to periodically adjust the Clearing Fund Cash Requirement (typically during the annual review of OCC's Base Liquidity Resources as required under the proposed LRMF based on analysis of OCC's projected liquidity demands under a variety of stress scenarios.[39] However, revised Rule 1002(a) would require that the Clearing Fund Cash Requirement never be at set at an amount lower than $3 billion.

In addition, OCC proposes to remove the description of the specific OCC officers authorized to temporarily increase the size of the Clearing Fund as this authority is already discussed in OCC's CFM Policy and will also be described in the proposed LRMF.[40] Rule 1002(a)(i) would be revised to instead state that ''the Corporation'' shall have the authority to increase the amount of cash required to be maintained in the Clearing Fund. OCC believes the internal governance process for temporary increases in the Clearing Fund Cash Requirement are appropriately documented in its filed policies (and proposed LRMF) and that the proposed change would reduce the risk of potential inconsistencies between OCC's Rules and its filed policies.

OCC also proposes to modify Rule 1002(a)(i)(A) to provide that the Clearing Fund Cash Requirement may be temporarily increased ''to respond to changing business or market conditions'' for the protection of OCC, Clearing Members or the general public and to move certain existing criteria (*i.e.,* that any determination to implement a temporary increase in the Clearing Fund Cash Requirement (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants) to be applied to the Risk Committees review of any such increase. The proposed change would provide flexibility for OCC's executive management to increase liquidity resources as circumstances warrant and put into place more detailed criteria for the Risk Committee's review of such an increase when determining whether changes should be made on a more permanent basis.

Under the requirements of the proposed LRMF, the Risk Committee's review would include a determination as to whether the increase was appropriately made on a temporary basis or whether OCC's Liquidity Risk Management Framework, stress testing methodology, Base Liquidity Resources, or Contingency Funding Plan should be modified to ensure that OCC continues to maintain sufficient liquidity resources to meet its regulatory obligations. This determination would (1) be based upon then-existing facts and circumstances, (2) be in furtherance of the integrity of OCC and the stability of the financial system, and (3) take into consideration the legitimate interests of Clearing Members and market participants. In addition, the Risk Committee would maintain sole authority to decrease the amount of the Clearing Fund Cash Requirement, incrementally or in full, to any amount greater than or equal to the amount set during the last yearly sizing process.[41] The LRMF would also clarify that any such increase may occur during the monthly Clearing Fund sizing process, or on an intra-month basis. The proposed change is designed to ensure that OCC maintains appropriate flexibility to manage its liquidity risks in response to changing market and business conditions while also providing an appropriate governance structure for making such decisions on a temporary basis (*i.e.,* through authority limited to OCC's executive management team) and for reviewing such decisions and making determinations on further enhancements to OCC's framework for managing liquidity risk (*i.e.,* through oversight and ultimate decision-making authority by OCC's Board-level Risk Committee).

OCC also proposes to amend Interpretation and Policy .03 to Rule 1002 to require that any increase in the Clearing Fund Cash Requirement be satisfied no later than the second business day following notification unless the Clearing Member is notified by an officer of OCC an alternative time to satisfy such obligation. Interpretation and Policy .03 to Rule 1002 currently requires Clearing Members to fund an increase in Clearing Fund Cash

[38] OCC also proposes non-substantive revisions to its Rules and OCC Risk Policies to redefine this requirement as the ''Clearing Fund Cash Requirement.''

[39] OCC's Risk Committee has initially determined that OCC's Clearing Fund Cash Requirement should be increased to $3.5 billion based on an analysis of stress test results demonstrating that this amount, combined with OCC's committed liquidity facilities, should be sufficient to cover OCC's liquidity risk tolerance of a 1-in-50 year statistical market event at a 99.5% confidence level over a two-year look back period. In evaluating the proposed size of the Clearing Fund Cash Requirement, OCC analyzed stress test results for the period January 2017–June 2019. This analysis has been provided in confidential Exhibit 3 to File No. SR–OCC–2020–802. OCC would inform Clearing Members of any change in the Clearing Fund Cash Requirement through Information Memoranda and Clearing Fund sizing reports.

[40] OCC also proposes similar changes to Rule 1001(d) concerning temporary increases to the overall Clearing Fund Size. This authority is also discussed in OCC's CFM Policy.

[41] OCC notes that the Clearing Fund Cash Requirement would initially be set at $3.5 billion.

Requirement no later than one hour before the close of Fedwire on the business day following notification by OCC. The proposed change is intended to more closely align timeframes for meeting an increase in the Clearing Fund Cash Requirement with the timing for satisfying Clearing Fund deficits in the monthly and intra-month sizing processes. OCC believes that standardizing these timeframes would provide more clarity and simplicity in OCC's Rules and would help Clearing Members better understand and manage their obligations to OCC.

4. Two-Day Notice Period for Substitutions Involving Excess Clearing Fund Cash

Under OCC's current operational practices, Clearing Members may substitute Government Securities for cash deposits in the Clearing Fund in excess of their minimum cash requirements, and such substitutions are generally completed on the same day of the request. OCC proposes to adopt new Rule 1002(a)(iv) to introduce a two-day notice period for any Clearing Member requesting to substitute Government Securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement. For purposes of determining permitted substitution amounts and eligible cash withdrawals during any two-day notification period, deposits of Government Securities or any other non-cash collateral transactions that result in excess Clearing Fund contributions of the Clearing Member will not be deemed to be excess until the completion of the two-day notification period. The proposed change is intended to provide additional certainty around the level of liquidity resources available to OCC at any given time by fixing the amount of cash in the Clearing Fund, and thereby fixing the amount of OCC's Available Liquid Resources, for any given two-day liquidation horizon. Under the proposed LRMF, once the substitution request is made, OCC would remove the cash deposits in question from subsequent Contingency Funding Plan calculations (discussed below). OCC believes that the proposed change would also eventually result in a natural equilibrium of excess cash in Clearing Fund as Clearing Members determine how best to fund their Clearing Fund requirement. OCC notes that Clearing Members would continue to be able to immediately withdraw cash deposits that are above their Clearing Fund Cash Requirement provided that they have an equivalent amount of excess Clearing Fund deposits (as provided under Rule 1008).

Proposed Rule 1002(a)(iv) would also provide OCC with the discretion to waive the two-day notification period if the substitution would not result in any Clearing Member's settlement obligations, including potential settlement obligations under stressed market conditions, exceeding the liquidity resources available to satisfy such settlement obligations.

5. Contingency Funding Plan

OCC proposes several enhancements to its Contingency Funding Plan, which would be described in the proposed Rules, LRMF, and Methodology Description. OCC's current Contingency Funding Plan and proposed changes thereto are discussed in detail below.

Current Process

OCC's Contingency Funding Plan primarily consists of a process by which OCC monitors and evaluates the reasonably anticipated settlement obligations of its Clearing Members against OCC's liquidity resources and calls for cash margin deposits in circumstances where such settlement obligations may exceed OCC's liquidity resources. In 2014, OCC filed a proposed rule change for immediate effectiveness that, among other things, required OCC to issue an intra-day margin call [42] in situations in which a Clearing Member's reasonably anticipated settlement obligations to OCC exceeded the liquid financial resources available to satisfy such obligations.[43] The filing made it clear that such action would be taken even if OCC has made no adverse determination as to the financial condition of the Clearing Member, the market risk of the Clearing Member's positions or the adequacy of the Clearing Member's total margin deposit in the accounts in question. One primary circumstance in which such action may be required is the ''unwinding'' of a ''box spread'' position.[44] Box spreads can be used as financing transactions, and they may require very large fixed payments upon expiration. In this situation, if the margin deposited by a Clearing Member participating in such a box spread is in the form of common stock, and if the Clearing Member failed to make the settlement payment, OCC's available liquid financial resources may be insufficient to cover the settlement obligation. In anticipation of such a settlement, OCC requires the Clearing Member to deposit intra-day margin in the form of cash so that OCC's liquid financial resources would be sufficient to cover the Clearing Member's obligations.[45]

Currently, OCC generally monitors for potential liquidity shortfalls beginning thirty days prior to a given settlement. For purposes of determining whether the reasonably anticipated settlement obligations of a Clearing Member Group may exceed the liquid financial resources available to satisfy such obligations, OCC compares the forecasted liquidity amount against the drawable amount of its committed liquidity facilities.[46]

Proposed Changes

OCC proposes to make several enhancements to its Contingency Funding Plan, which are discussed in detail below.

Stress Test-Based Forecasting

As discussed above, OCC's proposed approach to liquidity stress testing would include the use of certain Sufficiency Scenarios designed to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources. OCC proposes to use the output of these Sufficiency Scenarios in place of its current process for forecasting reasonably anticipated settlement obligations to determine whether to require additional cash deposits from its Clearing Members. These Sufficiency Scenarios may include a range of Historical and Hypothetical Scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event. OCC notes that the proposed change would involve assessing OCC's projected settlement obligations against OCC's Available Liquidity Resources as opposed to its

[42] OCC Rule 609 provides OCC with the discretion to require the deposit of additional margin by any Clearing Member in any account at any time during a given business day.

[43] *See* Securities Exchange Act Release No. 72266 (May 28, 2014), 79 FR 32009 (June 3, 2014) (SR–OCC–2014–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Require That Intraday Margin be Collected and Margin Assets Not be Withdrawn When a Clearing Member's Reasonably Anticipated Settlement Obligations to OCC Would Exceed the Liquidity Resources Available to OCC to Satisfy Such Settlement Obligations).

[44] A box spread position involves a combination of two long and two short options on the same underlying interest with the same expiration date that results in an amount to be paid or received upon settlement that is fixed regardless of fluctuations in the price of the underlying interest. *See http://www.cboe.com/learncenter/glossary.aspx#b.*

[45] In advance of such margin call being made, a Clearing Member may elect to deposit margin in the form of cash, thereby increasing liquid resources available to OCC. If a margin deposit in the form of cash is made by the Clearing Member before the call is issued, it may obviate the need for the call altogether.

[46] *See supra* note 6.

committed liquidity facilities in order to fully account for the amount of cash committed to OCC beyond its liquidity facilities (*e.g.,* the Clearing Fund Cash Requirement). The proposed change would allow OCC to more appropriately monitor its liquidity exposures under a variety of foreseeable stress scenarios, including the default of the Clearing Member Group that would generate the largest aggregate payment obligation to OCC in extreme but plausible market conditions, and to call for additional liquid resources in the form of cash deposits to ensure that OCC continues to maintain sufficient liquid resources to meet its settlement obligations with a high degree of confidence.

Required Cash Deposits

Under the proposed LRMF, OCC would produce projections of near-term potential liquidity demands using its Sufficiency Scenarios for each Clearing Member Group. In the event OCC projects that a Clearing Member Group's projected liquidity demands exceed 80% of OCC's Available Liquidity Resources, FRM would initiate enhanced monitoring of the Clearing Member Group's liquidity demand. If any stressed liquidity demand from a Sufficiency Scenario is greater than, or equal to, 90% of Available Liquidity Resources, OCC may require the Clearing Member Group to post deposits or substitute collateral in the form of cash (''Required Cash Deposits'') to supplement OCC's Available Liquidity Resources.[47] In addition, the proposed LRMF would establish other thresholds designed to monitor the impact of Required Cash Deposits on individual Clearing Members. Specifically, if a Required Cash Deposit for an individual Clearing Member exceeds $500 million or 75% of the Clearing Member's excess net capital, STLRM would be required to notify the OCEO. If the Required Cash Deposit imposed on an individual Clearing Member would exceed 100% of an individual Clearing Member's net capital, the Required Cash Deposit shall be escalated to the OCEO, and any member of the OCEO would have the authority individually to determine whether OCC should continue calling for additional liquidity resources in excess of 100% of the net capital amount. OCC believes that this notification and escalation process would enable OCC to appropriately require those Clearing Members that bring elevated liquidity exposures to OCC to bear the costs of those risks in the form of Required Cash Deposits while also allowing OCC to take into consideration a particular Clearing Member's ability to meet the call based on its financial condition and the amount of collateral it has available to pledge when certain pre-identified thresholds have been exceeded.

These thresholds and any recommend changes thereto would be reviewed by the CLRWG and sent to the Risk Committee for approval during an annual review. Under the proposed LRMF, each member of OCC's Office of the Chief Executive Officer would maintain separate authority to approve temporary changes to the thresholds outside of the annual review process due to changing market or business conditions. Any temporary change in Contingency Funding Plan thresholds shall be reviewed by the Risk Committee within 20 calendar days of such increase to determine whether the increase was appropriate on a temporary basis, or whether OCC's Liquidity Risk Management Framework, stress testing methodology, Base Liquidity Resources, or Contingency Funding Plan should be modified to ensure that OCC continues to maintain sufficient liquidity resources to meet its regulatory obligations. Such a determination would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. If the Risk Committee determines that a permanent change is required to OCC's Liquidity Risk Management Framework, stress testing methodology, Base Liquidity Resources, or Contingency Funding Plan, OCC would continue to maintain any temporary changes in Contingency Funding Plan thresholds through the completion of any necessary regulatory filings to ensure that it maintains sufficient liquidity resources during the regulatory review and approval process.

Pursuant to procedures maintained by OCC's FRM department, a Clearing Member Group would be required to maintain a Required Cash Deposit in the account(s) where the demand is being generated until the stressed liquidity demand falls below established thresholds or until the settlement demand is met. OCC would generally require funding of Required Cash Deposits five business days before the date of the projected demand but may require funding up to 20 business days before the projected date as facts and circumstances may warrant.

Increases to Base Liquidity Resources

Under the proposed LRMF, the Contingency Funding Plan would also include increases in OCC's Base Liquidity Resources through an increase in the Clearing Fund Cash Requirement pursuant to proposed Rule 1002(a) as discussed above.[48] Additionally, OCC endeavors to have an uncommitted accordion [49] feature embedded in any syndicated credit facility, potentially allowing OCC to borrow additional funds from existing or new bank syndicate liquidity providers. The availability of an accordion is based on the willingness and ability of the syndicate members to fund the additional borrowing request. OCC can initiate a request to utilize an accordion at any time and it can be expected that it would take a period of weeks to exercise this feature.

Changes to OCC's Rules

OCC proposes changes to Chapters VI (Margins) and X (Clearing Fund) of its Rules to implement the proposed enhancements to its Contingency Funding Plan. OCC proposes to adopt new Rule 601(g) and Rule 609(b) to provide that, in cases when OCC forecasts that a Clearing Member's potential settlement obligations, including potential settlement obligations under stressed market conditions, could be in excess of OCC's committed liquidity resources available to satisfy such obligations, OCC may impose Required Cash Deposits either as part of the Clearing Member's normal daily margin requirement under Rule 601 or through the deposit of intra-day margin in the form of cash under Rule 609. Proposed Rules 601(g) and 609(b) would also provide that OCC would generally require funding of Required Cash Deposits five business days before the date of the projected demand but may require funding up to 20 business days before the projected date as facts and circumstances may warrant. Rule 609(b) would further provide that any such deposit of intra-day margin must be satisfied within one hour of the issuance of an instruction debiting the applicable bank account of the Clearing Member unless the Clearing Member is notified by an officer of OCC of an alternative time to satisfy such obligation, which is generally consistent

[47] The amount of any Required Cash Deposit would be determined by calculating the value of 90% of the total Available Liquidity Resources for the Clearing Member Group in question less amount of the largest stressed liquidity demand for that member resulting from OCC's Sufficiency Scenarios. Required Cash Deposits would be re-calculated daily and remain in place until the projected demand no longer exceeds 90% of Available Liquidity Resources.

[48] *See supra* notes 37–41 and associated text.

[49] An accordion is an uncommitted expansion of a credit facility generally on the same terms as a credit facility.

with OCC's current intra-day margin authority under Rule 609 (and newly amended Rule 609(a)). OCC believes the proposed changes would provide additional clarity and transparency around its authority to impose Required Cash Deposits.

OCC also proposes clarifying changes to Rule 608 concerning withdrawals of margin to provide that the existing prohibition on withdrawing margin for liquidity purposes would now be based on liquidity demands forecasted by OCC that may include potential settlement obligations under stressed market conditions. OCC also would adopt new Interpretation and Policy .08 to Rule 601 and amend Interpretation and Policy .02 to Rule 608 and Interpretation and Policy .01 to Rule 609 to clarify that, for purposes of determining whether a Clearing Member's forecasted settlement obligations to the Corporation could exceed the liquidity resources available to satisfy such obligations, OCC would consider, as forecasted settlement obligations, the settlement obligations of the Clearing Member and any Member Affiliates of the Clearing Member, as well as consider as liquidity resources the margin assets remaining on deposit with respect to such accounts that are in the form of U.S. dollars.

6. Required Cash Deposits for Clearing Members on Watch Level

In addition to the proposed enhancements to the Contingency Funding Plan discussed above, OCC proposes to add new Rule 604(g) to provide OCC with authority to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if the Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process.[50] Under the proposed rule, Clearing Members may be required to satisfy such required cash deposits through their daily margin requirements under Rule 601 or through intra-day margin calls under Rule 609. The proposed change is designed to provide OCC with an additional tool to mitigate potential liquidity risks of those Clearing Members identified as presenting increased risk to OCC through its ongoing monitoring processes outside of the forecasting process in the Contingency Funding Plan.

7. Enhancements to Rules Concerning the Borrowing of Clearing Fund Assets

Under Chapter X of OCC's Rules, OCC has authority in certain circumstances to take possession of cash or securities contributed to the Clearing Fund and to use such assets for borrowings. OCC also generally requires Clearing Members to collectively contribute a minimum of $3 billion in cash to the Clearing Fund, which is intended to provide OCC with a reliable amount of qualifying liquid resources to account for the event that there is an extreme scenario in the financial markets and OCC has to address any resultant liquidity demands. In addition to providing OCC with sufficient pre-funded financial resources to cover potential credit losses, these Clearing Fund contributions serve as an important source of liquidity for OCC to manage potential liquidity risks associated with a Clearing Member default or the failure or operational disruption of a bank or securities or commodities clearing organization. OCC is proposing several changes to its rules to clarify its authority to borrow Clearing Fund contributions to address potential liquidity needs.

Authority To Borrow Cash Clearing Fund Contributions for Liquidity Purposes

OCC Rule 1006(f) describes OCC's use of the Clearing Fund for liquidity purposes, specifically, the use of Clearing Fund for borrowing or otherwise obtaining funds to be used for liquidity purposes. Rule 1006(f) primarily discusses the use of Clearing Fund securities to borrow or otherwise obtain funds from third parties to meet its settlement obligations; however, OCC would be unlikely to use Clearing Fund cash deposits to borrow collateral from a third party in the same, fungible form, incur costs associated with the borrowing, and then use that fungible collateral to meet OCC's obligations. Rather, OCC would directly borrow Clearing Fund cash under the same general terms and conditions as it would to effect a borrowing pursuant to Rule 1006(f). This is further reinforced by OCC's Default Management Policy, which provides that ''[i]n order to meet financial resource obligations as a result of a clearing member suspension. OCC is able to utilize the following resources . . . *Clearing Fund deposits of the suspended member.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits. *Clearing Fund deposits of non-defaulting members.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits.'' (emphasis in original).[51]

OCC proposes to amend Rules 1006(a) and (f) to clarify that, where the Clearing Fund is already allowed to be used for borrowings, OCC has authority to borrow cash directly instead of pledging Clearing Fund cash or securities to a third party to borrow or otherwise obtain funds. Making this authority explicit will provide OCC with clear and transparent flexibility to access cash contributions to the Clearing Fund in relevant circumstances rather than pledging Clearing Fund securities to borrow on a secured basis. Consistent with OCC's current rules applicable to using Clearing Fund assets to effect borrowings, OCC would be permitted to borrow Clearing Fund cash directly for any means determined to be reasonable by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer in his discretion and shall not be deemed to be a charge against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Chapter X of the Rules. OCC believes the proposed change would provide additional clarity and transparency to its Clearing Members regarding OCC's use of Clearing Fund cash as a liquidity resource and would help Clearing Members better understand their and OCC's rights and obligations as they relate to the Clearing Fund.

Authority To Reject Substitution Requests for Clearing Fund Collateral

OCC proposes to amend Rule 1006(f) to permit OCC to reject a Clearing Member's substitution request regarding a security contributed to the Clearing Fund where OCC has already used the security to borrow or otherwise obtain funds. OCC's current By-Laws and Rules do not explicitly address its right to reject a request by a Clearing Member to substitute Government Securities that have been pledged to its liquidity facilities; however, OCC's Rules provide it with plenary authority to use such securities for the purposes of borrowing from its liquidity facilities without restriction or limitation on OCC regarding any obligation or timing for making a substitution. Specifically, Rule 1006(f) provides OCC with broad authority to take possession of cash or securities deposited by Clearing Members as contributions to the

[50] OCC's watch level reporting process is outlined in its CCRM Policy. *See supra* note 19.

[51] *See supra* note 7.

Clearing Fund and use such assets to borrow or otherwise obtain funds, including through its committed liquidity facilities, to meet obligations arising out of the default or suspension of a Clearing Member, the failure of a bank or securities or commodities clearing organization to meet its obligations, or where OCC believes it necessary to borrow to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization. Rule 1006(f) further provides OCC with the authority to pledge such cash and securities to borrow from its liquidity facilities for a period of up to thirty days.[52]

OCC proposes to amend Rule 1006(f) to explicitly permit OCC to reject a Clearing Member's substitution request regarding a security contributed to the Clearing Fund where OCC has already used the security to borrow or otherwise obtain funds. OCC believes that providing this discretion will strengthen OCC's access to liquidity through secured borrowing arrangements by ensuring OCC is able to preserve the pledge of particular securities where necessary or appropriate.

Timeframe To Determine Losses Resulting From Borrowing

OCC Rule 1006(f) currently provides, in part, that funds obtained by OCC through a borrowing shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during that period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund; however, if all or a part of any transaction effected by OCC under Rule 1006(f) remains outstanding after thirty days, OCC shall consider the amount of Clearing Fund assets used to support its obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with Chapter X of the Rules.

OCC proposes to amend Rule 1006(f) to clarify that OCC is not required to wait thirty days prior to determining that any borrowing represents an actual loss to the Clearing Fund. Making this authority more explicit will help ensure that OCC is able to make proportionate charges against Clearing Member contributions to the Clearing Fund in a timely manner to make good the related losses and replenish its credit and liquidity resources.

8. Requirement for Clearing Members To Maintain Contingency Plans for Settlement

OCC Rule 301(d) currently requires that every Clearing Member have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions. OCC rules do not address circumstances in which a Clearing Member has sufficient resources to meet its obligations but is unable to meet settlement obligations due to, for example, a failure or operational issue at its primary settlement bank. As a result, OCC proposes to amend Rule 301(d) to further require that every Clearing Member maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. OCC believes that it is important that OCC and its members maintain processes that are resilient to a variety of potential operational and financial disruptions and that Clearing Members maintain robust contingency plans designed to effect timely settlement of their obligations to reduce the likelihood member would be unable to satisfy their settlement obligations, risking possible suspension. Examples of such arrangements could include maintaining ability to wire funds directly to OCC via Fedwire or by providing instructions to another bank to effect the movement of funds.

9. Other Clarifying and Conforming Changes

OCC also proposes to make conforming changes to the OCC Risk Policies to replace references to OCC's Liquidity Risk Management Policy with references to the LRMF, align descriptions of OCC's liquidity risk management practices with the proposed LRMF, and make other non-substantive administrative changes to enhance the accuracy and clarity of the Risk Policies. In addition, OCC would revise the definition of Committed Liquidity Facilities to better align that term with (1) the discussion of such facilities in the LRMF and (2) the definition of ''qualifying liquid resources'' (as defined in Exchange Act Rule 17Ad–22(a)(14)).[53]

Finally, OCC proposes to revise the policy exception and violation reporting requirements in the Risk Policies and make other administrative updates to policy cross-references. OCC's Compliance Department is responsible for maintaining OCC's internal policy concerning the governance and content of OCC's policies and procedures. This includes the development of standard templates for OCC policy documentation and ensuring that those templates include appropriate and consistent requirements for the reporting and escalation of policy exceptions and violations. OCC proposes to revise the Risk Policies to incorporate new, standardized policy exception and violation reporting requirements, which apply to all internal OCC policies and procedures. The proposed change would simplify and centralize the escalation path for policy document owners and ensure that OCC's Compliance department, and if appropriate the Enterprise Risk Management department, is notified in a consistent manner of any exceptions or violations. OCC does not believe the proposed change would have a material impact on operations under the Risk Policies. The proposed change is intended to ensure that the administration of policy exception and violation reporting is done in a consistent manner throughout OCC's policies.

Clearing Member Outreach

To inform Clearing Members of the proposed changes, OCC has provided an overview of the proposed changes to the Financial Risk Advisory Council (''FRAC''), a working group comprised of exchanges, Clearing Members and indirect participants of OCC and the OCC Roundtable, which was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues.[54] OCC will also provide parallel testing prior to implementation and perform direct outreach to Clearing Members most likely to be materially impacted by the proposed changes and answer any questions Clearing Members may have. To-date, OCC has not received any material objections or concerns in response to this outreach.

Implementation Timeframe

OCC expects to implement the proposed changes within sixty (60) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the

[52] OCC notes that while the terms of its committed liquidity facilities may generally permit OCC to substitute pledged collateral during the course of a borrowing, nothing in the agreements requires OCC to make such a substitution at the request of a Clearing Member.

[53] 17 CFR 240.17Ad–22(a)(14).

[54] The OCC Roundtable is comprised of representatives of the senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC's membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

proposed change by an Information Memorandum posted to its public website at least two (2) weeks prior to implementation.

Expected Effect on and Management of Risk

The proposed changes are designed to enhance OCC's overall framework for managing liquidity risk. OCC believes the proposed changes would mitigate the risks presented to and by OCC and improve OCC's resilience as a systemically important financial market utility for the reasons set forth below.

1. Liquidity Risk Management Framework

The proposed LRMF would set forth the manner in which OCC effectively measures, monitors, and manages its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. Specifically, the LRMF would describe: (1) The identification of OCC's liquidity risks; (2) the categories and types of OCC's liquidity resources; (3) the stress testing and sizing of OCC's liquidity resources; (4) OCC's Contingency Funding Plan for collecting additional liquidity resources from Clearing Members; (5) the risk management of supporting institutions (*e.g.,* settlement banks, custodian banks, and liquidity providers) that may present liquidity risks to OCC; and (6) the governance and reporting requirements concerning OCC's LRMF. Taken together, the proposed LRMF is designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions.

2. Liquidity Stress Testing

OCC proposes to adopt a liquidity stress testing approach to effectively measure and monitor the sufficiency of OCC's liquidity resources. OCC would perform daily liquidity risk stress testing using standard and predetermined parameters and assumptions, and the output of these scenarios would be used for liquidity resource evaluation. OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, and the output would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's liquidity resources against OCC's liquidity risk tolerance; (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches in scenarios including but not limited to, a 1987 historical market event and a 2008 historical market event; and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios. The proposed change is designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions.

3. Clearing Fund Cash Requirement

The proposed changes to OCC's Clearing Fund Cash Requirement are designed to improve the resiliency of OCC's liquidity resources by providing OCC with the flexibility to periodically set its Base Liquidity Resources and to adjust Base Liquidity Resources in response to changing market and business conditions to ensure that OCC maintains sufficient liquidity resources to meet its settlement obligations in a timely manner. Specifically, the proposed changes would provide OCC's Risk Committee with the authority to initially reset the Clearing Fund Cash Requirement to $3.5 billion based on an analysis of stress test results demonstrating that this amount, in combination with OCC's committed liquidity facilities, should be sufficient to cover OCC's liquidity risk tolerance of a 1-in-50 year statistical market event at a 99.5% confidence level over a two-year look back period.[55] It would also allow the Risk Committee to further adjust OCC's Base Liquidity Resources based on future stress test results in a timely manner. In addition, it would allow OCC's executive management team to adjust OCC's Base Liquidity Resources on a temporary basis, subject to notification and review by the Risk Committee, in response to changing market and business conditions.

4. Two-Day Notice Period for Substitutions Involving Excess Clearing Fund Cash

OCC proposes to introduce a two-day notice period for any Clearing Member requesting to substitute Government Securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement. The proposed change is intended to provide additional certainty around the level of liquidity resources available to OCC at any given time by fixing the amount of cash in the Clearing Fund, and thereby fixing the amount of OCC's Available Liquid Resources, for any given two-day liquidation horizon.[56] The proposed change would enhance OCC's management of liquidity risk by providing additional certainty around its liquidity resource calculations and thereby help to ensure that OCC maintains sufficient liquidity resources to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in the event of a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions.

5. Contingency Funding Plan

The proposed enhancements to the Contingency Funding Plan would include the use of certain Sufficiency Scenarios designed to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources in place of OCC's current process for forecasting reasonably anticipated settlement obligations to determine whether to require additional cash deposits from its Clearing Members. The proposed changes would allow OCC to more appropriately monitor its liquidity exposures under a variety of foreseeable stress scenarios, and to call for additional liquid resources in the form of cash deposits to ensure that OCC continues to maintain sufficient liquid resources to meet its settlement obligations with a high degree of confidence, or to respond to a reduction in the amount of OCC's Base Liquidity Resources in an extreme event, such as the potential failure of a liquidity

[55] *See supra* note 39.

[56] OCC notes that Clearing Members would continue to be able to immediately withdraw cash deposits that are above their Clearing Fund Cash Requirement provided that they have equivalent amount of excess Clearing Fund deposits (as provided under Rule 1008).

provider. OCC's Contingency Funding Plan is designed to enable OCC to meet its settlement obligations in all relevant currencies when OCC experiences or projects a liquidity shortfall exceeding its financial resources without unwinding, revoking, or delaying same-day and where appropriate, intraday and multiday, settlement obligations. The proposed changes are designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

6. Required Cash Deposits for Clearing Members on Watch Level

OCC proposes to add new Rule 604(g) to provide OCC with authority to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if the Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. Under the proposed rule, Clearing Members may be required to satisfy such required cash deposits through their daily margin requirements under Rule 601 or through intra-day margin calls under Rule 609. The proposed change is designed to provide OCC with an additional tool to mitigate potential liquidity risks of those Clearing Members identified as presenting increased risk to OCC through its ongoing monitoring processes outside of the forecasting process in the Contingency Funding Plan. The proposed change would allow OCC to collect additional liquid resources from a Clearing Member demonstrating potentially increasing levels of risk through the watch level review process so that OCC can continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in the event such a Clearing Member defaults.

7. Enhancements to Rules Concerning the Borrowing of Clearing Fund Assets

OCC is proposing several changes to its rules to clarify its authority to use Clearing Fund assets to address potential liquidity needs. First, OCC proposes to amend Rules 1006(a) and (f) to clarify that, where the Clearing Fund is already allowed to be used for borrowings, OCC has authority to borrow cash directly instead of pledging Clearing Fund cash or securities to a third party to borrow or otherwise obtain funds. The proposed change would provide additional clarity and transparency to OCC's Clearing Members regarding OCC's use of Clearing Fund cash as a liquidity resource and would help Clearing Members better understand their and OCC's rights and obligations as they relate to the Clearing Fund.[57] Second, OCC proposes to amend Rule 1006(f) to permit OCC to reject a Clearing Member's collateral substitution request concerning a security contributed to the Clearing Fund where OCC has already used the security to borrow or otherwise obtain funds. Explicitly providing this discretion in OCC's Rules will strengthen OCC's access to liquidity through secured borrowing arrangements by ensuring OCC is able to preserve the pledge of particular securities where necessary or appropriate. Finally, OCC proposes to amend Rule 1006(f) to clarify that OCC is not required to wait thirty days prior to determining that any borrowing represents an actual loss to the Clearing Fund. Making this authority more explicit will help ensure that OCC is able to make proportionate charges against Clearing Member contributions to the Clearing Fund in a timely manner and make good the related losses. OCC believes that these proposed changes provide important clarity around its ability to borrow and use Clearing Fund assets for liquidity risk management purposes, and to replenish such resources in a timely fashion.

8. Requirement for Clearing Members To Maintain Contingency Plans for Settlement

OCC proposes to amend Rule 301(d) to require that every Clearing Member maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. The proposed change is intended to reduce liquidity risk at OCC by requiring that Clearing Members have adequate contingency planning designed to effect timely settlement of their obligations with OCC despite a disruption by their primary settlement bank. OCC believes that it is important that OCC and its members maintain processes that are resilient to a variety of potential operational and financial disruptions and that Clearing Members maintain robust contingency plans designed to effect timely settlement of their obligations to reduce the likelihood member would be unable to satisfy its settlement obligations, risking possible suspension.

9. Other Clarifying and Conforming Changes

OCC proposes to make a number of other clarifying, conforming, and organizational changes to the OCC Rules and Risk Policies to ensure the accuracy and consistency of its liquidity risk management rules and practices. The proposed changes are therefore designed to ensure that OCC is able to effectively manage its liquidity risks and maintain sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions.

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[58] Section 805(a)(2) of the Clearing Supervision Act[59] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[60] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and

[57] OCC notes that the proposed changes to Rule 1006 are aligned with OCC's existing Default Management Policy, which provides that ''[i]n order to meet financial resource obligations as a result of a clearing member suspension. OCC is able to utilize the following resources . . . *Clearing Fund deposits of the suspended member.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits. *Clearing Fund deposits of non-defaulting members.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits.'' (emphasis in original). *See supra* note 51 and associated text.

[58] 12 U.S.C. 5461(b).

[59] 12 U.S.C. 5464(a)(2).

[60] 12 U.S.C. 5464(b).

• support the stability of the broader financial system.

OCC believes that the proposed changes described herein are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act[61] and the risk management standards adopted by the Commission in Rule 17Ad–22 under the Act for the reasons set forth below.[62]

Consistency With Objectives and Principles of the Clearing Supervision Act

OCC believes the proposed changes are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.[63] The proposed changes are generally designed to enhance OCC's overall framework for managing liquidity risk. As described above, OCC proposes to adopt a new LRMF to set forth the manner in which OCC effectively measures, monitors, and manages its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. Specifically, the LRMF would describe: (1) The identification of OCC's liquidity risks; (2) the categories and types of OCC's liquidity resources; (3) the stress testing and sizing of OCC's liquidity resources; (4) OCC's Contingency Funding Plan for collecting additional liquidity resources from Clearing Members; (5) the risk management of supporting institutions (*e.g.,* settlement banks, custodian banks, and liquidity providers) that may present liquidity risks to OCC; and (6) the governance and reporting requirements concerning OCC's liquidity risk management.

OCC also proposes to enhance its management of liquidity risk by introducing a new approach to stress testing and determining the adequacy, sizing, and sufficiency of its liquidity resources. OCC's liquidity stress testing would be based on output of its current stress testing and Clearing Fund methodology, which would be used to project OCC's potential liquidity demands under stressed market conditions. OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, and the output would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's liquidity resources against OCC's liquidity risk tolerance; (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches in scenarios including but not limited to, a 1987 historical market event and a 2008 historical market event; and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios. The proposed change is designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions.

In addition, the proposed changes to OCC's Clearing Fund Cash Requirement are designed to improve the resiliency of OCC's liquidity resources by providing OCC with the flexibility to periodically set and adjust its Base Liquidity Resources in response to changing market and business conditions, and the proposed two-day notice period substitutions of Government Securities for excess Clearing Fund cash deposits would provide additional certainty around the level of liquidity resources available to OCC at any given for any given two-day liquidation horizon.

Moreover, the proposed enhancements to the Contingency Funding Plan would include Sufficiency Scenarios designed to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources to determine whether to require additional cash deposits from its Clearing Members. The proposed changes would allow OCC to more appropriately monitor its liquidity exposures under a variety of foreseeable stress scenarios, and to call for additional liquid resources in the form of cash deposits to ensure that OCC continues to maintain sufficient liquid resources to meet its settlement obligations with a high degree of confidence, or to respond to a reduction in the amount of OCC's Base Liquidity Resources in an extreme event, such as the potential failure of a liquidity provider.

In addition, OCC proposes to mitigate its liquidity risk by adopting new rules to require its Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process and to require that every Clearing Member maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. OCC would also revise its Rules to clarify its authority to use Clearing Fund assets to address potential liquidity needs.

Taken together, OCC believes that the proposed enhancements to its overall framework for managing liquidity risk would improve OCC's resilience as a systemically important market utility by promoting robust risk management and safety and soundness and thereby reducing systemic risks and supporting the stability of the broader financial system. This is further evidenced by their consistency with the risk management standards adopted by the Commission in Rule 17Ad–22 under the Act, which is discussed in detail below.

Consistency With Risk Management Standards in Exchange Act Rule 17Ad–22

OCC also believes the proposed changes are consistent with the risk management standards adopted by the Commission in Rule 17Ad–22 under the Act for the reasons set forth below.

1. Liquidity Risk Management Framework

Rules 17Ad–22(e)(7)(i) and (ii)[64] require a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the CCA in extreme but plausible market conditions and to maintain such resources in the form of qualifying

[61] *Id.*

[62] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). OCC is a ''covered clearing agency'' (or ''CCA'') as defined in Rule 17Ad–22(a)(5) and therefore must comply with the requirements of Rule 17Ad–22(e).

[63] 12 U.S.C. 5464(b).

[64] 17 CFR 240.17Ad–22(e)(7)(i) and (ii).

liquid resources and in each relevant currency for which the CCA has payment obligations owed to clearing members. The proposed LRMF would describe: (1) OCC's approach to liquidity stress testing; (2) OCC's process for determining the size of OCC's liquidity resources based on analyses of projected liquidity demands under a variety of stress scenarios (*e.g.,* stress scenarios representing OCC's liquidity risk tolerance, extreme historical scenarios such as a 1987 historical market event and 2008 historical market event, and certain scenarios used to size OCC's Clearing Fund); (3) OCC's process for testing the sufficiency of its liquidity resources and Contingency Funding Plan for collecting additional liquidity resources when necessary; and (4) the various categories and types of liquidity resources maintained by OCC, including the qualifying liquid resources maintained by OCC to meet its minimum liquidity resource requirement for effecting same-day, intraday and multiday settlement of OCC's payment obligations. OCC therefore believes the proposed LRMF is reasonably designed to comply with the requirements of Rules 17Ad–22(e)(7)(i) and (ii).[65]

Rule 17Ad–22(e)(7)(iii)[66] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to use access to accounts and services at a Federal Reserve Bank, or other relevant central bank, when available and where determined to be practical by the board of directors of the CCA, to enhance its management of liquidity risk. The proposed LRMF would describe OCC's use of accounts and services at the Federal Reserve Bank of Chicago in accordance with this requirement.

Rules 17Ad–22(e)(7)(iv) and (v)[67] require that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to: (1) Undertake due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers has sufficient information to understand and manage the liquidity provider's liquidity risks and the capacity to perform as required under its commitments to provide liquidity to the CCA and (2) maintain and test with each liquidity provider, to the extent practicable, the CCA's procedures and operational capacity for accessing each type of relevant liquidity resource at least annually. The proposed LRMF would set forth OCC's requirements for performing due diligence to confirm it has a reasonable basis to believe each of its liquidity providers has sufficient information to understand and manage OCC's liquidity risk profile and the capacity to perform as required under its commitments. The proposed LRMF would also require the execution of periodic test borrows no less than once every 12 months to measure the performance and reliability of the liquidity facilities. As a result, OCC believes the proposed LRMF is consistent with Rules 17Ad–22(e)(7)(iv) and (v).[68]

Rule 17Ad–22(e)(7)(vi)(A)[69] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. Under the proposed LRMF, OCC would perform daily stress tests using its Sufficiency Scenarios to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources under a range of stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan.[70] OCC therefore believes that the proposed LRMF is reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7)(vi)(A).[71]

Rules 17Ad–22(e)(7)(vi)(B)–(D)[72] further require a CCA to maintain policies and procedures for: (1) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the clearing agency's identified liquidity needs and resources in light of current and evolving market conditions; (2) conducting a comprehensive analysis more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by the clearing agency's participants increases significantly, or in other appropriate circumstances described in such policies and procedures; and (3) reporting the results of such analyses to appropriate decision makers at the CCA, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its liquidity risk management methodology, model parameters, and any other relevant aspects of its liquidity risk management framework. The proposed LRMF would set forth the governance, review, monitoring, and reporting activities performed by OCC with respect to liquidity risk management. This would include the comprehensive review of existing stress test results and scenarios, and their underlying parameters and assumptions, the output of which is used to project liquidity demands, and evaluation of their appropriateness for determining the level of liquidity resources that OCC must maintain under current and evolving market conditions, with such an analysis being conducted more frequently than monthly when products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by OCC's participants increases significantly. In addition, under the proposed LRMF, FRM would be responsible for preparing a summary of the adequacy of OCC's Base Liquidity Resources and results from its monthly comprehensive review to provide to OCC's Management Committee and Risk Committee and any issues would be promptly escalated to OCC's Management Committee intra-month when circumstance warrant. Accordingly, OCC believes that the proposed LRMF is reasonably designed to comply with the requirements of Rules 17Ad–22(e)(7)(vi)(B)–(D).[73]

2. Liquidity Stress Testing

Rule 17Ad–22(e)(7)(i)[74] requires a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday

[65] *Id.*

[66] 17 CFR 240.17Ad–22(e)(7)(iii).

[67] 17 CFR 240.17Ad–22(e)(7)(iv) and (v).

[68] *Id.*

[69] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[70] OCC also would perform daily stress tests using Adequacy and Informational Scenarios to evaluate the sufficiency of its liquidity resources under a wide range of historical and hypothetical stress scenarios.

[71] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[72] 17 CFR 240.17Ad–22(e)(7)(vi)(B)–(D).

[73] *Id.*

[74] 17 CFR 240.17Ad–22(e)(7)(i).

settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the CCA in extreme but plausible market conditions. Rule 17Ad–22(e)(7)(vi)(A)[75] further requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. As described above, OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, the output of which would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's liquidity resources against OCC's liquidity risk tolerance; (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches in scenarios including but not limited to, a 1987 historical market event and a 2008 historical market event; and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios. The proposed change is designed to ensure that OCC maintains sufficient liquid resources to settle its payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the Clearing Member Group that would generate the largest aggregate payment obligation for in extreme but plausible market conditions. It would also allow OCC to conduct daily sufficiency stress tests to assess potential liquidity exposures in excess of its Available Liquidity Resources under a range of stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan.[76] OCC therefore believes that the proposed liquidity stress testing enhancements are reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7)(i) and (e)(vi)(A).[77]

3. Clearing Fund Cash Requirement

Rule 17Ad–22(e)(7)(i)[78] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA, including by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day settlement, and where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of stress scenarios, that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. As explained above, OCC has performed an analysis of its stressed liquidity demands, including Adequacy Scenarios that demonstrate that its potential stressed liquidity demands may exceed the size OCC's committed liquidity facilities and current Cash Clearing Fund Requirement. The proposed changes would allow OCC to adjust its Base Liquidity Resources to account for extreme scenarios that may result in liquidity demands exceeding OCC's Cover 1 liquidity resources. In this regard, OCC believes the proposed changes concerning the Clearing Fund Cash Requirement are designed to satisfy the requirements of Rule 17Ad–22(e)(7)(i).[79]

Further, Rule 17Ad–22(e)(7)(viii)[80] requires that a CCA address foreseeable liquidity shortfalls that would not be covered by its liquid resources and Rule 17Ad–22(e)(7)(ix)[81] requires that a CCA describe its process to replenish any liquid resources that it may employ during a stress event. OCC believes that additional flexibility for temporarily increasing the Clearing Fund Cash Requirement up to an amount that includes the size of the Clearing Fund would provide OCC with an additional means of addressing liquidity shortfalls that otherwise would not be covered by OCC's liquid resources. Further, because the Clearing Fund is a resource that is replenished in accordance with OCC Rule 1006(h), to the extent that Clearing Members are required to replenish their required contributions—in whole or in part—with cash following a proportionate charge, the proposed change would provide a form of replenishment of OCC's liquid resources. In this regard, OCC believes the proposed change is consistent with the requirements of Rules 17Ad–22(e)(7)(viii) and (ix).[82]

4. Two-Day Notice Period for Substitutions Involving Excess Clearing Fund Cash

Rules 17Ad–22(e)(7)(i) and (ii)[83] require a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the CCA in extreme but plausible market conditions and to maintain such resources in the form of qualifying liquid resources and in each relevant currency for which the CCA has payment obligations owed to clearing members. The proposed two-day notice period for Clearing Fund cash substitutions would provide additional certainty around the level of OCC's Available Liquidity Resources (which would be comprised of qualifying liquid resources) for any given two-day liquidation horizon, thereby enhancing OCC's ability to ensure that it maintains sufficient qualifying liquid resources to effect settlement of its payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. OCC therefore believes the proposed change is consistent with the requirements of Rules 17Ad–22(e)(7)(i) and (ii).[84]

[75] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[76] OCC also would perform daily stress tests using Adequacy and Informational Scenarios to evaluate the sufficiency of its liquidity resources under a wide range of historical and hypothetical stress scenarios.

[77] 17 CFR 240.17Ad–22(e)(7)(i) and (e)(vi)(A).

[78] 17 CFR 240.17Ad–22(e)(7)(i).

[79] *Id.*

[80] 17 CFR 240.17Ad–22(e)(7)(viii).

[81] 17 CFR 240.17Ad–22(e)(7)(ix).

[82] 17 CFR 240.17Ad–22(e)(7)(viii) and (ix).

[83] 17 CFR 240.17Ad–22(e)(7)(i) and (ii).

[84] *Id.*

5. Contingency Funding Plan

Rule 17Ad–22(e)(7)(vi)(A) [85] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. Further, Rule 17Ad–22(e)(7)(viii) [86] requires such policies and procedures to address foreseeable liquidity shortfalls that would not be covered by the CCA's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. Under the proposed LRMF and changes to the Contingency Funding Plan, OCC would perform daily stress tests using its Sufficiency Scenarios to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources under a range of stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan. Accordingly, the Contingency Funding Plan enhancements also allow OCC to address foreseeable liquidity shortfalls that would not be covered by its currently available liquid resources. OCC therefore believes that the proposed LRMF and changes to the Contingency Funding Plan are reasonably designed to comply with the requirements of Rules 17Ad–22(e)(7)(vi)(A) and 17Ad–22(e)(7)(viii).[87]

6. Required Cash Deposits for Clearing Members on Watch Level

Rule 17Ad–22(e)(7) [88] requires generally that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA. OCC believes that the proposed change to require cash deposits from Clearing Members on enhanced watch level monitoring is reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7) [89] because it would provide OCC with an additional tool to manage potential liquidity risks of those Clearing Members identified as presenting increased risk to OCC through its ongoing monitoring processes.

7. Enhancements to Rules Concerning the Borrowing of Clearing Fund Assets

Rule 17Ad–22(e)(7) [90] requires generally that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA. Rule 17Ad–22(e)(7)(ix) [91] further requires such policies and procedures to describe the CCA's process to replenish any liquid resources that the clearing agency may employ during a stress event. OCC believes that the proposed clarifications to its Rules concerning OCC's authority to use Clearing Fund assets to address potential liquidity needs are reasonably designed to provide important clarity around its ability to borrow and use Clearing Fund assets for liquidity risk management purposes, and to replenish such resources in a timely fashion, in a manner consistent with Rules 17Ad–22(e)(7) and (e)(7)(ix).[92]

8. Requirement for Clearing Members To Maintain Contingency Plans for Settlement

Rule 17Ad–22(e)(18) [93] requires, in part, that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by participants and, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. OCC believes the proposed amendments to Rule 301(d) are objective and risk-based in that they would apply to all Clearing Members and are intended to reduce the likelihood that a Clearing Member would be unable to satisfy their settlement obligations to OCC by requiring that Clearing Members have adequate contingency plans for financial resources and robust operational capacity to meet such obligations. The proposed requirement would also be publicly disclosed in OCC's Rules. OCC therefore believes the proposed change is consistent with Rule 17Ad–22(e)(18).[94]

9. Other Clarifying and Conforming Changes

Rules 17Ad–22(e)(2)(i) and (v) [95] require each CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. As discussed above, OCC would revise its Risk Policies to incorporate standardized policy exception and violation reporting requirements, which would apply to all internal OCC policies and procedures. The proposed change would simplify and centralize the escalation path for policy document owners and ensure that OCC's Compliance department, and if appropriate the Enterprise Risk Management department, is notified in a consistent manner of any exceptions or violations. OCC therefore believes the proposed change is consistent with Rule 17Ad–22(e)(2)(i) and (v).[96]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

[85] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[86] 17 CFR 240.17Ad–22(e)(7)(viii).

[87] 17 CFR 240.17Ad–22(e)(7)(vi)(A) and (e)(7)(viii).

[88] 17 CFR 240.17Ad–22(e)(7).

[89] *Id.*

[90] 17 CFR 240.17Ad–22(e)(7).

[91] 17 CFR 240.17Ad–22(e)(7)(ix).

[92] 17 CFR 240.17Ad–22(e)(7) and (e)(7)(ix).

[93] 17 CFR 240.17Ad–22(e)(18).

[94] *Id.*

[95] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[96] *Id.*

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–OCC–2020–802 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–OCC–2020–802. 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 advance notice that are filed with the Commission, and all written communications relating to the 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

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–OCC–2020–802 and should be submitted on or before May 26, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09872 Filed 5–7–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16437 and #16438; SOUTH CAROLINA Disaster Number SC–00072]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4542–DR), dated 05/01/2020.

Incident: Severe Storms, Tornadoes, and Straight-line Winds.

Incident Period: 04/12/2020 through 04/13/2020.

DATES: Issued on 05/01/2020.

Physical Loan Application Deadline Date: 06/30/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 02/01/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/01/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Barnwell, Colleton, Georgetown, Hampton, Oconee, Orangeburg, Pickens

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16437B and for economic injury is 164380.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–09812 Filed 5–7–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16435 and #16436; SOUTH CAROLINA Disaster Number SC–00071]

Presidential Declaration of a Major Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4542–DR), dated 05/01/2020.

Incident: Severe Storms, Tornadoes, and Straight-line Winds.

Incident Period: 04/12/2020 through 04/13/2020.

DATES: Issued on 05/01/2020.

Physical Loan Application Deadline Date: 06/30/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 02/01/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/01/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Aiken,

Colleton, Hampton, Marlboro, Oconee, Orangeburg, Pickens.

Contiguous Counties (Economic Injury Loans Only):

South Carolina: Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Darlington, Dillon, Dorchester, Edgefield, Florence, Greenville, Jasper, Lexington, Saluda

Georgia: Burke, Effingham, Franklin, Habersham, Hart, Rabun, Richmond, Screven, Stephens

North Carolina: Anson, Jackson, Macon, Richmond, Robeson, Scotland, Transylvania

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	7.500
Businesses Without Credit Available Elsewhere	3.750
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16435B and for economic injury is 164360.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–09811 Filed 5–7–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11111]

Foreign Affairs Policy Board Meeting Notice

ACTION: Notice of closed meeting.

SUMMARY: The Department of State announces a meeting of the Foreign Affairs Policy Board to take place on June 1, 2020. Pursuant to section 10(d) of the Federal Advisory Committee Act, it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with the Executive Order titled, ''Classified National Security Information.''

FOR FURTHER INFORMATION CONTACT: Duncan Walker, Office of Policy Planning, U.S. Department of State, Washington, DC 20520, phone: (202) 647–2236.

SUPPLEMENTARY INFORMATION: The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) technology tools needed to advance the State Department's mission; and (4) priorities and strategic frameworks for U.S. foreign policy.

Duncan H. Walker,

Designated Federal Officer, Office of Policy Planning, Department of State.

[FR Doc. 2020–09887 Filed 5–7–20; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: In September 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and corrects technical errors in previously announced exclusions.

DATES: The product exclusions announced in this notice will apply as of September 24, 2018, the effective date of the $200 billion action, and extend to August 7, 2020. The amendments announced in this notice are retroactive to the date that the original exclusions were published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), 85 FR 17158 (March 26, 2020), and 85 FR 23122 (April 24, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent *ad valorem* duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit HTSUS subheading covered by the $200 billion action. Requestors also had to provide the 10-digit HTSUS subheading most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to

administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative periodically would announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September, October, November and December 2019, and in January, February, March and April 2020. *See* 84 FR 49591, 84 FR 57803, 84 FR 61674, 84 FR 65882, 84 FR 69012, 85 FR 549, 85 FR 6674, 85 FR 9921, 85 FR 15015, 85 FR 17158, and 85 FR 23122. The Office of the United States Trade Representative (USTR) regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005.*

B. Determination To Grant Certain Exclusions

Based on evaluation of the factors set forth in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set forth in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set forth in the Annex, the exclusions are reflected in two 10-digit HTSUS subheadings, which cover 15 separate exclusion requests, and 144 specially prepared product descriptions, which cover 170 separate exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer benefitting from the product exclusion filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex, and not by the product descriptions found in any particular request for exclusion.

Paragraph A, subparagraphs 3 through 7 of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex.

Paragraph B of the Annex contains amendments reflecting technical corrections to a certain notes of the HTSUS. Paragraph B, subparagraph 1, makes a technical correction to U.S. note 20(mm)(6), published at 84 FR 61674 (November 13, 2019), as modified by Annex B(b) of 85 FR 9921 (February 20, 2020). Paragraph B, subparagraph 2, makes a technical correction to U.S. note (20)(qq)(40), published at 85 FR 6674 (February 5, 2020). Paragraph B, subparagraph 3, makes a technical correction to U.S. note (20)(ss)(17), published at 85 FR 9921 (February 20, 2020).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

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ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.46 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.88.46	Articles the product of China, as provided for in U.S. note 20(yy) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading"		

2. by inserting the following new U.S. note 20(yy) to subchapter III of chapter 99 in numerical sequence:

"(yy) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04. See 83 Fed. Reg. 47974 (September 21, 2018) and 84 Fed. Reg. 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 or in heading 9903.88.04 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

1) 4819.50.4060
2) 6902.20.5020
3) Dried broccoli, in powder form (described in statistical reporting number 0712.90.8510)
4) Freeze-dried pumpkin, in powder form (described in statistical reporting number 0712.90.8580)

5) Dried pomegranate, in powder form (described in statistical reporting number 1106.30.4000)
6) Bee pollen, in powder form (described in statistical reporting number 1212.99.9200)
7) Brown rice, in powder form, with protein content of at least 80 percent by weight, derived from organic brown rice (described in statistical reporting number 2106.10.0000)
8) Synthetic iron oxide red medium shade, in powder form, Colour Index No. 77491, CAS No. 1309-37-1, water soluble (described in statistical reporting number 2821.10.0020)
9) 2,5,8,11,14,17-Hexaoxanona-decan-19-yl methanesulfonate (IUPAC name: 2-[2-[2-[2-(2-phenylmethoxyethoxy)ethoxy]ethoxy]ethoxy]ethyl methanesulfonate) (CAS No. 1807539-07-6) (described in statistical reporting number 2909.19.1800)
10) Phthalocyanine green 7 quick-set flush pigment, in paste form, Colour Index No. 74260, CAS No. 1328-53-6, water insoluble (described in statistical reporting number 3204.17.9010)
11) Quinacridone red 122 quick-set flush pigment pigment, in paste form, Colour Index No. 73915, CAS No. 980-26-7, water insoluble (described in statistical reporting number 3204.17.9021)
12) Prepared pigment pastes, containing 41 percent by weight of Colour Index pigment violet 19 (CAS No. 1047-16-1), 35 percent by weight of plastic resins, 20 percent by weight of linseed oil, and 4 percent by weight of methyl esters of soya fatty acids (methyl soyate), such paste of a kind used for producing printing inks (described in statistical reporting number 3204.17.9035)
13) Prepared pigment pastes, containing 40 percent by weight of Colour Index pigment yellow 74 (CAS No. 6358-31-2), 36 percent by weight of plastic resins, 18 percent by weight of linseed oil, and 6 percent by weight of methyl esters of soya fatty acids (methyl soyate), such paste of a kind used for producing printing inks (described in statistical reporting number 3204.17.9055)
14) Prepared pigment pastes, containing 41 percent by weight of Colour Index pigment red 81 (CAS No. 12224-98-5), 35 percent by weight of plastic resins, 20 percent by weight of linseed oil, and 4 percent by weight of methyl esters of soya fatty acids (methyl soyate), of a kind used for producing printing inks (described in statistical reporting number 3204.17.9086)
15) Disposable cloths of nonwoven textile materials impregnated, coated or covered with organic surface-active preparations for washing the skin, put up for retail sale (described in statistical reporting number 3401.30.5000)
16) Artificial graphite, in powder form (described in statistical reporting number 3801.10.5000)

17) Natural graphite, in powder form (described in statistical reporting number 3801.90.0000)
18) 1,3,5-Triazine-2,4,6-triamine, deammoniated (CAS No. 68649-66-1) (described in statistical reporting number 3810.90.5000)
19) Plate-type supported catalysts (reaction accelerators) for reduction of nitrous oxides (NOx) with enhanced mercury oxidation, with oxides of base metals being the active substances, applied to a stainless steel mesh (described in statistical reporting number 3815.19.0000)
20) Plate-type supported catalysts (reaction accelerators) for reduction of nitrous oxides (NOx), with base metals being the active substances, applied on a titanium dioxide based ceramic material to a stainless steel mesh (described in statistical reporting number 3815.19.0000)
21) Floor coverings in the form of planks or tiles of vinyl with cores of high density plastic composite or stone polymer composite, each with a surface layer measuring at least 0.1 mm but not more than 0.8 mm in thickness, the whole measuring at least 2 mm but not more 8 mm in thickness, at least 12.5 cm but not more than 61 cm in width and at least 30 cm but not more than 153 cm in length, with edges that are interlocking or simply cut at a 90-degree angle (described in statistical reporting number 3918.10.1000)
22) One-piece stoppers, of polypropiolactone ("PPL") or polylactic acid ("PLA") polymers, each comprising a disc-shaped top attached to a rounded, tapered plug with a protruding stirrer, measuring at least 55 mm but not more than 120.7 mm in overall length, and weighing at least 0.6 g but not more than 1.1 g each, of a kind used with lids for beverage containers (described in statistical reporting number 3923.50.0000)
23) Expandable garden hoses of rubber sheathed in fiber webbing, each with brass fittings (described in statistical reporting number 4009.32.0050)
24) New non-radial pneumatic tires of rubber, with tread pattern suitable for use on off-road all-terrain vehicles ("ATV") and utility task vehicles ("UTV"), measuring at least 70 cm but not more than 105 cm in diameter, and weighing at least 20 kg but not more than 35 kg (described in statistical reporting number 4011.90.8010)
25) Vibration control goods of rubber, other than natural rubber, for the vehicles of headings 8701 to 8705 (described in statistical reporting number 4016.99.5500)
26) Automotive constant velocity ("CV") joint boots and rack and pinion bellows, of neoprene (described in statistical reporting number 4016.99.6050)
27) Backpacks with outer surface of textile materials of man-made fibers, each with padded and insulated zippered compartments measuring not more than 27 cm by 19 cm by 21.5 cm (described in statistical reporting number 4202.92.3120)
28) Cases of textile materials of man-made fibers, each measuring not more than 57 cm by 47 cm by 34 cm, specially fitted to contain a sewing machine, each

with outer pockets, side handles and 4 wheels (described in statistical reporting number 4202.92.3131)

29) Cases of man-made fiber, each measuring not more than 40 cm by 27 cm by 9 cm, with clear zippered pockets, mesh pockets and a carrying handle (described in statistical reporting number 4202.92.9100)

30) Three-ply plywood sheets constructed of strips of bamboo, each sheet measuring not more than 122 cm in width and not more than 244 cm in length and at least 2 cm in thickness (described in statistical reporting number 4412.10.0500)

31) Laminated flooring consisting of a bamboo surface layer, measuring 1.5 mm in thickness, laminated onto a base of high density plastic composite or stone plastic composite, each plank measuring at least 7 mm but not more than 9 mm in thickness, at least 126 mm but not more than 204 mm in width and at least 30 cm but not more than 214 cm in length, with locking edges and vinyl padding (described in statistical reporting number 4412.10.9000)

32) Printable glitter paper, at least 0.3 mm in thickness, consisting of base paper coated with polyethylene terephthalate ("PET") glitter flakes, in rolls and sheets not more than 145 cm in width, weighing at least 190 g/m^2 but not more than 520 g/m^2 (described in statistical reporting number 4811.51.2050)

33) Printable glitter paper, not more than 0.3 mm in thickness, consisting of a base paper coated with polyethylene terephthalate ("PET") glitter flakes, in rolls and sheets not more than 145 cm in width, weighing at least 145 g/m^2 but not more than 220 g/m^2 (described in statistical reporting number 4811.51.4000)

34) Printable glitter paper, consisting of base paper coated with polyethylene terephthalate ("PET") glitter flakes, in sheets with one side measuring not more than 36 cm and one side measuring not more than 15 cm, weighing at least 150 g/m^2 but not more than 400 g/m^2 (described in statistical reporting number 4811.51.6000)

35) Registers to record financial transactions, to be inserted into booklets, of white paper, each measuring at least 9.5 cm but not more than 10.5 cm by at least 6 cm but not more than 7 cm, each weighing at least 8 g but not more than 10 g (described in statistical reporting number 4820.10.4000)

36) Dyed sateen fabric containing at least 85 percent by weight of cotton, measuring at least 292 cm but not more than 293 cm in width, weighing not more than 210 g/m^2 (described in statistical reporting number 5208.39.2020)

37) Limestone with a flamed finish on one side and a length of at least 200 mm but not more than 3,100 mm, a width of at least 100 mm but not more than 1,380 mm and a thickness of at least 30 mm but not more than 180 mm (described in statistical reporting number 6802.92.0000)

38) Sinks and sink pedestals of natural granite for bathroom and kitchen use, each measuring not more than 110 cm by 95 cm by 95 cm and weighing not more than 415 kg (described in statistical reporting number 6802.93.0090)

39) Basalt with a flamed finish on one side and a length of at least 200 mm but not more than 3,100 mm, a width of at least 100 mm but not more than 1,380 mm and a thickness of at least 30 mm but not more than 180 mm (described in statistical reporting number 6802.99.0060)

40) Refractory bricks containing 90 percent by weight of silica (described in statistical reporting number 6902.20.1020)

41) Cylinders of ceramic, excluding those of heading 6902, containing by weight at least 50 percent of alumina (Al2O3) or of a mixture or compound of alumina and of silica (SiO2) (described in statistical reporting number 6903.20.0000)

42) Convex rear-view mirrors for vehicles (described in statistical reporting number 7009.10.0000)

43) Flat rear-view mirrors for vehicles (described in statistical reporting number 7009.10.0000)

44) Glass mirrors for use on motor vehicles, unframed and unmounted (described in statistical reporting number 7009.10.0000)

45) Convex glass cones for cathode-ray tubes ("CRTs"), measuring not more than 32 cm across at base of cone, not more than 10 cm across at neck, not more than 42 cm from base to top of neck, and weighing not more than 7 kg (described in statistical reporting number 7011.20.4500)

46) Microscope slides, consisting of glass with ground and polished edges with 45-degree corners, each measuring 25 mm in width, 75 mm in length and 1 mm in thickness, put up for retail sale in 72-piece packages (described in statistical reporting number 7017.90.1000)

47) Laboratory glassware of borosilicate glass, consisting of any of the following: 200 mm Liebig condensers; 100 ml graduated cylinders, each with a hexagonal base; 50 ml burets (also known as burettes) with stopcocks; 100 ml volumetric flasks; 9 ml test tubes with rims; 100 ml beakers and 250 ml Erlenmeyer flasks (described in statistical reporting number 7017.90.5000)

48) Dielectric nipples of non-alloy steel, with zinc plating and polypropylene lined, measuring at least 1.8 cm National Pipe Thread ("NPT") by at least 5 cm but not more than 13 cm in length, weighing at least 0.08 kg but not more than 0.2 kg (described in statistical reporting number 7307.99.5015)

49) Kitchen whisks, hand operated, each consisting of loops of wire of steel coated with silicone, in a handle measuring not more than 26 cm in length and not more than 6 cm in diameter (described in statistical reporting number 7323.99.9030)

50) Parts of table, kitchen or other household articles, of steel, consisting of a semi-round wire designed to be incorporated in a trash can as the vertical element to open and close the lid (described in statistical reporting number 7323.99.9080)

51) Parts of table, kitchen or other household articles, of steel, each consisting of a semi-round wire designed to be incorporated in a trash can as the horizontal

element to open and close the lid (described in statistical reporting number 7323.99.9080)

52) Rail air brake crimp hose fittings of cast iron, each measuring at least 2.5 cm by 10.1 cm by 12.7 cm but not more than 5.1 by 10.2 cm by 15.3 cm and weighing at least 0.2 kg but not more than 1 kg, conforming to the Association of American Railroads ("AAR") specifications M-927 and M-618 (described in statistical reporting number 7325.99.1000)

53) Rail air brake hose connection support castings, each measuring at least 5 cm by 5 cm by 5 cm but not more than 12.7 cm by 12.7 cm by 10.2 cm and weighing at least 0.2 kg but not more than 2.3 kg, conforming to Association of American Railroads ("AAR") specifications S-4021, S-4003, S-400 and S-4013 (described in statistical reporting number 7325.99.1000)

54) Rail air brake hose couplings ("gladhands"), each measuring at least 610.1 cm by 10.1 cm by 10.1 cm but not more than 16.6 cm by 7.7 cm by 10.2 cm and weighing at least 0.4 kg but not more than 1.4 kg, conforming to Association of American Railroads ("AAR") specifications S-491, M-601 and RP-5595 (described in statistical reporting number 7325.99.1000)

55) Rail brake dummy couplings suitable for hose-blocking or testing and calibration of air brake systems, each measuring at least 2.5 cm by 5 cm by 15.2 cm but not more than 5.1 cm by 7.7 cm by 20.4 cm and weighing at least 0.2 kg but not more than 1.4 kg, conforming to the Association of American Railroads specifications ("AAR") S-436, S-486, and S-491 (described in statistical reporting number 7325.99.1000)

56) Parts of natural gas measuring machines and fracking apparatus, valve seat, carrier, and body, of stainless steel, weighing at least 0.2 kg but not more than 2.3 kg, measuring at least 5 cm but not more than 15.8 cm (described in statistical reporting number 7325.99.5000)

57) Sintered metal fiber filtration media, whether or not of 316L grade stainless steel or other steel alloy, with a nonwoven porous web structure (described in statistical reporting number 7326.90.8688)

58) Pocket clips of base metals for screwdrivers (described in statistical reporting number 8205.40.0000)

59) Screwdrivers, each measuring at least 12 cm but not more than 14 cm in length, at least 1 cm but not more than 2 cm in depth, weighing at least 13 g but not more than 50 g, with two reversible bits, each bit having heads of different sizes (described in statistical reporting number 8205.40.0000)

60) Kitchen and table implements of iron or steel, non-electric, including but not limited to peelers, graters and whisks (described in statistical reporting number 8205.51.3030)

61) Kitchen handtools, consisting of vegetable peelers and avocado preparation tools, with stainless steel blades and handles of plastics (described in statistical reporting number 8205.51.7500)

62) Unfinished hand-operated tube bender of stainless steel (described in statistical reporting number 8205.59.1000)

63) Parts of handtools of base metal (other than iron, steel, copper or aluminum), each consisting of a valve stem tool, weighing not more than 5 g, measuring not more than 16 mm by 6 mm by 3 mm (described in statistical reporting number 8205.59.8000)

64) Utility knives with carbon steel blades and handles of plastics, each measuring not more than 16 cm by 3.8 cm by 4.5 cm (described in statistical reporting number 8211.93.0060)

65) Mountings and brackets for railway air brake systems, each measuring at least 15.2 cm by 7.6 cm by 114 cm and not more than 25.4 cm by 15.3 cm by 17.8 cm and weighing at least 9 kg and not more than 20.5 kg, conforming to the Association of American Railroads ("AAR") specifications S-475, M-201 and S-401 (described in statistical reporting number 8302.49.6045)

66) Racks of steel for storing kayaks, paddle boards and fishing poles (described in statistical reporting number 8302.50.0000)

67) Clasps, frames with clasps, purse feet and rings, all the foregoing of base metal and of a kind used in the making of purses and handbags (described in statistical reporting number 8308.90.9000)

68) Clips, each with an iron spring, polypropylene handle, polystyrene head, with a magnet attached, weighing not more than 0.1 kg, measuring not more than 9 cm in width, not more than 5 cm in depth and not more than 8.6 cm in height (described in statistical reporting number 8308.90.9000)

69) Carburetors of aluminum, suitable for use solely or principally with spark-ignition internal combustion piston engines of heading 8407 (other than for aircraft engines, cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, for vehicles of subheading 8701.20, or heading 8702, 8703 or 8704 or for marine propulsion engines) (described in statistical reporting number 8409.91.9990)

70) Crankcases of aluminum and steel, suitable for use solely or principally with spark-ignition internal combustion piston engines of heading 8407 with a cylinder bore measuring at least 85 mm but not more than 92 mm and a displacement not more than 1 liter (other than for aircraft engines, cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, for vehicles of subheading 8701.20, or heading 8702, 8703 or 8704 or for marine propulsion engines) (described in statistical reporting number 8409.91.9990)

71) Vacuum pumps, each composed of a cast aluminum body and an unalloyed steel cover, measuring not more than 85 mm in length, not more than 75 mm in width and not more than 96 mm in height, with a pump volume not more than 200 cc, for use in automotive braking systems (described in statistical reporting number 8414.10.0000)

72) Agricultural and horticultural sprayers, towable, having a capacity not more than 80 liters (described in statistical reporting number 8424.41.1000)

73) Hydraulic floor jacks of steel, each measuring not more than 81 cm by 41 cm by 25 cm, weighing not more than 52 kg (described in statistical reporting number 8425.42.0000)

74) Telescoping hydraulic transmission jacks, each weighing not more than 90 kg, meeting American Society of Mechanical Engineers Portable Automotive Service Equipment 2014 standard (described in statistical reporting number 8425.42.0000)

75) Pallet jacks, not self-propelled, each measuring not more than 160 cm by 70 cm, with a load capacity of at least 1,950 kg but not more than 2,500 kg, with 89 mm pump and 11 gauge steel forks (described in statistical reporting number 8427.90.0090)

76) Parts of heat presses (described in statistical reporting number 8451.90.9090)

77) Electric saws for cutting metal pipe, tube, and bar, whereby the blade is brought down to cut metal, not numerically controlled, new, valued under $3,025 each (described in statistical reporting number 8461.50.8020)

78) Machine tool base castings of class 30 grey iron or 65-45-12 ductile iron not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, other than machine tools for cutting, grinding or finishing gears, each measuring at least 141 cm but not more than 413 cm in length, at least 67 cm but not more than 179 cm in width and at least 47 cm but not more than 67 cm in height (described in statistical reporting number 8466.93.1560)

79) Machine tool bridge castings of class 30 grey iron or 65-45-12 ductile iron not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, other than machine tools for cutting, grinding or finishing gears, each measuring at least 105 cm but not more than 146 cm in length, at least 67 cm but not more than 77 cm in width and at least 42 cm but not more than 77 cm in height (described in statistical reporting number 8466.93.1560)

80) Machine tool column castings of class 30 grey iron or 65-45-12 ductile iron not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, other than machine tools for cutting, grinding or finishing gears, each measuring at least 83 cm but not more than 240 cm in length, at least 39 cm but not more than 100 cm in width and at least 17 cm but not more than 93 cm in height (described in statistical reporting number 8466.93.1560)

81) Machine tool saddle castings of class 30 grey iron or 65-45-12 ductile iron not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, other than machine tools for cutting, grinding or finishing gears, each measuring at least 67 cm but not more than 608 cm in length, at least 50 cm but not more than 75

cm in width and at least 14 cm but not more than 34 cm in height (described in statistical reporting number 8466.93.1560)

82) Machine tool spindle head castings of class 30 grey iron or 65-45-12 ductile iron not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, other than machine tools for cutting, grinding or finishing gears, each measuring at least 47 cm but not more than 75 cm in length, at least 37 cm but not more than 57 cm in width and at least 29 cm but not more than 108 cm in height (described in statistical reporting number 8466.93.1560)

83) Machine tool table castings of class 30 grey iron or 65-45-12 ductile iron not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, other than machine tools for cutting, grinding or finishing gears, each measuring at least 88 cm but not more than 217 cm in length, at least 39 cm but not more than 95 cm in width and at least 9 cm but not more than 22 cm in height (described in statistical reporting number 8466.93.1560)

84) Molds (other than blow molds or bladder operated molds) of rubber or plastics, not injection or compression type, for kayaks (described in statistical reporting number 8480.79.9090)

85) Hand-operated sillcocks of stainless steel, each comprising a tubular stainless steel body, plastic check valve, hose connector and valve cover designed to mount flush to vertical or horizontal surfaces (described in statistical reporting number 8481.80.3090)

86) Reversing valves for heat pumps, each consisting of brass body with internal piston controlled by solenoid, weighing not more than 0.2 kg (described in statistical reporting number 8481.80.9005)

87) Regulator valves for air pressure (described in statistical reporting number 8481.80.9015)

88) Thermostatic expansion self-regulating valves to control refrigerant for use in air conditioning units and systems (described in statistical reporting number 8481.80.9015)

89) Air regulator valve assemblies, each weighing not more than 7 kg, with a body, piston or spring and O-rings, with thermostatic actuators (described in statistical reporting number 8481.80.9045)

90) Internal combustion engine throttle assembly valves (described in statistical reporting number 8481.80.9050)

91) Inductive charging sleeves and base stations, put up for retail sale, containing electronic circuitry to inductively charge automatic data processing ("ADP") machines when used together, with output power of at least 1.8 A but not more than 7.1 A (described in statistical reporting number 8504.40.7001)

92) Modular power supplies for optical telecommunication apparatus, each in a rectangular metal enclosure measuring at least 96 mm but not more than 305 mm in width, and at least 40 mm but not more than 96 mm in height,

weighing not more than 2 kg (described in statistical reporting number 8504.40.8500)

93) Power supplies capable of converting 230 V/460 W alternating current to 24 V/97 W direct current, each consisting of a printed circuit board, power supply and a heatsink, enclosed in a metal housing measuring not more than 355 mm by 100 mm by 99 mm (described in statistical reporting number 8504.40.9520)

94) Power supplies with a power output of at least 150 W but not more than 500 W, each measuring not more than 18 cm by 24 cm by 65 cm, weighing not more than 2.4 kg (described in statistical reporting number 8504.40.9530)

95) Battery chargers, operating on input voltage of at least 100 V but not more than 240 V, with power output of at least 650 W but not more than 1,425 W, with wireless control and communications (described in statistical reporting number 8504.40.9550)

96) Nickel-metal hydride batteries, with 4.8 V weighing not more than 0.3 kg and measuring 46.5 mm by 46.5 mm by 48.5 mm, or 6 V weighing not more than 0.2 kg and measuring 84 mm by 31 mm by 18 mm (described in statistical reporting number 8507.50.0000)

97) Bronze fittings for illumination sources, each measuring at least 5 cm, but not more than 10.3 cm in diameter, with a thickness of at least 1.2 cm but not more than 5.1 cm (described in statistical reporting number 8512.90.6000)

98) Polycarbonate reflectors, used with illumination sources, each measuring at least 6 cm but not more than 31 cm in length, and weighing at least 45 g but not more than 227 g (described in statistical reporting number 8512.90.6000)

99) Reflectors composed of a blend of polycarbonate and acrylonitrile-butadiene-styrene, each measuring at least 6 cm but not more than 31 cm in length (described in statistical reporting number 8512.90.6000)

100) Detectors for indoor use in security applications, capable of detecting breakage of plate, tempered, laminated or wired glass types, and sending an alarm signal to a control panel or central call center (described in statistical reporting number 8531.90.9001)

101) Insulated cables, fitted with modular telephone connectors, having outer sheaths of steel (described in statistical reporting number 8544.42.1000)

102) Extension cords conforming to Chapter 85 Statistical Note 6, for a voltage not more than 1,000 V, each not more than 60 cm in length (described in statistical reporting number 8544.42.9010)

103) Cable harnesses, each consisting of insulated copper resolver 24 V feedback cables and 230 V AC and 440 V AC power cables with connectors assembled together, whether or not with Ethernet cables, with a net weight not more than 7.3 kg, of a kind used for industrial robots (described in statistical reporting number 8544.42.9090)

104) Flat wire harnesses with connectors, for a voltage not more than 1,000 V, for connecting automotive engine heating products, including but not limited to

block heaters, to a power source (described in statistical reporting number 8544.42.9090)

105) Insulated copper cables twisted together in 3-wire or 6-wire groups with connectors, for a voltage not more than 1,000 V, each with a net weight of 1.4 kg and not more than 1.2 m in length, of a kind designed to power industrial robots (described in statistical reporting number 8544.42.9090)

106) Junction box assemblies, of a kind used in solar panels, incorporating three bypass diodes and two insulated cables fitted with connectors, for a voltage not more than 1,000 V (described in statistical reporting number 8544.42.9090)

107) Bumpers of round tubing or flat sheets of steel, for the front, sides or rear of off-road all-terrain vehicles ("ATVs") or utility task vehicles ("UTVs") (described in statistical reporting number 8708.10.3050)

108) Motor vehicle bumper underside attachments, designed to be incorporated onto the vehicles of headings 8701 to 8705 (described in statistical reporting number 8708.29.5060)

109) Spoilers, splitters, diffusers and other devices that provide aerodynamic downforce and engine covers ("hoods"), all the foregoing of fiberglass reinforced plastics or carbon fiber, for the vehicles of heading 8703 (described in statistical reporting number 8708.29.5060)

110) Tonneau covers for pickup trucks, each with soft vinyl panels that fold (described in statistical reporting number 8708.29.5060)

111) Wheel spacers of aluminum suitable for use on all-terrain vehicles ("ATV") and utility task vehicles ("UTV") (described in statistical reporting number 8708.70.6060)

112) Radiator tubes of clad aluminum, high frequency welded, each measuring not more than 310 cm (described in statistical reporting number 8708.91.7550)

113) Flange forgings of Society of Automotive Engineers ("SAE") 1035 carbon steel suitable for use in automatic transmission systems for passenger motor vehicles (described in statistical reporting number 8708.99.6890)

114) Front output shafts of Society of Automotive Engineers ("SAE") 1045 carbon steel suitable for use in automatic transmission systems for passenger motor vehicles (described in statistical reporting number 8708.99.6890)

115) Housings of aluminum used for integrated wheel-end disconnect systems, which lock and disengage the front hubs when switching between 2- and 4-wheel drive (described in statistical reporting number 8708.99.6890)

116) Hub forgings of Society of Automotive Engineers ("SAE") 1035 carbon steel suitable for use in automatic transmission systems for passenger motor vehicles (described in statistical reporting number 8708.99.6890)

117) Park gear blanks of Society of Automotive Engineers ("SAE") 1520 carbon steel suitable for use in automatic transmission systems for passenger motor vehicles (described in statistical reporting number 8708.99.6890)

118) Stator shafts of Stahlwerk Annahutte ZF34C grade carbon steel suitable for use in automatic transmission systems for passenger motor vehicles (described in statistical reporting number 8708.99.6890)

119) Cargo carriers of powder-coated steel designed to fit into receiver hitches of vehicles of headings 8701 to 8705, each measuring not more than 123 cm by 83 cm by 20 cm, with a capacity not more than 228 kg, incorporating a loading ramp (described in statistical reporting number 8708.99.8180)

120) Front triangles of carbon fiber for bicycle frames (described in statistical reporting number 8714.91.9000)

121) Rear wheel swing arms of carbon fiber for bicycle frames (described in statistical reporting number 8714.91.9000)

122) Bicycle wheel rims, of carbon fiber, with outer reinforcement around nipple holes, each valued at least $100 (described in statistical reporting number 8714.92.1000)

123) Parts of trailer axles described herein: spindles, spindle brake flanges, brake spiders, tie plates or torsion arms (described in statistical reporting number 8716.90.5010)

124) Wheels with polyurethane tread over polypropylene hubs, each of a diameter measuring not more than 210 mm (described in statistical reporting number 8716.90.5045 prior to January 1, 2020; described in statistical reporting number 8716.90.5048 effective January 1, 2020)

125) Retractable measuring tapes of steel, each measuring at least 3.5 m but not more than 7.8 m in length, weighing at least 90 g but not more than 310 g (described in statistical reporting number 9017.80.0000)

126) Tape measures, each consisting of a steel tape in a housing of translucent plastics, each measuring at least 3 m but not more than 3.1 m in length, weighing at least 77.1 g but not more than 77.2 g (described in statistical reporting number 9017.80.0000)

127) Flexible probes, each measuring at least 1 m but not more than 2 m in length, with a thermistor heat sensor in the tip which transmits heat data directly to a temperature monitor (described in statistical reporting number 9025.90.0600)

128) Metal casings for, and metal parts of, thermometers of subheading 9025.11.40 designed for use in heating, ventilation and air conditioning ("HVAC") equipment (described in statistical reporting number 9025.90.0600)

129) Parts and accessories of thermometers and combinations of thermometers and other instruments, each consisting of a solar radiation shield comprising a housing composed of 99 percent plastics and 1 percent base metal with an integrated hanger loop, weighing not more than 300 g (described in statistical reporting number 9025.90.0600)

130) Upholstered chairs with wooden frames, other than of teak, not for children or households (described in statistical reporting number 9401.61.4031)

131) Seats for infants with steel frames attached to plastic bases, upholstered with textile coverings, each suitable for serving as a stable seat for giving an infant a bath (described in statistical reporting number 9401.71.0011)
132) Unassembled upholstered chairs with metal frames, other than household chairs, with seats and backs having a shell of plastics or wood and measuring at least 48 cm but not more than 61 cm in width (described in statistical reporting number 9401.71.0031)
133) Upholstered chairs with frames of iron or steel (described in statistical reporting number 9401.71.0031)
134) Outdoor household seats with aluminum frames covered in polyethylene rattan wicker, with textile covered cushions (described in statistical reporting number 9401.79.0011)
135) Seats with metal frames, not upholstered, not folding, suitable for stacking (described in statistical reporting number 9401.79.0050)
136) Children's rocking stools of plastics, each with a convex-shaped base (described in statistical reporting number 9401.80.2031)
137) Bench frames of cast aluminum, each measuring at least 42 cm but not more than 79 cm in height, and at least 52 cm but not more than 62 cm in width (described in statistical reporting number 9401.90.5081)
138) Greaseless cylinders, each measuring at least 7.5 cm but not more than 25.4 cm in height and having a diameter of not more than 5.1 cm (described in statistical reporting number 9401.90.5081)
139) Parts of furniture, consisting of pivoting back supports for chairs (described in statistical reporting number 9401.90.5081)
140) Outdoor household tables with aluminum frames covered in polyethylene rattan wicker (described in statistical reporting number 9403.20.0050)
141) Bicycle racks of galvanized or black powder coated steel, each comprising one, three or five loops of tubing measuring not more than 7 cm in outside diameter, for either surface or in-ground mount (described in statistical reporting number 9403.20.0090)
142) Over-bed tables, height-adjustable, each with a steel base with casters and a high-density wooden laminate top with a tilting mechanism (described in statistical reporting number 9403.60.8081)
143) Light-emitting diode ("LED") desk lamps, other than of base metal, each with height adjustable from at least 28 cm to not more than 61 cm, with flexible neck, touch switch controlling power and four brightness settings for natural daylight LEDs, with or without 5 V, 2.1 A Universal Serial Bus ("USB") charging port (described in statistical reporting number 9405.20.8010)
144) Light-emitting diode ("LED") floor-standing lamps, other than of base metal, each with height adjustable from at least 124 cm to not more than 181 cm, with flexible neck, touch switch controlling power and brightness settings for natural daylight quality LED illumination, including memory feature to

remember last brightness setting when lamp is turned on (described in statistical reporting number 9405.20.8010)

145) Light-emitting diode ("LED") floor-standing or table lamps, other than of base metal, each with height adjustable from at least 100 cm to not more than 145 cm with flexible neck, with 2X magnifier measuring not more than 12.8 cm in diameter with 4X spot magnifier (described in statistical reporting number 9405.20.8010)

146) Modular, prefabricated buildings, each with a steel frame (described in statistical reporting number 9406.90.0030)"

3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:

   a. by deleting the word "or" where it appears after the phrase "U.S. note 20(vv) to subchapter III of chapter 99;"; and

   b. by inserting the phrase "; or (13) heading 9903.88.46 and U.S. note 20(yy) to subchapter III of chapter 99" after the phrase "U.S. note 20(xx) to subchapter III of chapter 99".

4. by amending U.S. note 20(f) to subchapter III of chapter 99;

   a. by deleting the word "or" where it appears after the phrase "U.S. note 20(vv) to subchapter III of chapter 99;"; and

   b. by inserting the phrase "; or (13) heading 9903.88.46 and U.S. note 20(yy) to subchapter III of chapter 99" after the phrase "U.S. note 20(xx) to subchapter III of chapter 99".

5. by amending the first sentence of U.S. note 20(g) to subchapter III of chapter 99:

   a. by deleting "or (6)" and by inserting "(6)" in lieu thereof; and

   b. by inserting "; or (7) heading 9903.88.46 and U.S. note 20(yy) to subchapter III of chapter 99" after "U.S. note 20(ss) to subchapter III of chapter 99".

6. by amending the Article Description of heading 9903.88.03:

a. by deleting "9903.88.43 or" and inserting "9903.88.43," in lieu thereof; and

b. by inserting "or 9903.88.46," after "9903.88.45,".

7. by amending the Article Description of heading 9903.88.04:

a. by deleting "9903.88.38 or" and inserting "9903.88.38," in lieu thereof; and

b. by inserting "or 9903.88.46," after "9903.88.40,".

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. 85 FR 9921, Annex B(b) referencing U.S. note 20(mm)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "various sizes; and tie out cables and aerials, of iron or steel (described in statistical reporting number 4201.00.3000)" and inserting "various sizes, with or without tie out cables and aerials of iron or steel (described in statistical reporting number 4201.00.3000); cat leads, harnesses, retractable leads, muzzles and head halters of nylon, polyester or soy-based webbing of various sizes (described in statistical reporting numbers 4201.00.6000), and cat collars (described in statistical reporting numbers 4201.00.3000 or 4201.00.6000)" in lieu thereof.
2. U.S. note 20(qq)(40) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 7006.00.4050)" and inserting "(described in statistical reporting number 7006.00.4050 or 7020.00.6000)" in lieu thereof.
3. U.S. note 20(ss)(17) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Portable outdoor cookers, each consisting of a burner and stand made from steel and cast iron, two or more pots with fitted strainer baskets, a rack suitable for supporting and lifting out large food items and an adjustable pressure regulator/hose combination for connecting the burner to a portable container of LP, put up for retail sale" and inserting "Portable outdoor cooker kits, consisting of at least a burner and stand made from steel and/or cast iron, with an adjustable pressure regulator/hose combination for connecting the burner to a source of natural gas or a portable container of liquefied propane" in lieu thereof.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0434]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Passenger Facility Charge (PFC) Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the FAA's administration of the Passenger Facility Charge (PFC) program. The information to be collected will be used to authorize public agencies to impose PFCs and use PFC revenue on airport-related projects and to ensure compliance with PFC program requirements.

DATES: Written comments should be submitted by July 7, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Rachel McCoy, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Ave. SW, Suite 620, Washington, DC 20591.

By fax: 202–267–5302.

FOR FURTHER INFORMATION CONTACT: For further information please contact Vanessa Balgobin by email at: *vanessa.balgobin@faa.gov;* phone: 202–267–3867.

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: 2120–0557.

Title: Passenger Facility Charge (PFC) Application.

Form Numbers: FAA Form 5500–1.

Type of Review: Renewal of an information collection.

Background: The DOT/FAA will use any information submitted in response to this collection to carry out the intent of 49 U.S.C. 40117. This statute authorizes public agencies controlling airports to impose PFCs and use PFC revenues. The information collected enables the FAA to approve the collection of PFC revenue for projects which preserve or enhance safety, security, or capacity of the national air transportation system, or which reduce noise or mitigate noise impacts resulting from an airport, or which furnish opportunities for enhanced competition between or among air carriers, and to provide oversight of the PFC program, as required by statute.

Respondents: Approximately 475 respondents annually.

Frequency: On occasion.

Estimated Average Burden per Response: 8 hours.

Estimated Total Annual Burden: 22,054 hours.

Issued in Washington, DC, on May 4, 2020.

David F. Cushing,

Manager, Airports Financial Assistance Division, APP–500.

[FR Doc. 2020–09833 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2020–0409]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Commercial Air Tour Operator Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information from commercial air tour operators on the numbers and types of air tours over national park units. The information to be collected will be used by the FAA and the National Park Service to track air tour operations over national parks and as background information in the development of air tour management plans and voluntary agreements for purposes of addressing any potential significant impacts from commercial air tour operations on the natural or cultural resources or visitor experience at the parks.

DATES: Written comments should be submitted by July 7, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Keith Lusk, AWP–1SP, FAA Western-Pacific Region, 777 S Aviation Boulevard, Suite 150, El Segundo, CA 90245.

By fax: 424–405–7038.

FOR FURTHER INFORMATION CONTACT: Keith Lusk by email at: *Keith.Lusk@faa.gov;* phone: 424–405–7017.

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: 2120–0750.

Title: Commercial Air Tour Operator Reports.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The FAA Modernization and Reform Act of 2012 included amendments to the National Parks Air Tour Management Act (NPATMA) of 2000, which applies to commercial air tour operators who conduct tours over or within a half mile of a national park unit. One of these amendments requires commercial air tour operators conducting tours over national park units to provide the FAA and National Park Service with certain information on these operations. The information collected includes the date and time of day of the tour operation, the make and model of aircraft the tour was taken in, and the name of tour route flown. The information allows the agencies to track air tour activity over national park units and provides background information that the agencies can utilize when developing an air tour management plan or voluntary agreement for a national park unit. Respondents are the commercial air tour operators currently

authorized to conduct tours over national parks. Operators provide the information on a reporting template and either email it or mail it in to the agencies.

Respondents: 48 commercial air tour operators nationwide.

Frequency: Information is collected semi-annually (twice a year), or annually for park units with 50 or fewer tours per year.

Estimated Average Burden per Response: 11.83 hours.

Estimated Total Annual Burden: 1,136 hours.

Issued in El Segundo, CA, on April 24, 2020.

Keith Lusk,

Program Manager, Special Programs Office, FAA Western-Pacific Region.

[FR Doc. 2020–09898 Filed 5–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2020. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

SUPPLEMENTARY INFORMATION:

Last name	First name	Middle name/initials
ABAYA	JOSE	PAOLO YUCHENGCO
ABDUL AL SAUD	ABDULLAH	SAUD
ABE	KENICHIRO.	
ABEL	ELGA	CHRISTINA
ABI ABDALLAH	NAJIB	P.
ABRAMS	MARIO	EVERARDO
ABRAR	BABAK.	
ADAMOVICH	YARDEN	LEHAVI
ADCOCK	BENJAMIN.	
ADLER	MICHAEL	FRED
ADLER	PETER	EDWARD
ADRIAENSENS	JIMMY.	
AGRAWAL	PARAS	M.
AGRAWAL	PUSHPA	K.
AHLERS	JOERN.	
AHSAN	SYED	ALI
AHUJA	ANAND.	
AHUJA	SARLA	M.
AHUJA	SARLA	M.
AILLOUD	ROBERT	WILLIAM
AINSWORTH	KATHRYN	GRACE
AISTRICH	MATTI	M.
AL MOSHEKY	ZAID	A.
ALABISO	DUCCIO.	
ALDERSON	AKI.	
AL–GHOREABI	NEZAR	MOHAMMED
ALHARBI	AHMAD	IBRAHIM
ALI	HASSAN	O.
ALI	PRASANNA.	
ALIREZA	TAMARA	GHASSAN
ALKON–FISHER	MARGARET	RAY
ALLIN	ROBERT	W.
ALMARZOOQI	THURAYA	RAED
ALON	HAGIT.	
ALONSO	MONSERRAT.	
ALONSO	ROCIO.	
ALPERSTEIN	DION	MANGALISO
AL–QATTAN	DANA.	
AL–SHARHAN	NADIA	RASHEED
AL–SHARHAN	SARA	RASHEED
AL–SHARHAN	SUMAIYA	RASHEED
ALTHAUS	KENNETH	SEBASTIAN
ALTHOLZ	LIRON.	
ALVAREZ	NOE.	
ALVERANGA	SHIRLENE.	
AMBROS	SHARON	ELAINE
AMES	ANNE	MARGARET
AMIN	RAJESHWARI	J.
AMIYA	YOKO.	
AMMANN	BENJAMIN	ROWE
ANDERS	MIA	IRENE
ANDERSEN	PAULETTE	PTAK
ANDERSON	CHARLENE	MARIETTA

Last name	First name	Middle name/initials
ANDERSON	MARY	N.
ANDERSON	MORRIS	ALLAN
ANDO	MASAHIRO.	
ANDRASZEK	ALICJA	JULIA
ANDRASZEK	ANNA	KINGA
ANDRASZEK	BARBARA	JOANNA
ANDRASZEK	TOMASZ	JULIUSZ
ANDRESEN	TOM.	
ANDRIANI JR.	CORRADO.	
ANEMA	TED.	
ANG	RACHEL	SWEE PENG
ANG	TIFFANY	LIXIAN
AOKI	YOUTA	BRANDON
AONO	HIROJI.	
APT	ISABELLE	M.
AQUINO	CARLOS	MIGUEL
ARAUZ	MANUEL	J.
ARCAMONE	MICHELE.	
ARM	CHRISTOPH	ANDREAS
ARROWSMITH	JACQUELINE	VALERIE
ARSENAULT–LANGLOIS	MARIE–JOSEE.	
ARTHUR	WALTER	THOMAS
ARTOLLE	ALEX.	
ARTS	ERIC	J.
ARVE	MORTEN.	
ASAKAWA	SACHIYO.	
ASAKURA	HIDETOSHI.	
ASAKURA	YOKO.	
ASELL	FOLKE	R.
ASPINALL	BARBARA	LYNNE
ASSAD	ALANA	LOUISE
ASTLEY	KENNETH	GEORGE
ASTLEY	LINDA	ANN
ATKINSON	ALAN.	
AUDIBERT	ALBERTINE	ALESIA JOY
AUGER	ANTOINE.	
AVIV	TEL.	
AW	KAILING	GABRIELLE
AWAN	FAUZIA	SALIM
AZHA	NUR QISTINA	BINTI ZOAL
AZZARONE	GIUSEPPE.	
BABROWSKY	CHRISTINE	H.
BACHEW	PAUL.	
BAE	MIYOUNG.	
BAE	SANG	HO
BAERI	SHARON	MIRIAM
BAETEN	NICOLE	JEANNE
BAGCHI	DEEPANWITA.	
BAGDADY	SUMMER	ABDUALZIZ
BAIL	JEAN	MARIE
BAILEY	SAYURI	T.
BAK	THOMAS.	
BALAKRISHNAN	LAKSHMI	B.
BALDASSI	BLAKE.	
BALL	ALEXANDRE	CHARLES
BALL	ANDREW	T.
BALLHAUS	MICHAEL	A.
BALSARA	THRITY	CYRUS
BALTZAN	MARCEL	ALEXANDER
BAMFORD	PATRICK	CHARLES
BANCROFT	DAVID	J.
BANCROFT	MARGARET	R.
BANERJEE	GAURAB.	
BANERJEE	SUCHISMITA.	
BARABANOV	DMITRI	NIKITOVICH
BARANES	HELENE.	
BARANOWSKI	ANN.	
BARATOFF	CYRIL.	
BARBARA	PATRICIA	J.
BARDELLI	ANGELA.	
BARDEWYK	JAN.	
BARELMANN	KELLY	MARIE
BAROUD	CHARLES.	
BAROUK–HASLER	NANCY	RACHEL

Last name	First name	Middle name/initials
BARRETT	SHIRLEY	J.
BARRETTE	NICOLE	JEANNINE
BARTELS	DIRK.	
BARTON	ALISTAIR	RAINE SINCLAIR
BARYLIUK	NESTOR	W.
BARYLIUK	SIMONE	S.
BASSANI	PAOLO	WILLIAM
BASTANI	HANIEH.	
BASTIDE	VICTORIA	JENNY
BASU	ESHA.	
BATTEFELD	THORSTEN	J.
BAUDESSON DE CHANVILLE D'ARC	PIERRE.	
BAUGH	MARK	THOMAS
BAUMAN	PAUL	DAVID
BAUMANN	DIANE	CHRISTINA
BAUNGAARD	GREGERS.	
BAUR	HANNA	CAROLINE
BAUTISTA	ISABELLE.	
BAUTOVICH	TANYA	MARY
BAYER	LINDA	MAY
BAYSTON	ASHLEY	ROBIN
BEAN	AYAKA	M.
BEANLAND	RICHARD	J.
BEARDSLEY	SALLY	ANNA
BEAUBIEN	KAREN	FRANCES
BEAUDRY	COLETTE	MARCELLA
BEAUPRE	JOANN.	
BEAUPRE	PETER	E.
BECCARIA	ARMANDO.	
BECK	JAMES	FRIEDRICH
BECK	JENNIFER	LEIGH
BECKER	ROBERT	U.
BECKER	THOMAS.	
BECKLEY	TYLER	COLE
BEGGS	CATHERINE	RUML
BELANGER	MARTIN.	
BELFRAGE	NICOLAS	JOHN
BELLARE	GURUDUTT	R.
BELLARE	NIRMALA	G.
BELLONI	VITTORIO.	
BELZIL	DENISE.	
BENDER	ALEXANDER	GEORGE
BENIKE	KARL.	
BENNET	BRIAN	DANIEL
BENSTER	MICHAEL	I.
BERCKEMEYER	TALIA	MARISA
BERGOMI	ALEXIS	JOHN CHARLES
BERGSTEN	BJORN.	
BERLIN	JENNIFER	M.
BERLIN	SHELLY	M.
BERNAZZANI	ODETTE.	
BERNDT	SIMONE.	
BERNET–ROLLANDE	ELEONORE	KAREN
BERNET–ROLLANDE	EMERIC	YAN
BERTELE	ANDREA.	
BERTHELEMOT	REMI.	
BERTOCCHI	GRAZIELLA.	
BERTRAM	AUDREY	ANN
BERTSCH	ANDREAS	NOEL
BESSETTE	GERALD	HOMER
BEST	ROBERT	J.
BEYROUTI	ARLETTE.	
BEZIER	HONORIO.	
BHATIA	MEGHA.	
BHATIA	SNEH	PAL
BHIROMBHAKDI	PALIT.	
BHOJWANI	ANMOL.	
BIA	ALEXIA	ANNE
BIBBY	RICHARD	H.
BIEG	MARTIN	THOMAS
BIER	DAVID	A.
BIGLIENI	WILLIAM	LEE
BILLINKOFF	SUSAN	DALE
BILLS	THOMAS	M.

Last name	First name	Middle name/initials
BILOTTI	MARIO	EUGENIO
BISCHOFBERGER	STEPHAN	ANDREAS
BISSEGGER	RETO	M.
BISTER	HELGA.	
BLACKWOOD	BERT	W.
BLACKWOOD	MURIEL	L.
BLANCHARD	DAVID	P.
BLANCHARD	MARIE–EMMANUELLE	ANDREE
BLANCHARD	MICHELLE	RENEE
BLATTLER–KOLLER	BRIGIT.	
BLUMBERG	STEPHEN	LOUIS
BLUMER	BRENDAN	FRANCIS
BOCCARA	KAKINO.	
BOCHERENS	FRANCOIS	MARC
BODTKER	ASTRID	CHRISTINA SEJERSTED
BOHLMAN	BYRON.	
BOHNER	DEBORAH.	
BOIRA	FRANCISCO	D.
BOKSANYI	SABINE.	
BOLDT	TED	ANDREW
BOND	ELISABETH.	
BOND	JOHN.	
BONDAVALLI	ALEJANDRO.	
BONNEY BRUELLMANN	CLAIRE	ELLEN
BOONE	ERIC	DANIEL
BOOTSMA	SHARYLEE	DAWN
BORGEAUD	EMILY	HELENE MARIE
BORLAK	MARIE–ODILE.	
BORMANN	TANJA.	
BORST	NORA.	
BOUCART	KATHERINE	MARLO
BOUCHER	BRIGITTE.	
BOUGON	ALEXIS.	
BOUMA	JETSKE	ANNE
BOURGEOIS	ANNA	LUTNICKI
BOURGEOIS	NICOLE	DIANE
BOUTIER	JEAN–PASCAL.	
BOW	HELEN	KATHERINE
BOWERS	ELIZABETH	CATHERINE
BRADLEY	JAMES	ROSS
BRADLEY	JEANETTE	A.
BRADLEY	JONATHAN	R.
BRADLEY	KENNETH	J.
BRADLEY	ROSEMARY.	
BRADY	BARRY	HUGH
BRAMALL	SUSAN	E.
BRANDT	WILLEM	REINDER
BRASH	CHRISTOPHER	LAW
BRASS	HELEN	JEAN
BRAUN–HARTWIG	BENJAMIN	UELI
BRAUSER	THOMAS	HENNING
BREECH	MATTHEW	DAVID
BREM	CHRISTOPH	K.
BRENNAN	SEAMUS.	
BREVIG	KAHN.	
BRICE	FRANCK.	
BRINGA	TONE	R.
BRISSON	BRIGITTE.	
BROCK	WILLIAM.	
BRODEUR	FRANCINE.	
BRODEUR	ROBERT.	
BRODIGAN	MARTIN	P.
BRONNER	TANIS	LESLEY
BROOKS	ISABEL	SAVANNA
BROOKS	ROI	CHRISTOPHER
BROWN	DANA	M.
BROWN	GARY.	
BROWN	JACK	ADAM
BROWN	KEVIN	D.
BROWNLEE	DONNA	BURGESS
BROWNSTEIN	HOWARD.	
BRUDNEY	CHARLES	SCOTT
BRUEGEMANN	BJOERN	A.
BRUGGER	RAHEL	CHRISTINA

Last name	First name	Middle name/initials
BRUNEAU	MARK	R.
BRUNGGER	OLIVER	PASCAL
BRYAN	GEORGIA	ANN
BUCHANAN SMITH	RUPERT	JAMES
BUETTEL	KEVIN	MICHAEL
BUHLER	MAX	ALBERT
BULLIVANT	ANDREW	GEORGE
BUNNY	KIM	L.
BUNTON	MARIA	J.
BUREAU	BRUNO	OLIVIER
BURES	HYNEK.	
BURKE	CATHERINE	GRACE VAN DUSEN
BURKE	RICHARD.	
BURKHART	DAVID	RALPH
BURNETT	EMILY	ROSE
BURTIN	CHRISTIANE	FRANCOISE
BUSCA	BARBARA	LOU
BUSCH	YVETTE	MARCELLA
BUTLER	JOHN	LAWRENCE
BUUNEN	MARK.	
BYRNE	CIARA	ANNE
BYRNES	GREGORY	J.
BYUN	HAJUNG.	
CABLE	CHRISTOPHER	RANDOLPH
CABRALES	JUAN	DAVID
CAHEN	CECILE	SANDRA
CALLAN	JOHN	P.
CAMERON	CHRISTOPHER	JAMES
CAMP	MATTHEW	IAN
CAMPBELL	KENNETH	WILLIAM
CAMPBELL	MARY–ANN.	
CAMPEAU	NORMAN.	
CANALES	JUAN	MANUEL
CAPPA	PATRICK	MARCEL
CARLE	VALERIE	MARIE MARTINE
CARPENTER	THOMAS	SELBY
CARPENTIER	DEANNA	MICHELLE
CARRINGTON	JOHN.	
CARTEAU	ALEXANDRE.	
CASARI	NICOLETTA.	
CASE	GEOFFREY	LEWIS
CASSAR	JESSICA	MARIE
CASTELLUCCI	CARLO.	
CASTLE	JOHN	RICHARD
CATTLE	PHILIP	RICHARD
CAVENEY	ANDREW	DUNCAN
CECCOTTI	NADIA	L.
CEDRONI	JEAN–PIERRE.	
CELLE	JOSETTE	BRICAUD
CELLICH	MARK	AUSTIN
CERRONE	MARC.	
CHADBOURNE	BARBARA	M.
CHAE	TAEJOO	GRAND
CHAMBERS	EDWARD.	
CHAMBERS	JOHN	DAVID
CHAN	AMANDA	CHEE YUN
CHAN	EDWARD.	
CHAN	NGAN	YUNG
CHAN	NINA.	
CHAN	PETER	W.
CHAN	RICKY.	
CHAN	SCARLET	SEE KA
CHAN	SHING	YAN
CHAN	SZE	C.
CHAN	TING	FUNG
CHANG	CONRAD	TZE KONG
CHANG	JASON	KANG–LUNG
CHANG	SUNHOON.	
CHANG	YI.	
CHANG	YUN–PENG.	
CHAO	FALTON	TAIN SHIAN
CHAPMAN	AMANDA	MEGAN
CHAPMAN	FRANCIS	ALLAN
CHAPMAN	MICHELLE	THERESA

Last name	First name	Middle name/initials
CHAPPELLE	ANNE	MARIE
CHARBONNEL	MELISSA	KAY
CHARNEY	JODY	LEE
CHASHECHKINA	EKATERINA.	
CHAU	MARGARET	Y.
CHAY	SEUNG	JAE
CHEIFETZ	JONATHAN	SHMUEL
CHEN	CHIEN	CHEN
CHEN	CHIH	MING
CHEN	CHING	MEI
CHEN	CHIUEH–HUA.	
CHEN	CHUN	M.
CHEN	CHUN–REN.	
CHEN	KUANG	WU
CHEN	LAN.	
CHEN	LIAT	TSING–YEE
CHEN	LISA	HUANG
CHEN	YANG.	
CHEN	YINHUI.	
CHEN TUNG	JENNIFER	HUI
CHENG	HUI	FEN
CHENG	LAWRENECE	CHICH–HAO
CHENG	LIZA	P.
CHENG	RITA.	
CHENG	YUNG–CHUN.	
CHERN	KENG	MING
CHERN	WENYING.	
CHERRY	CHRISTOPHER	ALOYSIUS
CHESSEX	MARILYN	MADELEINE
CHEUNG	ERICA	CHEUK YIU
CHEUNG	JANICE	MARIA WING HEI
CHEUNG	LOUISA	YUEN WAH
CHEUNG	SAMANTHA	WING–SEEN
CHEUNG	SUM	MAY
CHEVALIER	GILLES	FRANCOIS
CHI	MING	SHEN
CHI KAO	CHING	PING
CHIA	CHING–WEN.	
CHIA	MENG	KOON
CHIANG	ERIC	FRANK
CHIAPPE	ESTEBAN.	
CHIDAMBARAN	LAKSHMINARAYANAN.	
CHIK	WING	HONG
CHIN	PYONGHO.	
CHIU	JASON.	
CHIU	WINNIE	VENG–LUN
CHNG	IVAN	IRVING
CHO	YOUNG	RAE
CHOI	EUJEAN.	
CHOKA	KATHERINA	P.
CHONG	RACHEL	YING VUN
CHOONG	AUDREY	JIA YUAN
CHOUDHRY	NETAN.	
CHOW	SAI	HING
CHOW	SAI	KEUNG
CHOY	ANDY.	
CHRETIEN	KAREN	LOUISE
CHRISTECK	MARY	ELIZABETH
CHRISTENSON	ELSIE	MARIE
CHRISTOPHER	KELLY	ANNE
CHUA	CEDRIC	RUIHENG
CHUI	PING	YU
CHUN	JUNG	YEOB
CHUNG	BONNIE	WAI PING
CHUNG	KIM	SAU
CHUNG	LUN	CHEUNG
CHUNG	YOUN	HO
CHUNG LO	JAMES	CZE
CHURCH	TERI.	
CHURTON	HENRIETTE	SUSAN MACHTELD
CHYLE	HARMINDER	K.
CICCOGNANI	DIANA.	
CLARK	EMILY	BARBARA
CLARK	JONATHON	J.

Last name	First name	Middle name/initials
CLARK	JULIAN.	
CLARK	TREVOR	MICHAEL
CLARKE	SALLY	ANNE BARROW
CLEMENTS	WILLIAM	BLUET
CLIFFORD	DORTE.	
CLINCHY	BIRGITTA	C.
CLINTON	JAMES.	
CLINTON–MARSH	KIM.	
CLOCKSIN	WILLIAM	FREDERICK
CLUCAS	ALAN	T.
CLUCAS	CORINNE	M.
COCHRANE	CARLOS	AUGUSTO
COCKERILL	MARIA	J.
COE	COLIN.	
COE	CORNELIA	JOAN
COHEN	AARON.	
COHEN	AVNER.	
COHEN	DANA.	
COHEN	JEFF	ISAAC
COHEN	YARDEN.	
COHEN–BENITEZ	DANIEL.	
COLANGELO	MAURO.	
COLE	CASEY	JAMES
COLFLESH	SAMUEL	FOY
COLOMBANA	NORMA	L.
COLON	LYDIA.	
COMET	SOPHIE	SANDRINE
COMINETTI	NICOLAS.	
CONETTI	CHRISTINA	M.
CONETTI	SERGIO.	
CONRAD	HILARY	KATE
COOK	BENJAMIN	E.
COOK	HARRY	M.
COOPERSMITH	PENINA	SUSAN
COPTY	EMILE.	
CORDIAL	ALICIA	ROSE
CORNELL	KIMBERLY	ANN
CORNFIELD	LAURETTA	LYNN
COSTIN	KYLIE	ELIZABETH
COUGHLAN	JAMES.	
COUGHLAN	NATHALIE.	
COUGHLAN	PAUL.	
COUTURE	DANIELA	SANDRA
COX	DAVID	CLARIDGE
COX	RISA	IMAI
CRAFT	MARK	ALAN
CRAIG	BRIAN	LEE
CRANMORE	CHRISTIAN	ROBERT
CRAWFORD	DYLAN.	
CRAWFORD	HELENE.	
CRAWFORD	JAMES	DUNCAN LAING
CRAWFORD	KAITLIN.	
CRAWFORD	MARC	J.
CREALEY	SEAN	PETER
CRERAR	LYNNE	ELIZABETH
CRESSMAN	RUTH.	
CRIVELLI	MARIA	TERESA
CROCKER	PETER	JOHN
CRONDAHL	MICHAEL	ARTHUR
CROSETTO	LORENZO.	
CROWHURST	LORI.	
CROWLEY	NICOLAS	WIKSTROM
CUBBERLEY	SANNE.	
CUCHET	BENOIT	J.
CUI	ENRUO.	
CUI	PETER	XIANFENG
CURRAN	RANDAL.	
CURRIE	DAVID.	
CURRIE	MOIRA	P.
CURZI–CZAIKA	GINA	MARIE
DAGGUPATI	HITESH	CHENCHURAM
DAHL	JEFFREY	BRUCE
DAILEY	TIMOTHY	CHARLES HAMILTON
DAILY	BRADLEY.	

Last name	First name	Middle name/initials
D'ALCARAVELA	JOAO	A.
DALE	ERICA.	
DALE	MICHAEL	P.
DALENSTAM	JAN–ANDERS.	
DALY	KATHLEEN.	
DAN	NORIYUKI.	
DANG	LORENA	CARMEN
DANIEL	GLENYS	A.
DANIEL	PETER	J.
DARBYSHIRE	LYNN.	
DASTOLFO	MEGAN	E.
DAVENPORT	ANTONIE	A.
DAVEY	EMMA	MARY
DAVEY	GLENN.	
DAVID	LOU GRETA	VILIJA
DAVID SMITH	ANTONY	MICHAEL
DAVIES	ELAINE	ANNE
DAVIS	BARBARA	NANCY
DAVIS	JOHN	THOMAS
DAVIS	YAAKOV	NAFTALI
DAWSON	AMANDA.	
DAWSON	FIONA	T.
DAWSON	MARIE	T.
DAY	MICHAEL	WARREN
DAY JR	MAURICE	JEROME
DE ABREU	FRANCISCO	R.
DE BOER	JOHANNES	F.
DE CARVALHO	ERIK	CONOLLY
DE GIORGIO	BEATRICE	GRAZIA
DE GRANDPRE	HELENE	MARIE FLORENCE
DE GROOT	MARCIA.	
DE LETTENHOVE	ELISABETH	KERVYN
DE LORENZO	FERRUCCIO	FRANCESCO
DE PARSCAU DE PLESSIX	FRANCIOS MARIE	CHRISTOPHE
DE VEER	GERARDO.	
DEFEUDIS	PATRICIA	ANN
DEL CARMEN	JOAQUINA.	
DEL VECCHIO	CHRISTINA	ELLEN
DELATTRE	CATHERINE.	
DELATTRE	PATRICK.	
DEMPSEY	LAYTON.	
DEMPSEY	PATRICIA.	
DENDA	CHRISTOPHER	RICHARD
DENG	CHIA–LING.	
DENLEY	RODERICK.	
DENNY	CHRISTOPHER	JOHN MICHAEL
DEPLAEDT	PAUL	EDWIN
DEREOBALI	NECMIYE.	
DERISH	WAYNE.	
DERMAKE	AARON.	
DERRETT	MARION	E.
DES MONSTIERS–MERINVILLE	MARIE–HELENE.	
DESCHAMPS	BENOIT.	
DESMOND	STEPHEN	JOHN
DESSOLLE	EVA	M.
DESSOLLE	OLIVIER.	
DESY	ALBERT	JEAN–FRANCOIS
DETTLAFF	KATHLEEN	HALL
DETTWILER	STEVEN	W.
DEVAM	MARGA.	
DEVARAJAN	TINESH	BREDAN
DEVASAR	ANJU.	
DEVASAR	ASHISH.	
DEWEY	PETER.	
DEXTER	JEFFREY	KANNER
DHONDT	LUC	R.
DI CAPO	ALFONSO.	
DICKMAN	SHARRON	O'BRIEN
DICKSON	JENNIFER	A.
DICKSON	MATHEW	J.
DIGILIO	LAURA.	
DINGER	THORSTEN.	
DINSE	MICHAEL	RUDOLPH
DIONNE	NICOLE	G.

Last name	First name	Middle name/initials
DITCHFIELD	ROBERT.	
DITTMAR	STEFAN.	
DIXSON	ELIZABETH	CURRY
DOERMER	GEBHARD	H.
DOERMER	GISELA	A.
DOLGAIA	YEKATERINA	OLEGOVNA
DOMONE	PETER	G.
DONOVAN	MATHEW	JAMES
DOUGHTY	SIMON.	
DOUGLAS	DEANNE	JULIE YORK
DOUGLAS	JAMES	VINCENT YORK
DOUGLAS	JOHN	MARTIN
DOUGLAS	JUSTINE	AMY YORK
DOUGLAS	SOPHIE	LOUIS YORK
DOWNER	GEOFFREY	F.
DOWNER	SUSAN	L.
DRIESSEN	SEBASTINE	FELIX
DRUMMOND	MARY	ANNE
DUCHOSSOIS–ALLEN	CHRISTELLE.	
DUDHIA	AISHA.	
DUDHIA	ISMAEL.	
DUGAN–BRAUSE	EUGENE	JOSEPH
DULLY	CHRISTIAN.	
DUNLAP	CAITLIN	SPRINGER
DUNMAN	AUDREY.	
DUNSFORD–VARENNE	ANNE.	
DUPONT	FREDERIC	C.
DURANTEL	OLVIER.	
DURINGER	ISABEL	S LEVIN
DUTTA	PRADIP	K.
DUVAL	ROZEN	NATHALIE
DVALI	GEORGI.	
DY GAISANO	CHARLES	LOUIS
EALES	NICHOLAS	MATTHEW
EAMER	DAVID	J.
EAST	ROSEMARY	ELAINE
EASTAGTE	LANCE	OLAV
EASTHAM	VALERIA.	
EASTMENT	COLIN	A.
EASTMENT	JOY	MARGARET
EBERHART	ROLF.	
ECKERTZ	MICHAEL	HEINZ
EDDINGTON	SCOTT	DANIEL
EDGERTON	SYLVIA	LOWE
EDLEY	STEPHEN.	
EGAWA	MIYUKI.	
EGAWA	TAIZABURO.	
EGERER	CHRISTIAN	PETER
EHLERT	KARIN	BRIGITTE
EICHHORN	ERIKA	ANITA
EINHORN	LENA.	
EL KOMATI	FADI.	
ELAHIYOUN	ELHAM.	
ELLIS	BARBARA	S.
ELLIS	RICHARDS (DELETE S AT END)	S.
ELMIEH	FARDANEH.	
EL–WANNI	SHARRIF	IWAN
EMMENEGGER	ANNA.	
ENER	HAKAN.	
ENG	CHERYL.	
ENGEL	ARNOLD.	
ENGLER	COLIN	DENNYS
ENRIGHT	PAUL.	
ERB	GEORGE	KENNETH
ERIGUEL	SANDRA	YOUNG
ERIKSSON	GUNILLA.	
ERIKSSON	LARS.	
ERRUNZA	SHAWN.	
ERVIN	RAGANI	SEMAJ
ESMAIL	HANIF.	
ESMAIL	JAMILA.	
EUBEL	SARAH	BETH
EUFEMIO	ALICE.	
EUFEMIO	DEOGRACIAS.	

Last name	First name	Middle name/initials
EUTSEY	KERICKA	DESARAE
EVANS	SHARON	ILENE
EVERTS	JAN	A.
EWING	MEGAN.	
EZRIN	JANET.	
FABRE	PIERRE	MARIE
FAIRFEILD	MICHAELA.	
FALK	EDELTRAUD.	
FALK	KLAUS.	
FANG	LI.	
FANGMEIER	KARL	H.
FANICO	LUIS	MARCELLO ALFAIATE
FARACE	ANDREA.	
FARAONE	PIERCE	AUGUSTUS MITCHELL
FARINA	VITTORIO.	
FARINA	VITTORIO.	
FARMER	JAMES	PATRICK
FAURE	MICHELINE	C.
FAWCUS	DEBRA	ANN
FAY	LEE	BOGLE
FEARNLEY	ALAN.	
FEARNLEY	DIANE	L.
FEBERWEE–HOCHSTETTER	JOHANNA	L.
FEHR	ALAN	JOY
FEHR	RICHARD	D.
FENG	JUN.	
FENTON	BRIDGET	C.
FENTON	JONATHON	M
FENTON	MORRIS	H.
FERMIN	KATHERINE	ELIZABETH
FERNANDEZ	VIRGINIA	ROSE
FERRAGAMO	VITTORIA.	
FERREIRA	ALBANO.	
FICKL	SUSANNE	MARIA
FILBERT	NATASHA	ANASTASIA
FILCHEL	DAMON	CAREY
FINN	THOMAS	EDWARD
FIORENTINO	NELLIE	ELIZABETH
FIRSTBROOK	DAVID	GEORGE
FISCHER	LUDWIG	MAX
FISCHER	SUSANNE	ELISABETH
FISHER	PAUL.	
FITZPATRICK	ANNE DURIO.	
FITZPATRICK	ELEANOR.	
FLANAGAN	JUNE	EILEEN MARIE
FLEMING	THOMAS	JOSEPH
FLETCHER	NICHOLAS	JAMES
FLOWER	BRIAN	DAVID
FLOYD	DANIEL	FRANKLIN
FOLOT	FRANCOIS	ROBERT
FOOTNICK	JULIA	TIVIA THERESE
FORDON	ANGELIKA.	
FORIER	JANICE	M.
FOROS	MARKOS	A.
FOUBERT	PHILLIP	P.
FOX	MAUREEN	KATHRYN
FOX	YEHUDA.	
FRAME	PATRICIA	ANN
FRANCK	DORIS.	
FRANK	JULIA	RITA
FRANK	PHILIPPE.	
FRANKE	LINDA.	
FRANKLIN	JOHN.	
FRANKLIN	RON	DANIEL
FRASER	ANDREW	GRAY
FREEDMAN	LEXIE	ANN
FREIRE	MARTA.	
FREITAS	KRIPA.	
FRERER	ERIC	PAUL
FREYE	BAERBEL	M.
FRICKER	JOSEPH	ALEXANDER
FRIEDLAN	AVRAHAM	YITZCHAK ELIYA
FRIEDMAN	AARON	MORDECHAI
FRIEDMAN	LYNN	MICHELE

Last name	First name	Middle name/initials
FRIEDMAN	SHMUEL	H.
FROELICHER	LOUIS	ROBERT
FU	JINMIN.	
FUCHIGAMI	KUMI.	
FUJII	MACHIKO.	
FUJII	SACHIO.	
FUJIKURA	MIDORI.	
FUJIKURA	TADASHI.	
FUKAYAMA	RIA.	
FUKUI	RYO.	
FUKUOKA	SACHIE.	
FUKUOKA	TAKAO.	
FUKUYAMA	KIYOSHI.	
FULLER	MIMI	GENEVA JOHNSON
FUNG	WAI	LIN
FUNG	WING	SEE
FURIHATA	CHIZUKO.	
FURIHATA	KENICHI.	
FURUSHO	EMIKO.	
FUSCO	GENEROSO.	
GAA	JAMES	CLYDE
GAASCH	CAROLINE.	
GABILAN	DAVID	ANDRE
GABILAN	MARYLENE	EMILIE
GABRIEL	MONA	TATJANA
GAHLAUT	VIVEK.	
GAILLARD	CORINNE.	
GALANTAY	MARIE–THERESE.	
GALBRAITH	DAVID	W.
GANI	SARAH	MAY
GANNON	KEVIN	J.
GAPPMAIER	JOHANNES.	
GARDNER	CHRISTIAN	ALAN
GARDNER	DIANA	LYNN
GARLAND	GEORGE.	
GAROFALO	EDUARDO	D.
GARRETT	BRUCE.	
GARRETT	LESLIE.	
GARRETTE	CARLA.	
GARRIDO–LECCA	CECILIA.	
GARWOOD	MIKYUNG.	
GATEHOUSE	CATHERINE	A.
GATH	MIRIAM	LUCY
GAUL	MATTHEW	DAVID
GAUTHIER	THOMAS	PATRICE JEAN ARSENE
GEIGER	ADAM	MICHAEL
GEISER	NILS	JULIAN
GEMKE	ANS	H.
GENCE	THOMAS	JOHN PIERRE MARIE
GENSCH	FRANK	THOMAS
GEOR	RAYMOND	J.
GEORGE	GINA	M.
GEORGE	JENNIFER.	
GERBER	NATHALIE	CARA
GERMAIN	MARJORY.	
GERRISH	STEPHANIE.	
GERZANICH	EIKO.	
GHANEBASIRI	KAMBIZ.	
GHANWAT	SANDHYA.	
GHOSH	SUSHMITA.	
GIBBONS	KAZUYO.	
GIBSON	JESSIE	NICOLL
GIESEN	HILDEGARD.	
GIESEN	PAUL.	
GIFFORD	JOHN	WILLIAM
GILL	BRIAN	J.
GILL	TIMOTHY	WILLIAM
GILL	YVONNE	A.
GILLY	ALEXANDER	EDWARD FRANCOIS
GIOVANNINI GRAZIOLI	LAURA	JEANNE MONIQUE
GIROD	MAGALI	KARINE
GIROLAMI	PATRICK	GERARD
GIUFFRIDA	MARTIN	J.
GIVAN	NANA NINA	ALEXANDROVNA

Last name	First name	Middle name/initials
GLANSBEEK	JOHANNES	HARMANNUS BERNARDUS
GLASS	LINDSAY	CRAWFORD
GLAUSER–NETTLETON	JULIE	MICHELLE
GLOUTNEY	GUYLAINE.	
GOBINS	MARCIS.	
GOEK	KEITH	CHER WEI
GOEMAERE	JEAN–MARC.	
GOGELA	ELISABETH	MARIE
GOH	AH	ANG
GOLD	JULIA	THEA
GOLDMAN	MA'AYAN	TSIPORA
GOLDRING	BELINDA	FLORENCE
GOLDSTEIN–GOFT	DAPHNE.	
GOMBRICH	CARL	ASOKA
GONCALVES SOARES FRANCO	ANTONIO	MARIA
GONTHIER	GEHA.	
GONZALES	GEORGE	CARLOS
GOOD	BRYAN	DAMERON
GOODSELL	ANGELA	GAIL
GOOSEY	EMMA	RAE
GOSSELIN	CHRISTINE	MARIE
GOTO	HISAE.	
GOTO	SUMIO.	
GOTTGES	MICHAEL.	
GOTTLIEB	DAVID	ELI
GOTTLIEB	LINDSEY	MICHELE
GOUDGE	CARLA	CATHERINE
GOUDREAU	PAULA	BINNEY
GOULDING	TOBY	JOSEPH GEORGE
GOW	MARK	DAVID
GOYAL	PRADEEP	V.
GOYER	NATHAN	ALAN
GRAF–HURST	SIDNEY	VAUGHN
GRAHAM	GORDON	B.
GRANDE	ELIZABETH.	
GRANDI	GIANLUCA.	
GRANHEIM	SARA	MARIE
GRAY	ANNAMIEK.	
GREEN	ANDREW	CHARLES
GREEN	ISOBEL	HOLLY
GREEN	JESSICA	CELECE
GREENE	JAMES	ALAN
GREER	RINA	CLAIRE
GRIEPSMA	GRACE	E.
GRIGO	BRITTA	ANGELA
GRIMM	GABRIELE	S.
GRINIUS	STEVEN	THOMAS
GRONEMAN	ROBERT	JOHN
GROSLAND	ROBERTA	JAYNE
GROSS	ARYE	MORDECHAI
GROSSMAN	ALAINE	F.
GROVIT	ALEXIS	FARID ISMAIL
GRUENDLER	CHRISTINE.	
GRUNEWALDER	TIMO	OTTO
GU	JIALIN.	
GU	MING.	
GUIDI	JOSEPH.	
GUILLEMIN	HELENE	M.
GUINEBRETIERE	SANDRA.	
GUMUSKAYA	IDIL.	
GUNNING	CHRISTOPHER	PAUL
GUNTHARDT	RAY.	
GUO	CHENG.	
GUO	JENNY.	
GUPTA	MADHULIKA.	
GUPTA	RAJIV.	
GURUNATHAN	JAYALAKSHMI.	
HA	MIN	JA
HAANK	JORI.	
HADLEY	EMILY	ELENA
HAENFLING	ERHARD.	
HAGGLUND	DIANE.	
HAJELA	ATUL	B.
HAJELA	SHIKHA.	

Last name	First name	Middle name/initials
HAKEMI	GHAZAL.	
HALL	ELLEN	SUE
HALLUK	CLAUDETTE.	
HALSEY	CHRISTINA.	
HALY	BART	S.
HAMEL	JUDY.	
HAMEL	MICHEL	P.
HAMID	ZAEN	ASAD
HAMMOND	CHRISTOPHER	JOSEPH
HAN	JI	S.
HAN	KEE	JUAN
HAN	MINGXIANG.	
HANAOKA	TOSHIMASA.	
HANCOCK	CHRISTOPHE	ROBERT
HANDELSMAN	SIMON	D.
HANNA	KARIN.	
HANOT	JEAN	R.
HANSEN	DAVID	ERIC
HANTSCH–KOCH	SUSANNE.	
HARA	YASUHITO.	
HARADA	MASAKO.	
HARADA	YOSHIO.	
HARBINSON	ELEANOR	LISKA
HARDENBERGER	JESSICA	ANNE
HARLACHER	FRANK.	
HARLAND	JEFFREY.	
HARNISH	PATRICK	ALAN
HARNISH	SABRINA	LAETITIA
HARRAP	JACK	ETHAN
HARRIS	ELIZABETH.	
HARRISON	ALEXANDER	W.
HARRISON	HELENA	JOAN
HARTING–LINKE	RENATE	B.
HARTMAN	STIAN	THOMAS
HARTSHORN	JUDITH	ELISABETH
HASAN	RYNEL.	
HASE	KUNIYASU.	
HASEGAWA	MEGUMI.	
HASEGAWA	YOSHIYUKI.	
HASHIMOTO	MASAHIRO.	
HASSANI	ROUDABEH.	
HASSOUNA	ISMAIL	I.
HASSOUNA	NADIAH.	
HATTORI	MINORU.	
HAUGEN	TANYA	T.
HAVEMAN	THERESA.	
HAVEMAN	THERESA.	
HAVEMANN	MARTIN.	
HAVERSTOCK	JOHN	PATRICK
HAY	JAMES	M.
HAYDEN	PAUL	TREVOR
HAYERS	PHILLIP	MICHAEL
HAYON	RAYMOND	R.
HAZAN	REUVEN	YAIR
HAZARD	LEAH.	
HE	KAILEI.	
HEARD	DEBORAH.	
HEBB	DIANE	MARIE
HEGDE	SADANANDA.	
HEINE	LUCAS	OLIVER
HEINKE	THOMAS.	
HEISEY	ASPEN	FERN
HELLIWELL	BENJAMIN	ALEXANDER
HELLSTADIUS	CECILIA.	
HELM	CYRIL.	
HEMMERICH	DAGMAR.	
HENDERSON	CHRISTOPHER.	
HENDERSON	HEATHER	A.
HENDERSON	SCOTT	00
HENDRIKSEN	ANDRE	MOURA
HENG	KANG	YU TERRENCE
HENRY	AMANDA.	
HENSBY	CHRISTIAN.	
HEPBURN	CHARLOTTE	MOORE

Last name	First name	Middle name/initials
HEREDIA	MARIA	ISABEL
HERMON–TAYLOR	PETER	MAXWELL
HERNANDEZ–KUCEY	ELENA.	
HEROLD	MARIANNE.	
HERRING	KEN	MATTHEW
HERRMANN	SUSANNE.	
HERSCHDERFER	KATHY	CECILE
HERTERT	BRIGITTE	ABRAMOVICI-
HERTERT	ROLAND.	
HERTLI	ANDREA.	
HERTLI	SEBASTIAN.	
HESS	JULIA	A.
HESS	STEPHANIE.	
HESS	ZACKARY	MCGRAIL
HESSE	MARC	OLIVER
HETZ	LINDA	C.
HEUPEL	MICHAEL.	
HEURICH	RAINER.	
HEWETT	TERRY	LEE
HEYN	MONTE	WAYNE
HIBBERT	SALLY	ELIZABETH
HIBBS	KATHERINE	KAMYRE
HICKS	LEE	ANN
HIGGINKERN	SETH	DAY
HIGHES	GERALDINE	ANGELA
HILLER	GERDA	LUISE
HILTY	STEPHANE	HANS
HIMMELMAN	LAURA	ANN
HIMMELMAN	RYAN	DAVID
HIMPENS	NATHALIE.	
HINTON	ANTHONY	JOHN
HIOKA	MINAKO.	
HIRAKAWA	KUMIKO	GRANILLO
HIRATA	SUGURU.	
HIRTHAMMER	THERESA	ERIKA
HITCHCOCK	ELIZABETH	ANN
HO	CALEB	K.
HO	CHIA HUI.	
HO	MOOI	F.
HO	PING	SUN JOHN
HO	STEPHANIE.	
HO	VERNA	GENWAY
HO	WAI	SUM
HODGSON	PHILIP	KENNETH
HODSON	SANDRA	LEE
HOFFART	STEVEN	W.
HOFFMAN	JUDITH	FRANCE
HOFFMANN	ARICK	TOR
HOFMANN–BELL	BIRGIT.	
HOFSCHNEIDER	MARCO	C.
HOLCOMB	JEFF	RICHARD
HOLLAND	MARY	CATHERINE
HOLLAND	NICHOLAS	J.
HOLLANDER	MARTIN.	
HOLLEY	DEBRA	L.
HOLLEY	MARK	W.
HOLME	BARBARA	ANNE
HOLMES	PHILIP.	
HOLMES	SIMON.	
HOLWERDA	NOAH	BRANDON
HOLWERDA	SASKIA	NADINE
HONG	JUNG	CHIH
HONG	KUN	HENG
HONG	LENG	KEONG
HOO	KARIN.	
HOOGENBOOM	PETER	JOHN
HOOKER	KIRSTY	V.
HOPCRAFT	PETER	N.
HOPE	CHRISTOPHER	M.
HOPE	JULIE	S.
HOPKINS	MICHAEL	KARLHEINZ
HOPMANN	HENRIK	JENS
HORNG	PETER	CHIH–YUAN
HORNUNG–MOSER	MICHAEL	CHRISTIAN

Last name	First name	Middle name/initials
HORTON	SIMON.	
HOSKINS	CLIVE	J.
HOSOYA	REIKO.	
HOTTA	HARUMI.	
HOTZ	LAURIE.	
HOU	CHUNNING.	
HOU	TINGGUI.	
HOU	ZHONGYU.	
HOUCK	STEVEN	MICHAEL
HOUSE	SARAH.	
HOUWEN	NANCY ANN	VANDER
HOWARD	BRENDAN	JOHN
HOWARD–KAEMMERER	MARTHA	LOUISE
HOWE	CHRISTINE	GISELE
HOWSON	KEVIN.	
HOYER	ALEXANDRE	GEORGES
HOYLE	VICTORIA ANNE	MCCREIGHT
HRYNIOWSKI	ELLEN IRENE	ROBB
HSIAO	HUI	HUA
HSIEH	ANNIE.	
HSIEH	PEI	LIN
HSIEH	TEV–HUANG.	
HSU	JEFFREY	TSUO–WU
HU	RENMING.	
HUANG	GUANGWEI.	
HUANG	LI	NA CHERN
HUANG	PHOEBE	LING–YEAN
HUANG	QIHAO.	
HUANG	SIN	CHEN
HUANG	YA	WEN
HUANG	YING	CHIH
HUANG	ZHAN	PENG
HUERZELER	FABIAN	MARC
HUH	KYUNGWON.	
HUH	MIJUNG.	
HUH	SUNG.	
HUIZING	EVERT	J.
HUMBEL	DIETER.	
HUMPHREY	JASMINE	NICOLE
HUNTING	ROBERT	PAUL
HUTCHINSON	ROY	O.
HUTT	SING	MING
HUTTON	JOANNE	THOMAS
HUYNH	KIM	PHUOC
HYAMS	PAUL.	
IANNETTA	JEAN	MARIE
IBANEZ	SABRINA	TERESA VIRGINIA
ICELY	PETER.	
ICHIKAWA	HIROSHI.	
ICHIKAWA	TAKAKO.	
IDCZAK–DESCAT	CHRISTIAN	J.
IGAWA	TAKEHIRO.	
IIZUKA	YUZO.	
IKEDA	YURIKO.	
ILTEN	PAUL	FREDERICK
IMAI	MASAKO.	
IMAI	TADAYUKI.	
IMAMURA	HISAO.	
IMAMURA	MIYAKO.	
IMBACH	PASCALE.	
IMHOF	LESLEY	MARGARET
IMPERIALE	MARINA	NASTASSJA
INAGAKI	KOTARO.	
INOUE	MASARU.	
INTRATOR	ELIZABETH	ROSE
IRANI	ZUBIN	J.
IRELAND	CATHERINE	A.
IRLAM	CAROL.	
ISAACSON	INEKO	H.
ISAKU	MASAKO.	
ISAKU	TAKESHI.	
ISHIGURO	KEN.	
ISHIHARA	YURI.	
ISHINO	TETSUYA.	

Last name	First name	Middle name/initials
ISOGAWA	CHIHIRO.	
ISOGAWA	MASANORI.	
ITO	AKIKO.	
ITO	TAKANOBU.	
ITO	TAKASHI.	
IWANAGA	YUJI.	
IWANAGA	YUKIKO.	
IWASAKI	YOSHIHISA.	
IWASAKI	YURIKO.	
JACKAMAN	PAUL	A.
JACKLING	TIMOTHY	DAVID
JACKSON	ADINE.	
JACOB	MAMMEN.	
JACOBS	MARCIA	LYNN
JADD	JEROME	LAWRENCE
JAEGER	ERIK.	
JAGAN	SONITA	S.
JAGANNATHAN	MAHESH	
JAIN	SANJAY.	
JAMES	CHRISTOPHER	BRIAN
JAMES	GINA	RENEE
JAMES	KATELYN	ALEXANDRA
JAMILA–WUERTH	FRIEDEMANN	J.
JANSEN	RICHARD	E.
JANSEN	TERRENCE	JOSEPH
JANSEN	THOMAS	W.
JARSKY	MATTHEW	MERTON
JAYARAMAN	GAYATHRI.	
JEFFS	LYNN	MARIE
JEFRI	FARIS	MOHAMMAD
JENKINS	ALAN	P.
JENNINGS	MIKAKO.	
JEONG	BAE	HOON
JEONG	CHOONG	KUN
JERRY	DOUGLAS	JOHN DONALD
JIA	HUI.	
JIANG	HONG.	
JIANG	JIANDE.	
JIN	CHARLES.	
JIN	JING.	
JIN	LIJIE.	
JOHLER	CHRISTINA	MAUREEN
JOHNA	SAMY.	
JOHNSON	AKEMI	SATO
JOHNSON	ANNE	ELIZABETH
JOHNSON	CHRISTINE	MARY
JOHNSON	JAY	A.
JOHNSON	RETNO	H.
JOHNSON	STEPHANIE	JANE
JOHNSON DEEGAN	MICHELLE	KATHLEEN
JOHNSTON	DOUGLAS	IAN
JOHNSTON	NICHOLAS	JAMES
JOLIVET	CLAIRE	ANNE
JONES	DON	LEWIS
JONES	ZACHARY	ROBERT
JORDAN	BYRON	DALE
JORDAN	JOSEPH.	
JORDAN	KATHERINE	ELAINE
JORDAN	NANDIPHA	ESTHER
JORDAN	SUSAN	MARGARET
JOSEPH	JOSEPH	MONSOUR
JOSHIPURA	NAMRATA.	
JOYCE	JOHANNA.	
JUERGENS	ROBERT	WILLIAN
JULEN ALTHAUS	IRMGARD.	
JUNEANTO	JUWITA	KUSUMAWATY
JUNG	HSIAO	MEI
JUNG	NIKOLAUS	JOACHIM
JUNOD	MARC.	
KABBANI	MAHER.	
KADATZ	SCOTT	HENRY CARROLL
KAEGI	MANUEL.	
KAELIN	CAROLINA	NADJA
KAHANE	ADAM	M.

Last name	First name	Middle name/initials
KAHANE	DOROTHY	R.
KAHN	MICHELE	MARGUERITE
KALE	PRAKASH	S.
KALE	SANDHYA	P.
KAM	BRANDON	JASON
KAMIYA	NOBUAKI.	
KAMMERER	MARK	ANDREW
KAMMERMEIER	ELISABETH	U.
KAMMERMEIER	KLAUS	G.
KANDA	JUNKO.	
KANEKO	KATSUMI.	
KANEKO	REIKO.	
KANG	SANGWOOK.	
KANG	SUH YOUNG.	
KANG	YI.	
KANII	KENJI.	
KANOST	LAUREL	KATRINA
KAO	JOHNNY	WEI–CHAO
KAPPAGANTULA	MYTHRI.	
KAPSIMALI	ALEXANDRA	MAURICE
KARADIMAS	PETRA.	
KARCHER	IAN	D.
KAREENHALLI	SRINIVAS	V.
KARIM	AHMAREEN.	
KARIYA	SHINGO.	
KARNEI–REM	REUBEN	MOSHE
KARSCHIN	PENNY	BARBARA VIKTORIA
KASDORF	HILDA.	
KATAYAMA	DAISUKE.	
KATO	HARUMI.	
KATZ	ELIAKIM.	
KATZ	KEVIN	MICHAEL
KAUFMAN	MAIKE	JENNIFER
KAVULAK	JOHN	C.
KAWAI	HIDEKI.	
KAWAMURA	TAKAHIRO.	
KAWASAKI	CHIE.	
KAY	MICHAEL	BENJAMIN
KA–YAN KWAN	ASHLEY	ELIZABETH
KAYE	PATRICIA	ELIZABETH
KAYE	ROBERT	ANDREW
KE	PI–HUNG.	
KECK	HARALD.	
KEES	MICHAEL	NATHANIEL
KEESS	ALAN	HOWATT SCOTT
KELLER	ROLAND	MANFRED
KELLEY	DOUGLAS	FORSYTHE
KELLEY	KEVIN	LEWIS
KELLIE	SANDRA	H.
KELLIHER	SARAH	JANE
KELSON	ILAN.	
KEMMOCHI	KATSUHIKO.	
KEMMSIES	THOMAS	FRANKLIN
KENNEDY	DAVID	EDWARD
KENNEDY	GERDA	H.
KENTOPP	KORRYN	ERIC
KERBS	HEIKE.	
KERN	MICHAEL.	
KERR	BARBARA	MARION
KERR	MICHAEL	WILLIAM GRAHAM
KESHAVARZ	HAMID.	
KESLAKE	RUTH	B.
KETTLER	DOLORES	HILDEGARD
KEZUKA	KIMIKO.	
KEZUKA	TOSHIHIKO.	
KHAN	AMY	JO
KHANNA	GEETA.	
KHONG	MICHELLE	B.
KHOSLA	RAEWYN	MAREE
KIDD	MELVIN	J.
KIDOKOO	IWAO.	
KIKUCHI	KAZUYUKI.	
KIKUCHI	KEIKO.	
KILLIN	ANDREW	JAMES

Last name	First name	Middle name/initials
KILLMANN	KAY.	
KILVINGTON	CHRISTOPHER	J.
KIM	BOK	JA
KIM	BONGGI.	
KIM	CHUNG	HOON
KIM	DEIRDRE	MARIE
KIM	DONGOOK.	
KIM	ERIC.	
KIM	EUNICE.	
KIM	HACHUL.	
KIM	HENRY	SUNGSU
KIM	HWA–SUK	C.
KIM	HYUN	SOO
KIM	HYUN	SOO
KIM	HYUNSOO.	
KIM	JEONG	MEE
KIM	JIN.	
KIM	JOSHUA	H.
KIM	JUN	BEOM
KIM	KWANG–JEA.	
KIM	MI	SON
KIM	MIN.	
KIM	SUNG	HEE
KIM	WON.	
KIM	YOUNGDAE.	
KIM PARK	YOUNG	AH
KIMPEL	DIRK	ROLF
KIMPTON	JAMES	ROGER FITZPATRICK
KIMURA	HARUKA.	
KIMURA	MASATO.	
KIMURA	MEGUMI.	
KIMURA	YURINA.	
KINGHAM	NICOLAS	WYATT
KINNE	ROLF.	
KINOSHITA	MASAHIRO.	
KIRBY	ANNETTE	P.
KIRBY	COLEEN	LOUISE
KIRDAR	RENA.	
KIRKHAM	PATRICIA	A.
KISS	GABRIELE.	
KITAGAWA	MASAHISA.	
KITAGAWA	YOKO.	
KIYANDA	CHARLES	BASENGA
KLEE	SIMONE.	
KLEIBERGEN	FRANK.	
KLEIN	KEVIN	V.
KLINEFELTER	VICTOR	ALLEN
KLINGER	CLAUDIA.	
KLOHR	CYNTHIA	SUE
KLUTH	ELAINE	ISHA
KNAUR	MATHIAS	THOMAS
KNELL	JUTTA	MARIA
KNIGHT	KATHRYN.	
KNOELL	MICHAEL	RALPH
KNUDSEN	ELLINA	MONET
KNUTTILA	KIM	R.
KO	COLIN.	
KOBAYASHI	MAYUMI.	
KOBAYASHI	MINORU.	
KOBAYASHI	TORU.	
KOBELT	ADRIAN.	
KOBRIN	ESTER.	
KOCH	MICHAEL	H.
KOCIA	CATHERINE.	
KOECHLIN	TILL	JASPER NICOLAS
KOEHL	JOERG.	
KOELEWYN	YAACOV	ISRAEL
KOH	ANDRE	JUN QI
KOH	TOWSIAN.	
KOHAMA	MOE.	
KOIVUMAKI	LIISA	HANNELE
KOJIMA	YUKIO.	
KOKKIDIS	ALEXANDROS	JOHN
KOLMAN	LOUIS	ROBERT

Last name	First name	Middle name/initials
KOLTIN	DROR.	
KONDRACKI	NICOLAS	OSTOJA
KONHEISER	CATHERINE.	
KONHEISER	HARALD.	
KONIETZKO	JULIUS.	
KONNO	ANDREA	K.
KOOP	WALTER	J.
KORDETZKY	JENS.	
KORNELSEN	JULENE	NICOLE
KORNITZER	DAFNA.	
KORN–NESPOR	ANNE	RUTH
KOSARIC	AMIR.	
KOUMETZ	GERARD.	
KOYAMA	NORIKO.	
KOYAMA	TORU.	
KRAKOWER	PEPII.	
KRAMER	THOMAS.	
KRAPF	JASMINE	ANN
KREMPA	GERALDINE.	
KROMBHOLZ	ANJA.	
KRONAUER	CHRISTINE.	
KU	JUNG	HEE
KU SINCLAIR	CHING	TAK NOEL
KUANG	HENG.	
KUDOSE	ITARU.	
KUEHNELT	MANFRED	F.
KUGE	TAKASHI.	
KUHARA	YUMIKO.	
KUHNKE	KRISTINA	LOUISE
KUIPERS	PATRICIA	JOY
KUMAGAI	MAKI.	
KUNNANATT	JAMES	THOMAS
KUNZ	GREGORY	STEFAN
KUO	CHUN	JAN
KUO	KUO	HSIEN
KUO	TAI–HAUR.	
KUO	YA–PEI.	
KUROKWA	TORU.	
KUROO	KUMIKO.	
KUROO	MAKOTO.	
KUSCH	MARTIN	G.
KUSHNER	KYLE	WILLIAM
KWAK	YOUNGMIN.	
KWEE	ALLISON	MEI–AI
KWONG	CHI YUEN	RAYMOND
LA PIETRA	NICOLAS.	
LABEJOF	PIERRE.	
LACHINE	VLADIMIR.	
LACHMAN	SWEENEY.	
LACOMBE	CARLOS	OCTAVIO
LAI	CHRISTOPHER	JUNJIEN
LAI	CHUNG	FAT
LAI	GLORIA	SUN MING
LAI	HO.	
LAI	LAURA.	
LAIRD	DIANNE	E.
LAIRD	RUTH	I.
LALONDE	DAVID	A.
LAM	ANTHONY	TZE CHEUNG
LAM	MEI	LAN
LAM	SZE	MAN VIVIAN
LAM	TAT	CHI BRIAN
LAMAY	VALERIE	ELISE
LAMBA	GURVINDER.	
LAMBA	SARABJEET.	
LAMBERT	TYSON	JAY
LAMM	MICHAEL.	
LAMOTHE	FRANCINE.	
LAN	KAE–YUAN	DAVID
LAN	SHAN.	
LANE	GEOFFREY	JAMES
LANGER	ADRIANA	KAREN
LANGLOIS	ELLIS.	
LANNE–MIRRLEES	PATRICK FRANCIS	ALEXANDER STUART DE LA

Last name	First name	Middle name/initials
LAO	BOBBY	SALIM
LAPIDUS	DIANE	CAROL
LATEGAN	CHRISTOPHER	F.
LATEGAN	PAUL	C.
LAU	CHERYL	DANIELLE
LAU	YUK	SHAN
LAUER	SONJA.	
LAUGHERY	LAWRENCE	GREGORY
LAUGHERY	VINCENT	OLIVIER
LAUGHLIN	YOKO	Y.
LAUNAY	BENOIT.	
LAURENS	CHARLOTTE	MARIE ZOE
LAURENT	NICOLAS	LEON
LAVALLEE	DOMINIQUE	PHILIPPE
LAVARELLO	ELISABETTA.	
LAW	PUI	YING VELMA
LAWRENCE	JOHN	DENNIS
LAWRENCE	MELANIE.	
LAWSON	HELEN	A.
LAWSON	KATHERINE	BELINDA
LAWSON	MURRAY	J.
LAWSON	ROY	DEAN
LAXTON	JEFFREY	ARNOLD
LE GRAND DES CLOIZEAUX	FRANCOIS	MARIE
LEAKOS	THOMAS	JAMES
LECOMTE	CHRISTOPHE.	
LEE	ANDREA	H.
LEE	ANGELA	WAI KAY
LEE	ANNIE	CHANG
LEE	BRIAN	H.
LEE	CHENG	HAO
LEE	CHENG	PING
LEE	CHENG–NING.	
LEE	CHIA YIN	DIANA
LEE	DONGWHAN.	
LEE	GI	SUE
LEE	HANJOO.	
LEE	JACK	LAN
LEE	JANGWOOK.	
LEE	JEONGAH.	
LEE	KEE	SIG
LEE	LESLIE	PIK SUEN HUNG
LEE	LINDA.	
LEE	LINDA.	
LEE	LINJIE.	
LEE	LYDIA.	
LEE	MARIA TERESITA	D.
LEE	MIN	YOUNG
LEE	NERISSA	OI LUM
LEE	OI	YEE
LEE	OWEN	Y.
LEE	PAN–CHI.	
LEE	ROBIN.	
LEE	SEOKHEE.	
LEE	SEUNG	YOUN
LEE	SOON	SUNG
LEE	TAE	KWON
LEE	TINA	PAI–TING
LEE	WON	JIN
LEE	YOON.	
LEE	YUNMEE.	
LEE0 LEE	JUN	YOUNG
LEERENTVELD	RUDOLF	A.
LEFEBVRE	JOSEE	MARY
LEGG	JACQUELINE	JON
LEGG	MICHAEL	JAMES
LEHTINEN	AMANDA	MARIE
LEIGH	RENA	DELAINE
LEITCH	MAY	ELIZABETH
LEKAS	FOTIS.	
LEMAK	JOZEF	J.
LEMAK	SUZANNE	HELENE
LEMARIE	GHISLAIN	RENE EMILE JEAN MARIE
LEMARIE	NATHALIE.	

Last name	First name	Middle name/initials
LEMMO	NICOLA.	
LENNOX	BRIAN	JOSEPH
LEO	ANTONIO.	
LEPATSKI	CATHERINE.	
LEPRIEUR	NANCY	HO
LESTER	NINA	CATHERINE
LETHU	CONSTANCE	REINE MARIE
LEUNG	REBECCA	CHENG–HUI
LEVERSHA	SIMON	D.
LEVI	GEORGE.	
LEVITT	ADAM.	
LEVITT	CHERYL.	
LEWIS	EMMA	ISABEL
LEWIS	JEREMY	BROWNING
LI	HAIYANG.	
LI	HAN	MIN
LI	JIAN.	
LI	JINJIN.	
LI	KIM	PANG
LI	LEI.	
LI	LIANJIANG.	
LI	SABRINA.	
LI	XIONG.	
LI	XUE	YUAN
LI	YINGHAO.	
LIAO	RIKO	N.
LIAW	HUI	WEN
LIE	SEN	NEN
LIEBERT	DOMINIC	SEBASTIAN
LIEBERT	MICHAEL	PATRICK
LIE–NIELSEN	FREDRIK.	
LIETZE	VERENA–ULRIKE.	
LIM	BEE	Y.
LIM	BEE BEE.	
LIM	DORCAS	QIAN–YI
LIM	HAE	K.
LIM	J.	
LIM	J.	
LIM	KOH	WEI
LIM	SIN	WEI
LIM	WOO	S.
LIM CHUASON	SHANNON	TRACI
LIM TAN	KRISTEN	KYLA
LIMBERT	RACHMANIEAR	S.
LIN	CHING–HUEI.	
LIN	CHUNG	L.
LIN	FRANK.	
LIN	KATHERINE.	
LIN	MICHAEL.	
LIN	SAMANTHA	YICHUN
LIN	SHERRY	FANGLING
LIN	SHYR–YI.	
LINDA	LOMA.	
LINDER	DANIEL	J.
LINDER	SILVIA	M.
LINDGREN	KERSTIN.	
LINDSAY	ELIZABETH	ANN
LINDSTROM	ADAM	ERIK
LING LO	YOLANDA	YUAN
LINK	CHRISTINE	MARIE
LINKE	BERNHARD.	
LIPMAN	ROSWITHA.	
LIPSON	PAMELA	SUSAN
LITTLE	DELFINA	F.
LITTLE	SASKIA	R.
LITTLE	SYDNEY	DAVIS
LITTLE	TIMOTHY	S.
LIU	AN–CHE	ANDY
LIU	CHANG–CHU.	
LIU	GUANGTAO.	
LIU	LEI.	
LIU	MING–HSING.	
LIU	RONG.	
LIU	SHIAO–WEN.	

Last name	First name	Middle name/initials
LIU	XINGSHENG.	
LIU	YING HUEI.	
LIVIUS	RONALD.	
LO	TAYLOR	KOON KIU
LOCK	JUNN–YEU	CONSUNJI
LOCKETT	WILLIAM	ALAN MORRIS
LOEFFLER	MAGDALENA.	
LOELIGER	FLORENCE	CATHERINE
LOESHE	ANN	ISABELLA
LOETTGEN	FABIO.	
LOH	BOON	KEOW
LOH	MARY	SHEUCHEUN
LONG	CAROLYN	MARJORIE
LOO	JON	PIERRE
LORANG	LYNNE	PATRICE
LORENZ	HELEN	JOANNE
LOSEV	DOLLY.	
LOTZ	BENNO.	
LOUGHLIN	EDWARD.	
LOVE	CHRISTINA.	
LOVE	WALTER	WILLIAM
LOVETT	SHARON	LOIS
LOW	JACQUELINE	EN–QI
LOW	RUTH	RAMAWATI
LOWELL	EDMUND	JOHN
LU	ALBERT	P.
LU	GRACE.	
LUDWIG	MINKA.	
LUENEBURGER	CHRISTOPH.	
LUI	WEN–JIE	BENJAMIN
LUKEN	MARK	ANDREW
LUTENBACHER	JOSHUA	SHINJI
LUTZ	SHIRLEY	ANN
LUTZ	SHIRLEY	A.
LUU	HUYEN	BOI
LUX	ANDREW	CHRISTOPHER
LYBY	KNUT.	
LYDON	EMMET.	
LYMAN	CHIKAKO	K.
LYONS	BERYL	CLAIRE
LYONS	BETHAN.	
LYONS	CHRISTOPHER	J.
LYONS	HELEN	JANE
LYONS	MARTYN.	
MA	ZHIYIN.	
MAC DONALD	RHONA	M.
MACALISTER	GRACE	V.
MACARTHUR	JANE	LOUISE
MACAUX–PERELMAN	CHARLOTTE.	
MACDONALD	BRUCE	ALLAN
MACDONALD	COLIN	FREDERICK
MACDONALD	JANE	NEWTON
MACDONALD	JENNIFER	ELLEN
MACDONALD	JOHN	JOSEPH
MACDONALD	SHEILA	T.
MACDONALD	SIMON	A.
MACEDO	ELISABETH	RIBEIRO
MACEDO	VALDIR.	
MACFARLAND JR	HAROLD	CHARLES
MACGREGOR	RODERICK.	
MACISAAC	JULIA.	
MACKAY–SMITH	ALEXANDER.	
MACKENZIE	MAITLAND.	
MACKINNON	REESA	LYNNE
MACLEOD	R.	MALCOLM
MADDEN	PAUL	M.
MADEDDU	DANIEL.	
MADER	JULIA	RAHEL
MADU	VIOLET.	
MAEK–GERRAD	MICHAEL.	
MAGER	CAROLINE	ANDREA
MAGLIONE	PABLO	A.
MAGNAN	ANTOINE	MARTIN
MAGNUSSEN	VICTORIA	ALLISON

Last name	First name	Middle name/initials
MAGUIRE	HENRY	P.
MAHONEY	DENIS	KIRK
MAIWEG NARCISO	ANIK	ALEXANDRA
MAK	BETTY	SUEK–YUK
MAKENZIE	BETTIE	RUTH
MALDONADO	DANIEL.	
MALE	WENDY.	
MALIK	BABAR	ABBAS
MALLICK	DHRUV.	
MALTBY	GEORGINA.	
MANDAPATI	SRIDHAR.	
MANGALGIRI	VICKRAM.	
MANNS	DEREK	MICHAEL
MANRIQUE	SANDRA.	
MANSE	FREDRIK	U.
MANSE	MARIA.	
MANSUR	DAVID	LLOYD
MANSUR	JOANNE	LOIS
MANTLE	PAUL.	
MAPP	MARGARET ANNE	PAOLINI
MARANGONI	ANA	MARIA ROSA
MARANGONI	LENER	LUIZ
MARAVEI	DANIEL	V.
MARGARIA	ROBERTO	AMERIGO
MARIES	SCOTT	LAURENCE
MARONDEL	IVONNE.	
MAROUF	NOUR	MOHAMMED
MARSHALL	KATE	E.
MARSICO	JOSEPH	FRANCIS
MARTEAU	MARYCLARE	WHITE
MARTEL	MARIE	THERESE DIANE
MARTIN	CHRISTOPHER	J.
MARTINI	REGINE.	
MARTONO	FRANS.	
MARTZ	JULIE	G.
MARX	BENJAMIN	ROBERT
MASAKI	HIROSHI.	
MASCHIO	BENEDETTA	DOROTHY
MASE	HIROKO.	
MASE	JITSUO.	
MASON	DAVID	FREDERICK
MASSEY	JENNIFER	CLAIRE
MASTROPRIMIANO	DAMIEN	M.
MASUDA	KAORU.	
MASUDA	YOSHIKAZU.	
MATHUR	RAKHI.	
MATHUR	VIVEK.	
MATOUK IRIONDO	MARIA.	
MATRONE	PEGGY	A.
MATSUI	AKIRA.	
MATSUI	KAYOKO.	
MATSUMURA	ASUKA.	
MATSUSHIMA	MASUMI.	
MATSUSHIMA	MIEKO.	
MATSUURA	TOSHIAKI.	
MATSUZAKI	YOKO.	
MATTIAZZO	GEMMA	FRANCESCA
MAUBOIS	MARIE	ANNE
MAURICE	SONYA	C.
MAXFIELD	MAO	ELISA
MAXWELL	PATRICK	HO
MAY	PHILIP	LAWRENCE
MAZER	SAMANTHA	BETH
MAZZUCATO	CHRYSTELLE.	
MC LIN	JON	BLYTHE
MC MECKAN	HILARY	RUTH
MCADAM	AILEEN	T.
MCBURNEY	JOSEPH	ELLIOT
MCCABE	BRIAN.	
MCCAUGHEY	HANNAH	RUTH
MCCLURE	VICKI	KATHRYN
MCCOLLUM	CRAIG	IAN
MCCRACKEN	NANCY	ANN
MCCUTCHEON	LAURA	L.

Last name	First name	Middle name/initials
MCCUTCHEON	MARK	J.
MCDONALD	PAMELA	JOYCE
MCDONALD	SUSAN	D.
MCDONALD–GIBSON	JONATHAN	HENRY
MCEVILLY	SEAN	JUNICHI
MCGRATH	DEBORAH	ANNE
MCGRAVIE–WRIGHT	ANNE	VERONICA
MCHUGH	MARIA	CATHERINE
MCINTOSH	RYOKO.	
MCINTOSH	STUART	J.
MCKAY	MELANIA	FRANCIS SHED
MCKENNA	JOSEPH	TERENCE
MCKERCHER	JOHN	G.
MCKINNON	SARAH	MORGAN
MCKOY	MADISON	JEFFERSON
MCLAREN	WHITNEY	HAMMOND
MCNAMER	MOEKO	RENEE
MCNEIL	ELIZABETH	ANN HULME
MCSHAN	DENISE.	
MEDDING	JONATHAN	AARON
MEDINA	ERIKA	SANTI
MEGNIN	CHARLES	H.
MEHTA	CHHAYA	P.
MEHTA	MITSU	N.
MEIER	MARIE	C.
MEIER	SUSAN	DEBORAH
MEIER	YANIK.	
MELLEMSETER	LARS.	
MELNIK	CATHERINE	MARIE CECILE
MELOCIK	JUDITH	KATE
MELTON	STEVEN	CHRISTOPHER
MENDEL	MAX.	
MENDEZ BUENO	CARLOS	B.
MENESES	J LOUIE.	
MERCADIER	VINCENT.	
MERCHEL	EWA	ANNA
MERCURY	JAMES	ARISTOTLE
MEREU	AKIKO	CHIBA
MERIGAY	ALEXANDRE.	
MERKX	DAVID.	
MERO	ALICE	EUGENIE MARIE
MERO	BAPTISTE	ANDRE JEAN MARIE
MERO	FLORENCE	MARIE
MERO	FRANCOIS	EUGENE GILBERT
MERO	JULES	CLEMENT GABRIEL MARIE
MERWOOD–SALISBURY	JOANNA	R.
MESZAROS	STEVE.	
MEYR	INGO.	
MICHAELIDIS	VENETIA.	
MILAZZO	ANTONETTE	DELORES
MILLER	COURTNEY	ELIZABETH
MILLER	SUSANNE	T.
MILLION	GREGORY	RONALD
MILTON	CINDY	ANN
MILTON	JOSHUA	DOUGLAS
MILTON	ZACHARY	ALEXANDER
MINARD	JEAN LUC	ANDRE MARCEL
MING–DE OEI	CHRISTIAN	ELLIOTT
MINNAARD	MARIJKE	CORNELIA
MINORA	LAURA.	
MINTO	RACHAEL	MAN YAN
MIRON	BRURIA.	
MIROW	ISABELLE	A.
MIROW	LEA.	
MITAL	SEEMA.	
MITCHELL	LISA	JOY
MITTAL	ANUPAM.	
MIURA	MAKOTO.	
MIURA	TOSHIRO.	
MIZUMO	SAYA	MARIA LUISA
MOCHIDA	KAZUHIKO.	
MOCHIZUKI	RIYO.	
MOCHIZUKI	YOSHIHIKO.	
MODIN	PER	NICLAS

Last name	First name	Middle name/initials
MOHADJERIN	MAHIN.	
MOHAMED	MOHAMED	ABDULLAHI
MOISAN	ERIC	HAZZARD
MOISAN	KATHLEEN	ANN
MOISAN	MARC	PIERRE
MOKAY–RINKE	SHILOE	MARIE
MOLIJN–HUIZING	JOYCE	I.
MOLL	MELANIE.	
MOLLER	SHARRU	ELESSAR
MONDLAK	MOISES.	
MONETHER	SANDRA.	
MONNERVILLE	JEAN–CHRISTOPHE	A. C.
MONTEJO	NICOLAS	M.
MONTEN	LINA	M.
MONTGOMERY	ALEXANDER	R.
MOORE	ALEXANDER	JEFFREY
MOORE–GILLON	MARK	J.
MORALES	VIOLETA.	
MORAND	GUY.	
MORBIANI	ALFRED	ANTHONY
MOREA	LUCAS.	
MORENCY	MARY	MOREHEAD
MORETON	JANE	S.
MORETON	PAUL	A.
MORGAN	CAROLINE	F.
MORGAN	LESLEY	J.
MORGAN	LYDIA	J.
MORGAN	ROGER	E.
MORGER	PHILIP	TOUSSAINT
MORI	MIYUKI.	
MORI	TOMOHISA.	
MORIMOTO	MARIKO.	
MORLEY	SIMON	ANTHONY
MORONI	ANTONELLA.	
MORRIS	ERICA	R.
MORRIS	PHILLIP	H.
MORTON	BETTY.	
MORTON	GARY	GORDON
MORTON	MASAKO	KONO
MOSELEY	BRIAN	ROGER
MOSHER	JUDITH.	
MOSHER	PAULINE	BARBARA
MUERL	CLAUDIA.	
MUIR	KENNETH	RONALD
MULYANTO	MONICA	LYNN
MUNDT–SMEJDA	TAMARA.	
MUNIAN	ALOMA.	
MUNIAN	FRANKLIN	O.
MUNNS	JESSICA.	
MUNZBERG	MIRIAM.	
MURAYAMA	YUICHI.	
MURPHY	ISABEL.	
MURPHY	MICHAEL.	
MURPHY	MICHEAL	J.
MURRAY	OISIN	F.
MURTHY MURPHY	SHYAMALA.	
MUSALLAM	SARAH	INRAHIM
MUSHIN	DAVID	A.
MYATT	JASON	F.
MYUNG	KEVIN.	
NAAIJKENS	GERARDUS	M.
NABHA	UDITA	M.
NAGAI	MASARU.	
NAGAR	SUMEET.	
NAGARAJAN	SHUBHA.	
NAGASHIMA	TAMIKO.	
NAGASHIMA	TATSURU.	
NAGLER	PATRICIA.	
NAHHAS	ANTOINE	D.
NAKAI	AKIRA.	
NAKAI	TAKAYUKI.	
NAKAMURA	HIKARU	KO.
NAKAMURA	JUNKO.	
NAKAYAMA	HITOMI.	

Last name	First name	Middle name/initials
NAKAZAWA	KOUKI	SPENCER
NAKAZAWA	RIEKO.	
NAMMOUR	BECHARA.	
NAMMOUR	HENRIETTA.	
NANNEY	JEFFREY	DELANEY
NASHAT	BIDJAN	T.
NATALE	LOUIS	FREDERICK
NATALINI	ANGELO.	
NATARAJAN	SHYAMSUNDAR.	
NATRAJ	LUCAS.	
NAUGHTON–SMITH	ALEXANDER	REED
NAVKA	TATIANA.	
NEDJAR	LYDIA–DJOUHRA.	
NEDJAR	REDA.	
NEHME	ANTONIO	ABDALLAH
NEILSON	CLARE	FRANCES
NEILSON	STEPHAN.	
NEMET	JEHUDA	ARIE
NERLICH	RALF.	
NESTOR	SARA	E.
NEW	KATHLEEN	MARIE
NEWBATT	FRANCIS	PETER
NEWMAN	ANNE	MARIE
NEWMAN	JEFFREY	FRANKLIN
NEWMAN	MARC	E.
NEWMAN	MELINDA	MAY
NEYSADURAI	ANURA.	
NG	ANNA.	
NG	SAI–YING.	
NG	WILLIAM	KA KIN
NGO	JUSTIN.	
NGO	PHILLIP.	
NGUYEN–HUYNH	TO	HOA
NGUYEN–PHUONG	DIEU–ANH.	
NGUYEN–PHUONG	LAM.	
NICHOLS	BARBARA	ANN
NICOLAUS	TIANA.	
NICOLAUS	TIMOTHY.	
NICOLIN	MAGNUS.	
NICOLIN	SOFIE	E.
NIELSEN	MORTEN	O.
NIESSING	CLAUDIA.	
NIGAM	VINEETI.	
NIGGLI–ANLIKER	SUSAN	BARBARA
NILSEN	GUNNAR	K.
NINOMIYA	HIROSHI.	
NISHIJIMA	ICHIKO.	
NIWA	NORIO.	
NIWA	TAKIKO.	
NOGUCHI	SEIJI.	
NOMIYAMA	AKIRA.	
NOMURA	YASUYO.	
NOMURA	YOKO	Y.
NORLUND	HAROLD	S.
NORLUND	MERRILL	S.
NORREY–DROUIN	DAWN	E.
NORRIS	DONALD	J.
NORRIS	GENEVIEVE.	
NORRIS	GRAHAM	CHARLES
NOSIADEK	RICO	ALEXANDER
NOUMAN	ALEENA.	
NOVELLA	CARLOS	MAURICIO
NOWAK	SEAN	WILLIAM
NUGENT	BARBARA	J.
OBANDO	IVAN	D.
OBATA	NORIKO.	
O'BEIRNE–RANELAGH	ELIZABETH	GRENVILLE
O'BRIEN	DENIS.	
O'BRIEN	MARY.	
OBRIST	JURG.	
OBYRNE	SHARON	ROSE
ODDOUX	LOUISE	MARGAUX-JADE
ODELSTIERNA	CHRISTINA	MAGNUSSON
ODOK	SINAN	CEM

Last name	First name	Middle name/initials
OGASA	MARI.	
OGINO	CHIEKO.	
OGISHIMA	HIROFUMI.	
OGISHIMA	YOSHIMI.	
OH	SOOK	JA
OHARA	KIMIE.	
OHIKI	TAKAO.	
OHLMANN	SONJA	RENEE
OISHI	KENTARO	CHRISTOPHER
OKABE	TAKASHI.	
OKADA	SUMIKO.	
OKADA	TOKUE.	
OKADA	TOTOHIKO.	
OKAMURA	TAKASHI.	
OKAZAKI	HIROAKI.	
OKAZAKI	YOSHIMI.	
OKI	AKIHISA.	
OKI	FUMIKO.	
OLGUN	ERDEM.	
OLSEN	ASTRI	KATRINE
OLSON	CHRISTOPHER	BROOKS
OLSON	DR. CORLISS	P.
OMAR	LIDA.	
OMORI	AKIKO.	
OMURA	RUKA.	
ONG	AIK	SENG
ONG	FREDERICK	ENG GIAP
ONG	ISSEY	TIEN–YUE
ONG	SIOW	LING
ONGKOWIJOYO	RONNY.	
ONISHI	HARUKA	EMILY
ONO	HIROYOSHI.	
ONO	KUMIKO.	
ONO	MIEKO.	
ONO	TATSUO.	
ONO	YOHEI	THOMAS
OR	KUEN–FUNG.	
ORKIN	ANDREW.	
OSBORNE	GWENNAEL	RUBY
O'SHAUGHNESSY	GAEL	TARA
OSTLER	KATHERINE	ELIZABETH
O'SULLIVAN	MARY	A.
OTANI	RUMIKO.	
OTEVREL OTEVERAL	GABRIEL.	
OTOSHI	AKHIRA.	
OTSUKA	AKIRA.	
OU	YU	XIAN
OVERHELT	LOUIS	RIKU
OXLEY	JOHN	HOWARD
OYAMA	TOSHISISA.	
OYEKANMI	OLULOPEYE	PETER
OZA	ASHOKAKUMAR.	
OZA	NIRMALA.	
OZA	SACHIN.	
PAGAN	JENNIFER	HENNY
PAI	JAYANT	S.
PAJKIC	VLADIMIR.	
PAKOS	MICHAL.	
PALMER	GERDA.	
PALMIERI	DANIELE.	
PANDYA	AMBRISH	R.
PANDYA	KIRTIDA.	
PANG	MINRAY.	
PARE	PATRICE.	
PARIKH	NUPUR.	
PARK	MARTIN.	
PARK	MI	JOO
PARK	SE YEON.	
PARK	SUNG	HYON
PARK	WONSUK	BRIAN
PARKER	KATHERINE	ELIZABETH
PARKER–KINSEY	JULIANNE	BEATRICE
PARRY	JAMES	A.
PARSONS	RUTH	L.

Last name	First name	Middle name/initials
PARTAN	HEESUK.	
PASSEY	RYAN	S.
PATENAUDE	JEAN–MARC.	
PATRIDGE PARTRIDGE	MYLES	A.
PATTISON	PETER	L.
PAULI	ROBERT	MICHAEL
PAULL	CLAIRE	NICOLE
PAUNICA	DANIEL.	
PEARCE	ROBERT	JOHN
PEARSON	RYAN	LOFTUS
PECK	ANDREW	EDWARD
PECORARI	DIANE	ELISABETH
PEDDI	MANJUSHA.	
PEI KAO	CHRISTINA	CHAI–HUI
PELLER	JOSEPH	JOHN
PELOU	FRANCOIS	LOUIS
PENNELL	CORLIENNE	ADELLE
PERELMAN	MARC.	
PERERA	MADISON	TATIANA
PERNE	EDWIN.	
PERNE	JACOBA	ALEIDA
PERRY–JOHNSON	GIANNINA	H.
PESKI	MARCIN.	
PETER	JON	RAYMOND
PETER	MARCO	DANIEL
PETERS	DOROTHY	LOUISE
PETERS	SAYURI.	
PETROV	YURIY.	
PEUKERT	UWE.	
PFAHL	BETTINA	U.
PFAHL	ULRICH	J.
PFEIFFER	HEIKE	S.
PFITZNER	GEORGE	JANIS
PHILLIPS	HYEON	HUI
PHILP	ROBERT	BRUCE
PIASENTE	MARIO.	
PIC	EMMANUEL.	
PICARD	LAUREEN	ISABELLE
PICKENS	GEOFFREY	EDMUND
PIETRO	MAURIANNE	AXELLE
PINE	KATHLEEN	A.
PINNIGER	BRENDON	JON
PINTO	THELMA	M.
PIROLO	MARIA	LUCILA
PIROTTA	DANIEL.	
PLANT	JANET	LEE
PLATTNER	ANDREAS.	
PLUMMER	PAUL.	
PODUCH	CAROL	CASSELMAN
POELS	EDUARD	K.
POGODA	PENINA.	
POH	KENDRA	NINA
POLEN	CHRISTOPHER	STANLEY
POLEN	SUZANNA	RUBY
POLIVKA MULLER	DENISE	LILI
POON	CHRISTOPHER.	
POON	KWOK	HO PHILLIP
POPOV–DIHOVICNI	SIMONIDA.	
PORTE	FERNANDO.	
PORTELA	MIREN	EDURNE
PORTEN	AVRUM	DAVID
PORTER	LISA	YVONNE
PORTER	MARIAN.	
POZZI	ANDREAS	FEDERICO
PRAKASH	SUJATA.	
PRAKASH	VISHWA.	
PRATT	JANEL	WIRE
PREKA	MARIA.	
PRENTICE	CAROLYN	A.
PU	JIMMY.	
PUROHIT	VANI	VIJAYEENDRA
PUYPE	PETER.	
QI	MIN.	
QIAN	ZHENYU.	

Last name	First name	Middle name/initials
QUIGLEY	JAMES	ALEXANDER
QUINN	CANDICE	A.
QUIRING	VIOLET.	
RAADSMA	JOHANNES	SCHELTE
RADERMACHER	CHRISTINE	I.
RAE–SMITH	JOHN	B.
RAFFEL	IAN	LESLIE
RAFFELLINI	BARBARA.	
RAFFETTO	PATRICIA	M.
RAHDER	BARBARA.	
RAIMONDI	PAOLO.	
RAJAN	RAMKISHEN	S.
RAJAPAKSA	NANDASENA	GOTABAYA
RAJU	BRENDA	LEE
RAKESTRAW	MARIKEN	VIRGINIA
RALLS	RENATE.	
RAMAKRISHNAN	SRIVIDYA.	
RAMATI	DVORA	LOW
RAMONAT	CHRISTA	JOAN
RAMOS CHRISTIANSEN	SABRINA	ISABEL
RAMSER	JENNIFER	CAROLE
RAMSEYER	ANDRE	DANIEL
RANA	RUMA.	
RANA	SATYA	P.
RANDALL	RITA	L.
RANGER	JULIE.	
RAPOLD	SANDRA	GABRIELA
RAPP	DONNA	ELIZABETH
RASMUSSEN	MORGAN	EMANUEL
RASMUSSEN	NICOLAS	NOEL
RASMUSSEN	STEVEN	LUND
RATTLEY	KOUNNY	KAMIKO
RAUDONAT–ARNDT	UTE.	
RAWBONE	MICHELLE.	
RAYNER	MICHAEL	ANTONY
RAZ	URI.	
READY	JANE	E.
READY	ROBERT	J.
REDDY	HIROKO	E.
REDMAN	SARAH	ELIZABETH
REED	JOEL	ARTHUR
REED	KAREN	LEE
REGAN	THOMAS	DURKIN
REICHERT	JANINE	SANDRA
REICHERT	TIFFANY	MCHELLE
REINCKE	NICOLAS	OLIVER
REISINGER	MARGIT.	
REISNER	MIKE	MARCEL
REISS	STEPHAN.	
REITZNER	SIBYLLA	GERLINDE
RELLSTAB	KATHERIN.	
REMEIKAITE	JULIJA.	
RENNHARD	STELLA	JOYCE
RENZ	GUNTA	RUBENE
RESHEF	EILON.	
REVILLON	CORINNE	FRANCOISE
REYES	MAKI.	
REYES	SAWAKO	FURUKAWA
RHO	YOON	HEE
RHODES–YOUNG	NICOLA.	
RHYMER	JUDITH	M.
RICHARD	MARNE MARLENE	Y.
RICHARDSON	STEPHEN	LESTER
RICHENS	DANIEL	JAMES
RICHENS	ELIZABETH	MARIE
RICHENS	SIMON	PETER
RICHMOND	JUSTIN	JEROME
RICHMOND	MILDRED	ELLEN
RICHTER	RALPH	MICHAEL
RICKER	JOHN	MALCOLM
RIDDELL	ELIZA	NAOMI
RIESEBRODT	MAX.	
RIGO	VINCENT	DENISE
RIJKEBOER	JAN	GERARD LEONARDUS

Last name	First name	Middle name/initials
RING	KRISTEN	LOUISE NIST
RINTOUL	CLAUDIA	ROMANA
RIPPLINGER	ISABELLE.	
RIQUE	RODRIGO	RIBEIRO
RITCHIE	JUDITH	LILA
RITONJA	LAURA	MIRIAM
RITZ	ANDREAS	CHRISTOPH
RIZET	DAMIEN	JOHN MANUREVA
ROBB	DOUGLAS	KEITH
ROBERTS	JAYNE	L.
ROBERTS	NEDRA	ANN
ROBERTSON	DAVID	C.
ROBERTSON–LAXTON	LESLEY	ANN DENISE
ROBIN–BOWMAN	RACHEL	LYNN
ROBINSON	ALEXANDER.	
ROBINSON	ALIDA	SUSAN
ROBINSON	ANN	CHAPMAN
ROBINSON	GRACE	NORDLINGER
ROBINSON	JANE	HIPPISLEY
ROBINSON	JETHRO	MALCOLM
ROBINSON	LISA	JANE
ROBINSON	LORRAINE	C.
ROBINSON	TERRENCE	J.
ROCHE	EDGAR	HEINZ
RODRIGUEZ	MARIA	R.
ROEBERS	JOHANNES	R.
ROETHLISBERGER	ANDRE	ALFRED
ROGE	VIANNEY	L.
ROGERS	ANGUS.	
ROHLEDER	ALEXANDER	MAARTJE
ROLDAN	TONATIUH.	
ROLDAN	XIMENA.	
ROLLINSON	BARBARA.	
ROLOFF	TANIA.	
ROMANYCIA	GAYLENE.	
RONCHI	CHRISTIAN.	
RONDEAU	JOSEE.	
RONG	QIONG	ZHEN
RONNHOLM	THOMAS.	
ROPPSTEIN	PASCAL	FRANCIOS
ROSE	SUTRINA	JELITA
ROSENMEIER	SCOTT	MATHEW
ROSERIE	HAFID	T.
ROSS	LOUISE.	
ROW	CHARLES	PHILIP
ROWSELL	TIMOTHY	R.
ROY	ANDREW	G.
ROY	JEREMY	BYCK
ROY	KENTARO.	
ROY	RAHUL.	
ROZEBOOM	STEVEN	LLOYD
ROZENTAL	RUBY	RAIN
RUDICK	TODD	DAVID
RUEGER	MICHAEL	H.
RUELLE–BIOLLEY	LAURENCE.	
RUMAK	CAROL	A.
RUMAK	MICHAEL	J.
RUMJAHN	NADIA	CHEUK YAN
RUSH	ADAM	J.
RUSH	SIMON	P.
RUSHTON	VICTORIA	LOUISE
RUSK	GARRETT	LEE
RUSSELL	ALEXANDER	F.
RUSSELL	JAMES	C.
RUSSELL	JOHN	B.
RUSSELL	MEGAN	J.
RYAN	GAIL	IONE
RYAN	PHOEBE	HAMMOND
RYBAK	MICHAEL.	
RYU	HEE	KYONG
S LAENNEC	ISABEL	CATHERINE MYA
SAAR	MARTIN	O.
SABAN	MARC	RAPHAEL
SADAMASA	TOSHIKO.	

Last name	First name	Middle name/initials
SAGALA	SAORI.	
SAHA	AMIT	KUMAR
SAHAMI–MALMBERG	MASOUMEH.	
SAITO	MAKOTO.	
SAJOUS	KATIA.	
SAKURAI	MOTOAKI.	
SALCE	LUCA	PAOLO
SALOMON	CARROLL	DE VORE LIEDTKE
SALT	BRENDA	J.
SALVADO	OLIVIER	PHILIPPE
SAM	ANDRES.	
SANCHEZ	BERNABE	NAFFZIGER
SANCHEZ	JAZMIN.	
SANDO	SHIGERU.	
SANO	LTSUKO ITSUKO.	
SARDINA	JORGE	ENRIQUE
SARO	JUHA	S.
SASAKI	YUJI.	
SASSA	ATSU.	
SASSA	MASAFUMI.	
SASSEVILLE	RACHEL.	
SATO	TOMOHIKO.	
SATOH	IKUKO.	
SATOH	YOSHIHARU.	
SAUTER	PETER	CHARLES
SAUTER PEER	MONIKA	NANCY
SAXENA	DEEPAK.	
SAYED	LEILA.	
SCAIFE	ALEXANDER	JONATHAN
SCAIFE	GEORGIA	ANNELISE
SCEARCE	BRIAN.	
SCEARCE	ROBIN.	
SCHAEFER	SIMON	MANUEL
SCHAETZ–KRUFT	TANJA	Y.
SCHALK	GERTRUDE	L.
SCHALK	SVEN	G.
SCHALK	WILLI	G.
SCHAPIRO	SHEILA	AINSBURY
SCHAUS	DAVID	JOHN
SCHERER	ELIZABETH	CLARA
SCHERRER	NORMAN	ANDREAS
SCHIFFNER	LESLIE–JOY.	
SCHILLEREFF	HERBERT	SCOTT
SCHINDLER	SOPHIA	KATHRIN
SCHITTNY	BASTIAN	S.
SCHJAERVE	ANNE	CARINE
SCHLAGETER	THOMAS	PAUL
SCHLOESSER	MARIE.	
SCHLOSSMACHER	MICHAEL.	
SCHLUETER	FELIX	MATTHEW
SCHLUETER	NIKLAS	CLAYTON
SCHLUETTER	JENS–UWE.	
SCHMAUS	M	RADZI
SCHMID	ALEXANDRA.	
SCHMID	CHRIS.	
SCHMIDT	ALEXANDER	CLAUDIA
SCHMIDT	COLIN	FRANK
SCHMIDT	GERHARD.	
SCHMIDTCHEN	MARTINA	SUSAN
SCHMIDTKE	OLIVER.	
SCHNEIDER	RITA	E.
SCHNEIDER	TIM	CONSTANTIN HENRY
SCHOBER	EVA–MARIA.	
SCHOCH	WERNER.	
SCHROEDER	EUGENE	NICK
SCHUDER	OFELIA	MARGARITA
SCHULTZ	KENT.	
SCHULZ	OLIVER	HERBERT
SCHURMANN	MELCHIOR	NIKLAUS
SCHWARZ	STEFFEN.	
SCOTT	JEANNE–MARIE.	
SCRAMONCINI	MARKUS.	
SEE LO	CARMEN	WAI
SEEMAN	LORAND	MARC

Last name	First name	Middle name/initials
SEETCH	LAURA YUET	LIN
SEKIYA	MASAKAZU.	
SELLAF	BOUMEDIENE.	
SEMCHUK	KAREN	LORI
SENDA	TAKUMA.	
SEOK CHOI	HOWARD	HYUN
SEOW	ALEXANDER	PEI YUAN
SERBAN	ALEXANDRA	PLETTENBERG
SERVAIS	SANDIE.	
SETIADARMA	RATNASISKA.	
SETT	SUVRO.	
SHACHAR	DANIEL	YOSEPH
SHACHAR	ELAD	ITZHAK
SHAH	BADAL	S.
SHAH	HIMANI.	
SHAH	PRITI	S.
SHAH	RAJ	BAHADUR
SHAH	RUPAL	R.
SHANAJ	HERA.	
SHANI	REBECCA	LEA
SHARMA	ANVITA.	
SHARON	ILAN.	
SHARP	KIMIKO–MIYAZAKI.	
SHAW	DAVID	SPENCER
SHAW	DAVID	VANCE
SHAY	IZHAR.	
SHAYA	SLAIMAN	SALEH
SHELDON–ALLEN	CAROLYN	WENDY
SHELDON–ALLEN	MARK	BRIAN
SHELLING	TIM	OTHEUS
SHEPHERD	MARTIN	CHRISTOPHER
SHERIDAN	SARAH	L. ROBAYO
SHERWIN	YOEL	YACOV
SHIBAO	FLAVIO.	
SHIBAO	JACIGUARA	SANTOS
SHIBATA	YASUKO.	
SHIBATA	YUTAKA.	
SHIBUYA	TAKENORI.	
SHIELDS	DINAH	JANE
SHIELDS	JOHN.	
SHILLING	JACK	LODELLE
SHILONI	ASSAF.	
SHIM	DAVID	YONG
SHIM	YONG	KOO
SHIMA	CHIKAKO.	
SHIMADA	TAKUMI	ROBERT
SHIMOHORI	TAKIKO.	
SHIRASAKI	YASUHIRO.	
SHIU	ZOE	YU
SHONG	HIROKO.	
SHUNE	MINAMI.	
SICHLAU	KATRINA.	
SIDDIQUI	HASSAN	I.
SIDDONS	ELIZABETH	RUTH
SIEBES	MARIA.	
SIEGEL	JEFFREY	ALAN
SIEREVELD	FRANK.	
SIGRIST	DANIEL.	
SILVA	JORGE	L. ESPIRITO SANTO
SIMMONS	DEBORAH	LEE
SIMMONS	JONITA	CHERAINE
SIMMONS	RICHARD	J.
SIMON	FABIENNE	GENEVIEVE
SIMON–KELLER	ELKE	MARGARETE
SIMPSON	DAVID	A.
SIMPSON	JASON	ROBERT
SINHA	SANDEEP.	
SIPPLE–ASHER	MICHAEL	JOHN
SIRMAN	YULIANA.	
SITTER	LAURA	MADELEINE
SKEINI	ANDERS.	
SKINNER	MYLES	L.
SKJEKKELAND	ATLE.	
SKOVROR	AMY	LEAH

Last name	First name	Middle name/initials
SLADEK	WOLFGANG.	
SLAPIN	AURELIJA.	
SLUSARSKI	STEVEN	EDWARD RAY
SMALLHORN–WEST	PATRICK	FOSTER
SMITH	ANTHONY.	
SMITH	CAROLE	J.
SMITH	LISA	MICHELLE
SMITH	MARK	A.
SMITH	MICHELLE	TARA
SMITH	OLIVIA	GRACE
SMITH	PETER	W.
SMITH	TANIA	M.
SMITH	VICTORIA.	
SMITS VAN DER VEN	MARIA.	
SNETHEN	LETTY	ANN
SNOOK	JULIE	P.
SNYDER–GOEGELMANN	MARTINA	H.
SOBRADO	CARLOS	EDUARDO
SOH	WILLIAM	T.
SOL	BERNARD	J.
SOLOMON–FUKE	OKSANA	LIDA
SOLURI	ROSANNA.	
SON	JENNIFER	LISA
SONNENBURG	DORIS	MARTHA
SOO	WAI	K.
SOONG	WEN–BING.	
SOUTHGATE	GLENN	ANDREW
SPARK	COLIN	J.
SPEARIN	LAURIE	A.
SPEIRS	AISHA	E.
SPENCER	MARGARET	ANNE
SPIERINGS	JULIAN	ARTHUR
SPITZ	YURI	M.
SPOERLEIN	BERNARDITA	J.
SPOERLEIN	GUENTER	V.
SPRABARY	TRAVIS.	
SRIDHAR	JAYANTH.	
SRINIVASAN	KRISHNAN.	
SRINIVASAN	RAMESH.	
STACCHINI	SECONDO.	
STACCHINI	STEFANO.	
STACEY	VIRGINIA	LOUISE
STADLER	HEIDI.	
STADTLER	JOELLA	GRETCHEN
STAMENOV	IVAN	V.
STAMPER	DAVID	R.
STAMPER	SALLY	P.
STANFIELD	MISHAEL	ANTHONY
STANKIEWICZ	BOGDAN	ARTUR
STANKIEWICZ	KATARZYNA.	
STANLEY	RITA	M.
STANOJEVIC	MARKO.	
STAPLES	SUSAN	E.
STARK	ANDREW	EMIL
STAUDACHER	ANDRES.	
STEARNS	LUBICA.	
STEGMANN	CHRISTIAN.	
STEINKOLER	LILO	DIANE SYLVAN
STENBECK	JOAKIM	C.
STENBERG–DALENSTAM	SOFIA	E.
STEPHENS	COLIN	MICHAELS
STEPHENS	GREGORY	DALE
STEPHENSON	MELANIE	A.
STEPHENSON	ROBERT	J.
STERN	HAGAY.	
STERVINOU LE BERRE	JEANNE	DENISE
STEVEM STEVEN	UMSEU CLAIRE	A.
STEVEN	DAVID	J.
STEVENSON	LESILE	ERIN
STEWART	ALISON	T.
STEWART	COLIN	W.
STEWART	SUSAN	M.
STEWART	TRACEY	ELIZABETH
STILLEROVA	SOPHIA.	

Last name	First name	Middle name/initials
STILLHART	EDITH.	
STING	HEIDI	HELENE
STIVER	JOHANNA	KRISTVEIG
STOLTZ	CONRAD	W.
STONE	DOUGLAS	ANTHONY
STORK	CAROLIEN	MAARTJE
STRAUSS	CHIKAKO.	
STREET	GAVIN	MORE
STRUNK	DOROTHEA	GISELA
STUBBS MD	PETER.	
STUETZLE	EVA	RENATE
STYLIANOPOULOS	CHRYSSANTHI	L.
SU	YAO–TIAN.	
SUESS	KATARINA	CLARE
SUESS	SARINA	NAOMI
SUEYOSHI	KYOKO.	
SUEYOSHI	TSUGIO.	
SUGAI	SUZUMU.	
SUGAYAMA	YOSHIE.	
SUGIMURA	KANICHI.	
SUGIMURA	SHIZUKO.	
SULTAN	JAIFER	NABEEL
SULTAN	JIHAN	NABEEL
SULTAN	LAYAL	NABEEL
SUN	HAO	H. S.
SUNG	ALAN	Y.
SUNG	PAI	Y.
SUNG	QUO	C.
SUNG	WEN	NING
SUNG	YOUNG	SOOK
SURCHAT	MELANIE	MURIELLE
SUTER	CORINNE	JOAN
SUTER	PASCAL	FREDERIC
SUZUKI	ERI.	
SWAIN	SEAN.	
SWAIN	TRACEY.	
SWIATEK	CLAUDIA	LOUISE
SWIATEK	MICHELLE	LOUISE
SWIATLOWSKI	DIANE.	
SWINIARSKI	CHARLES.	
SWOBODA	ISIS	CHANTELLE
SYKUTA	JON	D.
SYMES EARLE	JONATHAN	ASHLEY
SZCZECHURA	PAUL.	
SZYFTER	BEATA.	
TADA	CHIEKO.	
TADA	HIROKO.	
TADA	SEIGO.	
TAI–POW	KAREN	ANN
TAIT	LINDA.	
TAKAHASHI	HIDEO.	
TAKAHASHI	YASUHITO.	
TAKASAWA	YOSHIKO.	
TAKEMURA	KAZUKO.	
TAKEMURA	KEITA.	
TAKEMURA	TOMOYUKI.	
TALESH	JUSTIN	B.
TAMURA	ALVARO	J.
TAN	ABIGAIL.	
TAN	ANDREW	GIM–HAN
TAN	COLETTE	SZERUI
TAN	ENG	TONG
TAN	JOLENE	SI HUI
TAN	TIONG	HIAN
TAN	WEE	KEAT
TAN	ZHENWEN	TINA
TANAKA	MIKI.	
TANAKA	YASUKO.	
TANG	CHIEH.	
TANIE	HIROSHI.	
TANIGAWAS	KAORU.	
TANIGAWAS	MIYUKI.	
TARASAWA	SADAKO.	
TARDIF	MANON.	

Last name	First name	Middle name/initials
TASHIRO	FUMIKO.	
TASHIRO	SHUNJI.	
TATLOCK	EMMA	LEE
TAVEROFF	ALAN.	
TAVEROFF	ARLENE.	
TAYLOR	BRITTANY	KRISTEN
TAYLOR	IAN	S.
TAYLOR	MARION	C
TAYLOR	ROBERT	M.
TAYLOR	STEVEN	WARREN
TELEPAK	THHOMAS	NEIL
TEMPORETTI	VANESSA	F.
TER HAAR	TIZIANA.	
TERLOUW	GERRIT.	
TERLOUW	GISELA	K.
THARM	SEET–YEOW	E.
THAWLEY	MICHAEL	J.
THAYER	MIEKO.	
THEALL	MARGARET	ROSE
THEBAULT	STEPHAN.	
THEVENET	CLOVIS	LOUIS
THOMAS	NORMAN	R.
THOMAS	PEGGY	LYNN
THOMAS	ROBERT	N.
THOMPSON	DIANE	CHANDLER
THOMPSON	JOHN	CHARLES
THOMPSON	SHANE	WILLIAM
THOMPSON	WILLIAM	ROBERT
THOMSON	CLARE	SUSAN
THORNE	JANET	MARIE
THORNE	SHEILA	RAE
THORNTON	SUSAN	MARY
THURLIMANN	CHRISTOPH	BRUNO
TICZON	JULIANA	BELEN L
TIERNY	JANE	FRANCE CLEMENTINE
TIKKU	SANJAY.	
TING	MARC	F.
TING	MEI–LING.	
TING	YU–PEI.	
TISCHLER	LEE	PATRICIA
TJAHAJA	AMIR.	
TJANDRA	MATTHEW	NATHAN
TJEKNAVORIAN	JULIA	H.G.
TODD	MITSUE.	
TOGAWA	SETSUKO.	
TOGAWA	TATSUJI.	
TOH	DILLON	YAN TING
TOH	MARKUS	JUN SHENG
TOKUNAGA	SHURI	VENETIA
TOMISHIMA	AKANE.	
TOMISHIMA	NOBUHIKO.	
TOMITA	KENJI.	
TOMLINSON	COLIN	H.
TONG	LISA.	
TONG	TERRANCE	MANCHUN
TOV	ORLY	SIMAN
TOWNER	DARLENE.	
TOWNSEND	RENA.	
TRAFFORD	SUSAN	DAWN
TRAUTWEIN	BERNHARD.	
TREMBLAY	MARC.	
TREPANIER	RACHEL.	
TRILOFF	MELODY	MIRIAM
TRILOKEKAR	VIKRANT	S.
TRIPATHY	RAVI.	
TROMBETTA	DAVID	PAUL
TROMBLEY	EMMYLOU.	
TRONZA–ILLY	HELEN	MARGARET
TRUSWELL	BYRON	M
TRZEBINSKI	GABRIELA.	
TSAI	CHING	T.
TSCHERNER	ANDREAS	MORRIS ANTON
TSUCHIYA	HIROYUKI.	
TSUI	MICHELLE	MAN SAN

Last name	First name	Middle name/initials
TU	AMY.	
TUCKER	GILLIAN	ANNE
TUMMALA	SIRISHA	P.
TUNG	BRIAN	PHIL
TURANO	LESILE	PAM
TURKOGLU	GUCLU.	
TURNER	BRICE.	
TURNOCK	KATHLEEN	MARIE
UCHIDA	NORIKO.	
UCHIKAWA	YURI.	
UCHIMARU	HISAKO.	
UCHIMARU	TOSHIHIKO.	
UCHIYAMA	YUKO.	
UEBLAGGER	ELLEN	MARIA
UEDA	TAKESHI.	
UEKI	ATSUSHI.	
UPCHURCH III	CHARLES	WOODFIN
URASE	YUKO.	
URBACH	STEVEN	JAY
UREN	ALEXANDRA	MARGARET
URSINY	PAVEL.	
USUI	MASAHIRO.	
VALENTE	CHRISTINE	MADELEINE
VALENTI	GIUSEPPE.	
VALERI	KARIN.	
VALLE RODER	IDA	JENNIFER
VAN BEERS	NATALIE	JOSPEHINE PETRA
VAN BOETZELAER	CAREL	NICHOLAS
VAN DEN BRANDE	CARL	AUGUST DANIEL
VAN DER LANDE	ANNEMARIE	JOY MONIQUE
VAN DER SCHEER	SASKIA	CLASINA
VAN DER VEN	HENRICUS	J.
VAN DER WAL	HENDRIKA	A.
VAN DOMSELAAR	BASTIAAN	MARK
VAN DOMSELAAR	JOHANNES	M.
VAN DOMSELAAR	MARJOLIJN.	
VAN DOMSELAAR	MAX	DANIEL
VAN DORTH–WOELTGENS	CAROLINE.	
VAN DRUMPT	MANON	LOUISE
VAN JUREC	MELANIE	ADELE
VAN ROOSENDAAL	SIMON	JOHN
VANDEWATER	ANDREA	L.
VANDINI	MAURO.	
VANKERHOVEN	ELIZABETH.	
VANWYK	THEODORE.	
VASQUEZ	MARIO	L.
VASQUEZ	SANDRA	P.
VASWANI	JYOTI	D.
VAUGHN	ALLEN	DWAYNE
VAUGHN	CYNTHIA	ANN
VAZQUEZ	JOSE	AGUSTIN
VAZQUEZ	JUANA.	
VEENSTRA	PHILIP	JOHN
VEILLEUX	MIREILLE.	
VENTURA	LORNA	NG
VENUTO	FRANK.	
VETTOR	ALESSANDRO.	
VICKE GLINZ	MORTIMER	HANS MAGNUS
VIGILEOS	GEORGE	HENRY
VIGILEOS THEODORAKIS	EVANGELINE	LINDA
VIGMOSTAD	SVERRE	TOBIAS
VILLARS	MARC JEAN	LOUIS
VISWANATH	SRI	GUHA
VIVIAN	BENJAMIN	J.
VIVIAN	GERMAINE.	
VOLARD	CHRISTOPHE.	
VOLARD	LOUIS.	
VOLLEBREGT	NICOLE	TERESA
VON PLOTHO	DIANE	AUDE RUTH
VON SIEBENTHAL	CRISTELLE	JOANN
VON WYL	ALEX	JOHN
VON WYL	FEREN	RAY
VONTOBEL	MONIKA	A.
VOS	KOEN	BERNARD

Last name	First name	Middle name/initials
VRABLIC	DAWN	HEATHER
WACKERNAGEL	CHRISTA.	
WACKLER	DONNA	ANNETTE
WADA	KYOMI.	
WADA	NAOMI.	
WADE	GILLIAN	A.
WAGH	TRUPTI.	
WAGNER	SALLY	M.
WAGNER	TIFFANY	TARYN
WAGNER–BARTAK	NADINE.	
WAHLGREN	SYLVIA	A.
WALIMOHAMED	FARIDA	M.
WALKER	ANNE.	
WALKER	EMILY	A.
WALKER	TIMOTHY.	
WALL	ALYS	M.
WALTER	STEFAN..	
WALTERS	ASNY	W.
WALTERS	JOHN	H
WAMPLER	PHILIPPE	ANDREW
WAN	YIQING.	
WANG	AH	SENG
WANG	CHING	CHU
WANG	DAPENG.	
WANG	HONGYAN.	
WANG	KEFEI.	
WANG	LI	TIEN
WANG	MARILYN	MAY–MAN
WANG	TIMOTHY.	
WANG	XIAO	XING
WANG	YINGBIN.	
WANG	ZHENYU.	
WANKLYN	JAN.	
WARD	NICOLE	MARIE
WARE	DARYL	YEO ZIWEN
WARNER	ANN	SUNESON
WARRIKOFF	MICHAEL	ALEXANDER
WASSINK	MARCEL	GORDON
WATANABLE	KENTA.	
WATASE	REIKO.	
WATKINS	RHYS.	
WATSON	TREVOR	W.
WAXER	MICHELLE	LYNN
WAXER	SUSAN	RAE
WEATHERHEAD	ANDREW.	
WEATHERHEAD	JULIE.	
WEATHERHEAD	PATRICK	J.
WEATHERHEAD	SAMANTHA.	
WEAVER	GEMMA	KATE
WEAVER	RICHARD	R.
WEAVER	RICHARD	RYAN
WECHSLER	JORIS	BRUNO
WEDER	ANDREA	C.
WEDER	MARKUS	C.
WEE	HO	SUN
WEE	HYUN	JU
WEENEN	SAMUEL ULRICH	DE LEEUW VAN
WEISS	JUDITH	HELEN
WELFARE	LESLIE.	
WELFARE	RICHARD.	
WELL	TAL	JACOB
WELLS	OLIVIA	VAN CORTLANDT
WELTON	DARLENE	ALICE MAY
WELTON	LUCAS	ALAN
WENG	FAN.	
WENINGER	ROBERT	KARL
WENTZELL	KATHERINE.	
WESTWOOD–MARSH	SIMON.	
WEVERING	SIEGFRIED.	
WHEELER	SANDY.	
WHITE	ADRIAN	STANLEY
WHITE	BAZEL	M.
WHITE	CATHERINE	M.
WHITE	CHRISTINE	M.

Last name	First name	Middle name/initials
WHITE	DONA	JUNE
WHITE	GEOFFREY	A.
WHITE	GINA	EVELYN JANICE
WHITE	HAYLEY	DIANE
WHITE	PATRICIA	MARIE
WHITE	REBECCA	ELIZABETH
WHITE	RICHARD	J
WHITE	STEPHANIE	M.
WHITE	TYLER	DEVRIES MARSHALL
WHITMAN	DEMING.	
WHORTON	ERIC	ABRAHAM
WHYTE	IAN	WILLIAM
WICHMANN	FABIENNE	CORINNA
WIDJAJA	VICTORIA	TANIA
WIELAND	ANNE	MORRIS
WIJERATNE	SAMINDA	RAJITH
WILCOX	GILLIAN	PAMELA
WILD	PETER.	
WILDBERGER	MANUEL	D.
WILHELM	TOOD	KORRY
WILLE	MAIXNE.	
WILLERS	LISA	MARIE
WILLIAMS	DEAN.	
WILLIAMS	HELEN	L.
WILLIAMS	SELINA	J.
WILLIAMSON	KIMBERLY	ANN
WILLSALLEN	TIMOTHY	GIDLEY
WILSON	CHARLES	CHRISTIAN
WILSON	DOUGLAS	J.
WILSON	ROBERT	DAVID
WINDISCH	ELEONORA.	
WINFIELD	TERESA	LOUISE
WINSTON	JEROME	ALPINER
WINTER	ANNE.	
WIT	ALEXANDER	CHIA MEI
WITSCHI	DANIEL.	
WITSCHI	NICHOLAS	PETER
WOELTGENS	PIETER.	
WOICEK	TIMOTHY	WILLIAM
WOLD	INGRID	GERTRUDE LOUISE
WOLF	ANDREAS.	
WOLF	FLORIAN	TOBIAS JOHANNES
WOLF	ODET.	
WOLFE	ELIZABETH	JOANNE
WOLK	YAAKOV	ISRAEL
WOLLBACHER	CHRISTINA	DOLORES
WOMACK	MASON	AMACKER
WONDRA	BRADDEN	PHILLIP
WONG	CELINA	ERN–MEI
WONG	ELAINE	M.
WONG	ELLA	B.
WONG	JACQUELINE	LAIMEN
WONG	JOHANN	S.
WONG	JONATHAN	TSE–JIEQ
WONG	LAI	LAI LILY
WONG	LAI	LAI LILY
WONG	SERENA.	
WONG	SUZANNE	TONI
WONG	YIN	HUEY
WONGSRIKASEM	VICHAI.	
WONKA	PETER.	
WOO	NICOLAS	DARREN
WOOD	TIMOTHY	JOHN
WOODWARD	CARTER	WILSON ARELLANO
WORMUTH	KENNETH	EDWARD
WORRALL	IAN	MICHAEL
WRAGGE	KIMBERLY	CAVE
WRAZEJ	CHRISTOPHER	PAUL
WREN	SHIRLEY.	
WRENCH	ALAN	J.
WRENCH	HEIDRUN	M.
WRIGHT	CELIA	M.
WU	BIN.	
WU	JESSA	CHING–MAN

Last name	First name	Middle name/initials
WU	JINGYANG.	
WU	JUN.	
WU	JUN.	
WU	LING LING.	
WU	PEI	DONG
WU	PETER	SHIXIONG
WU	TAO.	
WU	WENXIANG.	
WU	XIAOYI.	
WUERMLI	ANTHONY	FREDERICK
WUERTZ	STEFAN.	
WUEST	VERONIKA.	
WULLSCHLEGER	CHELSEA	JEANNE
WYNNE	EMILIE.	
WYSOCKI	JOHN.	
XIAO	RIMING.	
XIAO	WEI.	
XING	WENHUA.	
XU	GUOQIANG.	
XU	JIANFENG.	
YACOUB	ANDREW	NICHOLAS
YAGI	SHIGEO.	
YAHYA	NIHAD	ALI
YAJIMA	MASATOSHI.	
YAMADA	TAKASHI.	
YAMADA	YOKO.	
YAMADA	YUKARI.	
YAMAGATA	SHIZUKA.	
YAMAMOTO	IKUKO.	
YAMAMOTO	MAKIKO.	
YAMAMOTO	MICHIYO.	
YAMAMOTO	TOSHIMASA.	
YAMANE	MIME.	
YAMANISHI	HIROKAZU.	
YAMASHITA	JUNICHI.	
YAMASHITA	MACHIKO.	
YAMATOMO YAMAMOTO	HISASHI.	
YAN	ZAIQIANG.	
YAN NG	YUN.	
YANAGISAWA	EITA.	
YANAGISAWA	TETSUO.	
YANG	CHIUNG	MING
YANG	JACK.	
YANG	JACK.	
YANG	KEVIN	SIK HIN
YANG	ORCHID.	
YANG	STARETT	RENSON
YANG	SUSAN	SUHAN
YANG	TIFFANY	SIK YI
YANGUAS	SONIA.	
YASU	JIRO.	
YASU	MAIKO.	
YASUI	KUMIKO.	
YAZAWA	TAKESHI.	
YE	BETTY	SHANG QING
YECHOURON	ARIANE.	
YEE CHIU	VENNIE	WAI
YEH	CHARLES	SUHAO
YEH	DEBBIE	T.
YEO	JUSTIN	QIANYU
YERMAN	TODD	JEREMY
YETKIN	DERVIS	A.
YETKIN	MARINA.	
YIP	EDWIN	MONG CHUN
YIP TSANG	WAI YAI	RITA
YOKOI	HIROMASA.	
YOKOI	TAMIKO.	
YOKOTA	KONICHI.	
YOKOTA	NATSUKO.	
YONEDA	HIDEKI.	
YONEDA	KAZUKI.	
YONEDA	MAMI.	
YONEDA	YU.	
YOON	JONG	MAN

Last name	First name	Middle name/initials
YOSAKA	YOJI.	
YOSHIBA	SHIGEYOSHI.	
YOSHIDA	CHIKA.	
YOSHIDA	CHIKA.	
YOSHIDA	KIKUYO.	
YOSHIDA	MASAYASU.	
YOSHINO	KOUICHI.	
YOSHINO	SHIZUKO.	
YOW	VIVIAN	MAY WING
YU	KIT	YING
YU	PETER	TAT WING
YU	RONNIE.	
YUAN	SHUBING.	
YUENG	KAR	YAN
ZABOJNIK	JAN.	
ZAMIR	ASAF.	
ZAMORANO GALLEGO	JORGE	A.
ZARRABI	JOUBIN	ADL
ZARRILLO	MARIA	M.
ZEISBERGER	KARL	HEINZ
ZEISBERGER	MARGRIT.	
ZELLWEGER	NICOLE	JOY
ZENDEJAS	VERONICA	P.
ZHANG	AMY.	
ZHANG	BINGMEI.	
ZHANG	QING.	
ZHANG	QING.	
ZHANG	SHAORONG.	
ZHANGQ ZHANG	WENGAO.	
ZHAO	XINGE.	
ZHAO	YILU.	
ZHENG	GENGLIN.	
ZHENG	LIU.	
ZHENG	YINGYU.	
ZIRNGIBL	MICHAEL.	
ZLOCHOVER	NIR.	
ZMOOD	SIMONE	ELEESHEVA
ZUAN	FILIP.	
ZUCCA	CESARE	GIUSEPPE
ZUESSE	EVAN	MAJOR
ZUPNIK	ERAN.	
ZWICKY	STEFAN	THOMAS

Dated: May 4, 2020.

Pamela Ross,

Manager, Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2020–09814 Filed 5–7–20; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meeting

TIME AND DATE: May 14, 2020, from Noon to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll), (ii) 1–669–900–6833 (US Toll), (iii) 1–877–853–5247 (US Toll Free), or (iv) 1–888–788–0099 (US Toll Free), Meeting ID: 964 7431 9506, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/j/96474319506.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Education and Training Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda

IV. Approval of Minutes from April 16, 2020 Meetings—UCR Operations Manager

• Draft minutes from the April 16, 2020 Education and Training Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.

V. Update on Education and Training Modules—UCR Technology Director

The UCR Technology Director will review the development of each of the three education and training modules (Enforcement, UCR 101, and National Registration System), including format and budget. The Subcommittee will discuss and provide comments on the education and training modules.

VI. Role of Subcommittee in Development of Modules—UCR Technology Director

The UCR Technology Director will lead a discussion on the need for assistance and guidance from the Subcommittee in the development of the modules.

VII. Planning for Education and Training Sessions at June 8, 2020 Meeting—Subcommittee Chair

The Subcommittee Chair will lead a discussion on the latest plans for UCR to host several live education and training sessions currently scheduled for June 8, 2020 in Portland, Oregon.

VIII. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

IX. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, May 6, 2020 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2020–10024 Filed 5–6–20; 4:15 pm]

BILLING CODE 4910–YL–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 90 May 8, 2020

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 410, 412, et al.

45 CFR Part 156

Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 410, 412, 413, 414, 415, 424, 425, 440, 483, 484, and 600

Office of the Secretary

45 CFR Part 156

[CMS–5531–IFC]

RIN 0938–AU32

Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period (IFC) gives individuals and entities that provide services to Medicare, Medicaid, Basic Health Program, and Exchange beneficiaries needed flexibilities to respond effectively to the serious public health threats posed by the spread of the coronavirus disease 2019 (COVID–19). Recognizing the critical importance of expanding COVID–19 testing, we are amending several Medicare policies on an interim basis to cover FDA-authorized COVID–19 serology tests, to allow any healthcare professional authorized to do so under State law to order COVID–19 diagnostic laboratory tests (including serological and antibody tests), and to provide for new specimen collection fees for COVID–19 testing under the Physician Fee Schedule and Outpatient Prospective Payment System, during the public health emergency (PHE) for the COVID–19 pandemic. Recognizing the urgency of this situation, and understanding that some pre-existing CMS rules may inhibit innovative uses of technology and capacity that might otherwise be effective in the efforts to mitigate the impact of the pandemic on beneficiaries and the American public, we are amending several CMS policies and regulations in response to the COVID–19 PHE and recent legislation, as outlined in this IFC. These changes apply to physicians and other practitioners, hospice providers, federally qualified health centers, rural health clinics, hospitals, critical access hospitals (CAHs), community mental health centers (CMHCs), clinical laboratories, teaching hospitals, providers of the laboratory testing benefit in Medicaid, Opioid treatment programs, and quality reporting programs (QRPs) for inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), skilled nursing facilities (SNFs), home health agencies (HHAs) and durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) suppliers.

DATES:

Effective date: These regulations are effective on May 8, 2020.

Applicability date: The policies in this IFC are applicable beginning on March 1, 2020, or January 27, 2020, except as further described in the table in **SUPPLEMENTARY INFORMATION**.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 7, 2020.

ADDRESSES: In commenting, please refer to file code CMS–5531–IFC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–5531–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–5531–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rebecca Cole, (410) 786–1589, for general information, or contact one of the following:

HHVBPquestions@cms.hhs.gov, for issues related to the HHVBP Model.

HAPG_COVID-19@cms.hhs.gov, for issues related to scope of practice issues; additional flexibilities for hospital outpatient departments and CMHCs to furnish outpatient services at temporary expansion sites, including the beneficiary's home and expanded CMHCs; expansion of the extraordinary circumstances relocation exception policy for on-campus and excepted off-campus provider-based departments (PBDs) that relocate in response to the COVID–19 PHE; teaching physician policies, including time spent by residents at another hospital and the medical education methodology of counting teaching hospital beds; counting beds for provider-based rural health clinic payment level; services furnished by opioid treatment programs; modified requirements for ordering COVID–19 diagnostic laboratory tests; payment to hospitals and physician's offices for specimen collection; counting time for telehealth evaluation and management visits; method for updating the telehealth list during the PHE; paying for remote monitoring services; and increased payment for telephone evaluation and management visits (Note this email address has an underscore'' '' between ''HAPG'' and ''COVID–19''.)

IRFCoverage@cms.hhs.gov, for issues related to the Medicare IRF benefits.

DMEPOS@cms.hhs.gov, for issues related to section 3712 of the CARES Act.

Hillary Loeffler, (410) 786–0456, *HomeHealthPolicy@cms.hhs.gov,* or *HospicePolicy@cms.hhs.gov,* for issues related to the Medicare home health and hospice benefits.

PHPPaymentPolicy@cms.hhs.gov, for issues related to the Partial Hospitalization Program (PHP) and CMHC issues.

MedicaidHomeHealthRule@cms.hhs.gov, for issues pertaining to the Medicaid home health benefit related to section 3708 of the CARES Act.

Kari Vandegrift, (410) 786–4008, and Elizabeth November, (410) 786–4518 or *SharedSavingsProgram@cms.hhs.gov,* for issues related to the Medicare Shared Savings Program.

Leigha Basini, (301) 492–4380, for issues related to the separate billing requirement.

Sheri Gaskins, (410) 786–9274, for issues related to Medicaid laboratory flexibilities.

Cassandra Lagorio, (410) 786–4554, for issues related to the BHP.

Molly MacHarris, (410) 786–4461, or *QPP@cms.hhs.gov,* for issues related to the Merit-based Incentive Payment System (MIPS).

NCDsPublicHealthEmergency@cms.hhs.gov, for issues related to national coverage determination and local coverage determination requirements.

Joan Proctor, (410) 786–0949, or *HHQRPQuestions@cms.hhs.gov,* for issues related to the following Post-Acute Care QRPs: HH QRP, IRF QRP, LTCH QRP, and SNF QRP.

Julia Venanzi, (410) 786–1471, for issues related to the Hospital VBP Program.

Adam Rubin, (410–786–1919), for issues related to Certification of Home Health Services.

SUPPLEMENTARY INFORMATION: The policies in this IFC are applicable beginning on March 1, 2020, or January 27, 2020, except as further described in the following table:

Provision	Applicability date
Medicare Shared Savings Program—Expansion of Codes used in Beneficiary Assignment.	We are revising § 425.400 to expand the definition of primary care services used in the Shared Savings Program beneficiary assignment methodology for the performance year starting on January 1, 2020, and for any subsequent performance year that starts during the PHE for the COVID–19 pandemic, as defined in § 400.200, which includes any subsequent renewals.
Modification to Medicare Rules and Medicaid Concerning Certification and Provision of Home Health Services.	We are revising §§ 409.41 through 409.48; 424.22; 424.507(b)(1); § 440.70(a)(2) and (3), and (b)(1), (2) and (4); and several sections of 42 CFR part 484 to include physician assistants, nurse practitioners, and clinical nurse specialists as individuals who can certify the need for home health services and order services. These changes are permanent, and applicable to services provided on or after March 1, 2020.
Flexibility for Medicaid Laboratory Services	We are revising § 440.30 to provide states with flexibility to provide Medicaid coverage for certain laboratory tests and X-ray services that may not meet certain requirements in § 440.30(a) or (b) (such as the requirement that tests be furnished in an office or similar facility). This flexibility is retroactive to March 1, 2020, during the period of the COVID–19 PHE and for any subsequent periods of active surveillance. The flexibility also applies to future PHEs resulting from outbreaks of communicable disease and subsequent periods of active surveillance.
Requirement for Facilities to Report Nursing Home Residents and Staff Infections, Potential Infections, and Deaths Related to COVID–19.	We are revising § 483.80 to establish explicit reporting requirements for long-term care (LTC) facilities to report information related to COVID–19 cases among facility residents and staff. These reporting requirements are applicable on the effective date of this IFC.
Separate Billing and Segregation of Funds for Abortion Services.	We are delaying by 60 days the date when individual market qualified health plan (QHP) issuers must be in compliance with the separate billing policy for non-Hyde abortion services. Under this 60-day delay, individual market QHP issuers must comply with the separate billing policy beginning on or before the QHP issuer's first billing cycle following August 26, 2020.
DME Interim Pricing in the CARES Act	We are revising § 414.210 to provide increased fee schedule amounts in certain areas starting on March 6, 2020, and for the duration of the PHE for the COVID–19 pandemic.
Merit-based Incentive Payment System (MIPS) Qualified Clinical Data Registry (QCDR) Measure Approval Criteria: —Completion of QCDR Measure Testing —Collection of Data on QCDR Measures	For the reasons discussed in section II.R. of this IFC, we are delaying the implementation of the completion of QCDR measure testing policy by 1 year. Specifically, we are amending § 414.1400(b)(3)(v)(C) to state that beginning with the 2022 performance period, all QCDR measures must be fully developed and tested, with complete testing results at the clinician level, prior to submitting the QCDR measure at the time of self-nomination. This change is applicable on the effective date of this IFC. For the reasons discussed in section II.R. of this IFC, we are delaying the implementation of the collection of data on QCDR measures policy by one year. Specifically, we are amending § 414.1400(b)(3)(v)(D) to state that beginning with the 2022 performance period, QCDRs are required to collect data on a QCDR measure, appropriate to the measure type, prior to submitting the QCDR measure for CMS consideration during the self-nomination period. This change is applicable on the effective date of this IFC.
Hospital VBP Program	We are revising the extraordinary circumstances exception policy to allow CMS to grant an exception to hospitals located in an entire region or locale without a request and we are codifying the updated policy at § 412.165(c). This change is permanent, and is applicable beginning on the effective date of this IFC.
IRF QRP	We are revising the compliance date for the IRF QRP to October 1st of the year that is at least one full fiscal year after the end of the PHE. This change is applicable on the effective date of this IFC.
LTCH QRP	We are revising the compliance date for the LTCH QRP to October 1st of the year that is at least one full fiscal year after the end of the PHE. This change is applicable on the effective date of this IFC.
HH QRP	We are revising the compliance date for the HH QRP to January 1st of the year that is at least one full calendar year after the end of the PHE. This change is applicable on the effective date of this IFC.
SNF QRP	We are revising the compliance date for the SNF QRP to October 1st of the year that is at least two full fiscal years after the end of the PHE. This change is applicable on the effective date of this IFC.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that website to view public comments.

Table of Contents

CPT (Current Procedural Terminology) Copyright Notice

Throughout this IFC, we use CPT codes and descriptions to refer to a variety of services. We note that CPT codes and descriptions are copyright 2019 American Medical Association. All Rights Reserved. CPT is a registered trademark of the American Medical Association (AMA). Applicable Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulations (DFAR) apply.

I. Background

The United States is responding to an outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in more than 190 countries internationally, and all 50 States and the District of Columbia. The virus has been named ''severe acute respiratory syndrome coronavirus 2'' (SARS-CoV–2'') and the disease it causes has been named ''coronavirus disease 2019'' (''COVID–19'').

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the outbreak a ''Public Health Emergency of international concern''. On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, determined that a Public Health Emergency (PHE) exists for the United States to aid the nation's healthcare community in responding to COVID–19 (hereafter referred to as the PHE for the COVID–19 pandemic) and on April 21, 2020, Secretary Azar renewed, effective April 26, 2020, the determination that a PHE exists. On March 11, 2020, the WHO publicly declared COVID–19 a pandemic. On March 13, 2020, the President of the United States declared the COVID–19 pandemic a national emergency.

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people such as with MERS-CoV, SARS-CoV, and now with this new virus (SARS-CoV–2).

The complete clinical picture with regard to COVID–19 is not fully known. Reported illnesses have ranged from very mild (including some with no reported symptoms) to severe, including illness resulting in death. While information so far suggests that much COVID–19 illness is mild, the Centers for Disease Control and Prevention (CDC) reports find that in the United States, between March 1 and 28, 2020, the overall laboratory-confirmed COVID–19-associated hospitalization rate was 4.6 per 100,000 population.[1] A pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread sustainably, from person-to-person. The virus, SARS-CoV–2, that causes COVID–19 is infecting people and spreading easily worldwide from person-to-person because there is little to no pre-existing immunity. This is the first pandemic known to be caused by the emergence of a new coronavirus.[2]

People in places where ongoing community spread of the virus that causes COVID–19 has been reported are at elevated risk of exposure, with the level of risk dependent on the location. Healthcare workers caring for patients with COVID–19 are at elevated risk of exposure. Close contacts of persons with COVID–19 also are at elevated risk of exposure.

The CDC has reported that some people are at higher risk of getting very sick from this illness.[3] This includes:

- Older adults, with risk increasing by age.
- People who have serious chronic medical conditions like:

++ Obesity
++ Cardiovascular disease
++ Diabetes mellitus
++ Hypertension
++ Chronic lung disease.

The CDC has developed guidance to help in the risk assessment and management of people with potential exposures to COVID–19, including recommending that health care professionals make every effort to interview a person under investigation for infection by telephone, text monitoring system, or video conference.[4]

As the healthcare community establishes and implements recommended infection prevention and control practices, regulatory agencies under appropriate waiver authority granted by the PHE for the COVID–19 pandemic declaration are also working to revise and implement regulations that work in concert with healthcare community infection prevention and

[1] *https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm.*

[2] *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html.*

[3] *https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm.*

[4] *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html.*

treatment practices. Based on the current and projected increase in the rate of incidence of the COVID–19 disease in the US population, and observed fatalities in the elderly population, who are particularly vulnerable due to age and co-morbidities, and additionally, the impact on health workers who are at increased risk due to treating the population, we believe that certain regulations should be reviewed and revised as appropriate to offer providers and suppliers additional flexibilities in furnishing services to combat the COVID–19 pandemic. We are addressing some of these regulations in a previous IFC which appeared in the April 6, 2020 **Federal Register** (85 FR 19230) with an effective date of March 31, 2020 (hereafter referred to as the ''March 31st COVID–19 IFC''). In this interim final rule with comment period (IFC), we are revising additional regulations to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the programs under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act (the Act), or in the identified programs authorized under the Affordable Care Act. In addition, we are implementing regulations in response to recent legislation including the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Pub. L. 116–123, March 6, 2020), the Families First Coronavirus Response Act (Pub. L. 116–127, March 18, 2020), and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, March 27, 2020).

In this extraordinary circumstance, we recognize that the COVID–19 pandemic greatly increases the overall risk to public health. We believe that this increased risk results in an immediate change, not only in the circumstances under which services can safely occur, but also in to the business relationships among providers, suppliers, and practitioners. By increasing access to hospital and community mental health services furnished in temporary expansion locations of the hospital including the patient's home, increasing access to laboratory and diagnostic testing in a patient's home or other settings that could help to minimize transmission of communicable disease, and improving infection control, this IFC will provide the necessary flexibility for Medicare and Medicaid beneficiaries to be able to receive medically necessary services without jeopardizing their health or the health of those who are providing those services, while also minimizing the overall risk to public health. Notably, all final provisions included in this IFC are only for the duration of the PHE for the COVID–19 pandemic, unless otherwise indicated.

We also acknowledge that the COVID–19 PHE has created a lack of predictability for many ACOs regarding the impact of expenditure and utilization changes on historical benchmarks and financial performance, created uncertainty around future program participation, and disrupted population health activities as clinicians, care coordinators, and financial and other resources are diverted to address immediate acute care needs. We are amending the Shared Savings Program regulations in order to address the impact of the COVID–19 pandemic and encourage continued participation by ACOs. In addition, this IFC also provides flexibility to states operating a BHP to seek certification for temporary significant changes to its BHP Blueprint that are directly tied to the PHE for the COVID–19 pandemic, including the ability to apply the changes retroactively to the start of the PHE. Finally, in light of these extraordinary circumstances and the immediate need for QHP issuers to divert resources to responding to the COVID–19 PHE, we are delaying by 60 days the date when individual market issuers must be in compliance with the separate billing policy. Under this 60-day delay, QHP issuers must comply with the separate billing policy beginning on or before the QHP issuer's first billing cycle following August 26, 2020.

As QHP issuers and Exchanges work to respond to the COVID–19 PHE and implement and establish policies to ensure access to COVID–19-related care for enrollees, HHS is working to assess and extend regulatory flexibility to QHP issuers, Exchanges, and other health industry stakeholders where doing so may enable these stakeholders to divert existing resources to aiding the COVID–19 PHE response. We believe extending the deadline 60 days for QHP issuers and Exchanges to comply with the separate billing policy is appropriate so that they may adequately respond to and divert resources to address the COVID–19 PHE.

Also, consistent with section 3708 of the CARES Act, we are expanding 42 CFR parts 409, 424.22, 424.507(b), 440.70 and part 484 to permit nurse practitioners (NPs), clinical nurse specialists (CNSs), and physician assistants (PAs) to certify the need for home health services and to order services in the Medicare and Medicaid programs.

II. Provisions of the Interim Final Rule With Comment Period (IFC)

In this IFC, we use the term, ''Public Health Emergency (PHE),'' as defined at 42 CFR 400.200. The definition identifies the PHE determined to exist nationwide by the Secretary of Health and Human Services (the Secretary) under section 319 of the Public Health Service Act on January 31, 2020, and renewed effective April 26, 2020, as a result of confirmed cases of COVID–19.

A. Reporting Under the Home Health Value-Based Purchasing Model for CY 2020 During the COVID–19 PHE

Through this IFC, we are implementing a policy to align the Home Health Value-Based Purchasing (HHVBP) Model data submission requirements with any exceptions or extensions granted for purposes of the Home Health Quality Reporting Program (HH QRP) during the PHE for COVID–19. We are also implementing a policy for granting exceptions to the New Measures data reporting requirements under the HHVBP Model during the PHE for COVID–19. Specifically, during the PHE for COVID–19, to the extent that the data that participating HHAs in the nine HHVBP Model states are required to report are the same data that those HHAs are also required to report for the HH QRP, HHAs are required to report those data for the HHVBP Model in the same time, form and manner that HHAs are required to report those data for the HH QRP. As such, if CMS grants an exception or extension that either excepts HHAs from reporting certain quality data altogether, or otherwise extends the deadlines by which HHAs must report those data, the same exceptions and/or extensions apply to the submission of those same data for the HHVBP Model. In addition, in this IFC, we are adopting a policy to allow exceptions or extensions to New Measure reporting for HHAs participating in the HHVBP Model during the PHE for COVID–19.

As authorized by section 1115A of the Act and finalized in the CY 2016 HH PPS final rule (80 FR 68624), the HHVBP Model has an overall purpose of improving the quality and delivery of home health care services to Medicare beneficiaries. The specific goals of the Model are to: (1) Provide incentives for better quality care with greater efficiency; (2) study new potential quality and efficiency measures for appropriateness in the home health setting; and (3) enhance the current public reporting process. All Medicare certified HHAs providing services in Arizona, Florida, Iowa, Nebraska, North

Carolina, Tennessee, Maryland, Massachusetts, and Washington are required to compete in the Model. The HHVBP Model uses the waiver authority under section 1115A(d)(1) of the Act to adjust Medicare payment rates under section 1895(b) of the Act based on the competing HHAs' performance on applicable measures. The maximum payment adjustment percentage increases incrementally over the course of the HHVBP Model in the following manner, upward or downward: (1) 3 percent in CY 2018; (2) 5 percent in CY 2019; (3) 6 percent in CY 2020; (4) 7 percent in CY 2021; and (5) 8 percent in CY 2022. Payment adjustments are based on each HHA's Total Performance Score (TPS) in a given performance year (PY), which is comprised of performance on: (1) A set of measures already reported via the Outcome and Assessment Information Set (OASIS),[5] completed Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) surveys, and select claims data elements; and (2) three New Measures for which points are achieved for reporting data.

The HHVBP Model utilizes some of the same quality measure data that are reported by HHAs for the HH QRP, including HHCAHPS survey data. The other HHVBP measures are calculated using OASIS data, which are still required to be reported during the PHE; however, we have given providers additional time to submit OASIS data (*https://www.cms.gov/files/document/covid-home-health-agencies.pdf*); claims-based data extracted from Medicare fee-for-service (FFS) claims; and New Measure data. To assist HHAs while they direct their resources toward caring for their patients and ensuring the health and safety of patients and staff, we are adopting a policy for the HHVBP Model to align the HHVBP data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the PHE for COVID–19. For the same reason, we are also establishing a policy for granting exceptions to New Measure reporting requirements for HHAs participating in the HHVBP Model during the PHE for COVID–19.

Under this policy, to the extent CMS has granted an exception to the HH QRP (for 2019 Q4 and 2020 Qs 1–2 as noted below in this section), or may grant any future exceptions or extensions under this same program for other CY 2020 reporting periods, HHAs in the nine HHVBP Model states do not need to separately report these measures for purposes of the HHVBP Model, and those same exceptions apply to the submission of those same data for the HHVBP Model. In accordance with this policy, if CMS grants an exception or extension under the HH QRP that either excepts HHAs from reporting certain quality data altogether, or otherwise extends the deadlines by which HHAs must report those data, the same exceptions and/or extensions apply to the submission of those same data for the HHVBP Model.

In response to the PHE for COVID–19, on March 27, 2020, we issued supplemental public guidance (*https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf*) excepting HHAs from the requirement to report any HH QRP data for the following quarters:

- October 1, 2019–December 31, 2019 (Q4 2019).
- January 1, 2020–March 31, 2020 (Q1 2020).
- April 1, 2020–June 30, 2020 (Q2 2020).

Under our policy to align HHVBP data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the PHE for COVID–19, HHAs in the nine HHVBP Model states are not required to separately report measure data for these quarters for purposes of the HHVBP Model. We note that with regard to the exception from the requirement to report Q4 2019 HH QRP data, we do not anticipate any issues in calculating the TPSs based on CY 2019 data under the HHVBP Model because HHAs had the opportunity to submit these Q4 2019 data on a rolling basis.

In addition, to ensure that HHAs are able to focus on patient care in lieu of data submission during the PHE for COVID–19, in this IFC, we are establishing a policy to allow us to grant exceptions to New Measure reporting for HHAs participating in the HHVBP Model during the PHE for COVID–19. We are codifying these changes at § 484.315(b). In accordance with this policy, we are granting an exception to all HHAs participating in the HHVBP Model for the following New Measure reporting requirements*:*

- April 2020 New Measures submission period (data collection period October 1, 2019–March 31, 2020).
- July 2020 New Measures submission period (data collection period April 1, 2020–June 30, 2020).

We note that although the data collection period for the April 2020 New Measures submission period began in 2019, the data collected during this period are used for the calculation of the TPSs for CY 2020 performance, not CY 2019 data. We further note that HHAs may optionally submit part or all of these data by the applicable submission deadlines. If we make the determination to grant an exception to New Measure data reporting for periods beyond the April and July 2020 submission periods, for example if the PHE for COVID–19 extends beyond the New Measure submission periods we have listed in this IFC, we will communicate this decision through routine communication channels to the HHAs participating in the HHVBP Model, including but not limited to issuing memos, emails and posting on the HHVBP Connect website (*https://app.innovation.cms.gov/HHVBPConnect*).

We acknowledge that the exceptions to the HH QRP reporting requirements, as well as the modified submission deadlines for OASIS data and our exceptions for the New Measures reporting requirements, may impact the calculation of performance under the HHVBP Model for the performance year (PY) 2020. We also note that while we are able to extract the claims-based data from submitted Medicare FFS claims, we may need to assess the appropriateness of using the claims data submitted for the period of the PHE for COVID–19 for purposes of performance calculations under the HHVBP Model. We are evaluating possible changes to our payment methodologies for CY 2022 in light of this more limited data, such as whether we would be able to calculate payment adjustments for participating HHAs for CY 2022, including those that continue to report data during CY 2020, if the overall data is not sufficient, as well as whether we may consider a different weighting methodology given that we may have sufficient data for some measures and not others. We are also evaluating possible changes to our public reporting of CY 2020 performance year data. We intend to address any such changes to our payment methodologies for CY 2022 or public reporting of data in future rulemaking.

B. Scope of Practice

In December 2019, CMS issued a request for feedback in response to part of the President's Executive Order (E.O.) 13890 on ''Protecting and Improving Medicare for Our Nation's Seniors,'' seeking the public's help in identifying additional Medicare regulations which contain more restrictive supervision requirements than existing state scope

[5] OASIS is the instrument/data collection tool used to collect and report performance data by HHAs.

of practice laws, or which limit health professionals from practicing at the top of their license (for a link to this request for feedback see *https://www.cms.gov/files/document/request-information-reducing-scope-practice-burden.pdf*). In response to this request, we received several recommendations from nonphysician practitioners (NPPs) that inform CMS policymaking to ensure an adequate number of clinicians are able to furnish critical services and tests during the COVID–19 PHE. According to the American Association of Nurse Practitioners, currently, twenty-two states and DC are considered Full Practice Authority (FPA) states because their licensure laws allow full and direct patient access to NPs. We are finalizing provisions that address several of those recommendations in this section of the IFC, on an interim basis for the duration of the PHE. We note that the responses to our request for information on these topics did not indicate the number of states having more flexible scope of practice rules than our federal regulations. In this rule, we are also seeking public feedback indicating the number of states to help us understand the scope of impact of these changes.

1. Supervision of Diagnostic Tests by Certain Nonphysician Practitioners

Rapid expansion of COVID–19-related diagnostic testing capacity (such as lab tests and respiratory imaging) is a top priority in the strategy to combat the pandemic. In response to the request for feedback discussed above, PAs and NPs recommended regulatory changes that would allow them to supervise diagnostic tests because they stated that they are currently authorized to do so under their State scope of practice rules. We also received feedback from radiologists who did not support making any changes to our regulations that would result in any inappropriate expansion of the role of NPPs. Currently, under 42 CFR 410.32(a)(3) of our regulations, physicians and NPPs who are treating a beneficiary for a specific medical problem may order diagnostic tests when they use the results of the tests in the management of the beneficiary's specific medical problem. Specifically, NPPs who furnish services that would be physicians' services if furnished by a physician (that is, NPs, PAs, CNSs, clinical psychologists (CPs), clinical social workers (CSWs), and certified nurse-midwives (CNMs)), and who are operating within the scope of their authority under State law and within the scope of their Medicare statutory benefit may order diagnostic tests when they use the results of the tests in the management of the beneficiary's specific medical problem. However, under our current regulation at § 410.32(b), only physicians are generally permitted to supervise diagnostic tests. The regulation at § 410.32(b)(1) provides as a basic rule that all diagnostic tests paid under the Physician Fee Schedule (PFS) must be furnished under an appropriate specified minimum level of supervision by a physician as defined in section 1861(r) of the Act. Section 410.32(b)(2) then provides for certain exceptions to which the general basic rule does not apply. For instance, under § 410.32(b)(2)(v), the requirement that diagnostic tests must be furnished under the appropriate level of supervision by a physician does not apply for tests performed by an NP or CNS authorized under applicable state law to furnish the test. (We note that, as for all services they furnish, the NP or CNS necessarily would be working in collaboration with a physician under §§ 410.75 and 410.76, respectively). Similarly, at § 410.32(b)(2)(vii), the requirement that diagnostic tests must be furnished under the appropriate level of supervision by a physician does not apply for tests performed by a CNM authorized under applicable state law to furnish the test. There are not currently any exceptions under § 410.32(b)(2) for services furnished by PAs. As such, any diagnostic tests furnished by PAs would need to be under the appropriate level of supervision by a physician in accordance with § 410.32(b)(1). We note further that our regulation at § 410.32(b)(3) specifies that only a general level of physician supervision is required for diagnostic tests performed by a PA that the PA is legally authorized to perform under state law. Of course, all services furnished by PAs must meet the physician supervision requirements under § 410.74, which generally defers to state law requirements that address the requisite practice relationship between PAs and physicians, or requires certain documentation of the working relationship between the PA and physicians to supervise PA services if the issue is not addressed in state law. Thus, while NPs, CNSs, PAs, and CNMs are permitted to furnish diagnostic tests to the extent they are otherwise authorized under state law to do so, the regulations at § 410.32 does not address whether NPs, CNSs, PAs and CNMs may supervise others when furnishing diagnostic tests.

In light of the need to reinforce and increase COVID–19-related diagnostic testing capacity throughout the duration of the PHE, and to increase the flexibility and availability of health care professionals to provide needed care, we are finalizing on an interim basis changes to our regulation at § 410.32(b) to add flexibility for NPs, CNSs, PAs, and CNMs, which are types of practitioners that have separately enumerated benefit categories under Medicare law that permit them to furnish services that would be physicians' services if furnished by a physician and be paid under Medicare Part B for the professional services they furnish directly and ''incident to'' their own professional services, to the extent authorized under their State scope of practice. The interim changes will ensure that these practitioners may order, furnish directly, and supervise the performance of diagnostic tests, subject to applicable state law, during the PHE. As we observe how rapidly the COVID–19 virus is transmitted in the population, we believe this policy will help to ensure that an adequate number of health care professionals are available to support critical COVID–19-related and other diagnostic testing needs, and provide needed medical care. This policy will support the rapid expansion of COVID–19-related diagnostic testing capacity to quickly identify affected individuals and protect against transmission of the virus to vulnerable populations, and help to address potential clinical workforce shortages that may impact access to services and other diagnostic tests that still need to be furnished during the PHE.

Specifically, we are amending the regulation at § 410.32(b)(1) to specify in the basic rule that diagnostic tests covered under section 1861(s)(3) of the Act and payable under the PFS must be furnished under the appropriate level of supervision by a physician as defined under section 1861(r) of the Act or, during the PHE, by a NP, CNS, PA, and CNM, as described above. Additionally, we are amending the regulation at § 410.32(b)(2)(iii)(B) which addresses supervision of COVID–19-related diagnostic psychological and neuropsychological testing services to allow these services to be supervised by a NP, CNS, PA and CNM as described above, during the PHE, in addition to physicians and CPs who are currently authorized to supervise these tests. We are also amending the regulation at § 410.32 by adding a new paragraph (b)(2)(viii) to allow diagnostic tests to be performed by a PA without physician supervision (although as noted above, the regulation at § 410.74 continues to apply) when authorized to perform the tests under applicable state law. Furthermore, we are amending the

regulation at § 410.32(b)(3) regarding the levels of supervision, to also authorize NPs, CNSs, PAs, and CNMs, as described above, during the PHE to provide the appropriate level of supervision assigned to diagnostic tests. Since we are adding PAs under § 410.32(b)(2)(viii) to the list of exceptions to the general basic rule for supervision during the PHE, and given that the physician supervision requirement in the regulation at § 410.74 continues to apply, we are removing the parenthetical regarding general physician supervision for diagnostic tests furnished by PAs from § 410.32(b)(3). We are also correcting the typographical error under § 410.32(d)(2)(i) regarding documentation and recordkeeping requirements to state that when ordering diagnostic tests, the physician (or qualified NPP, as defined in paragraph (a)(2) of this section), who orders the service must maintain documentation of medical necessity in the beneficiary's medical record.

2. Therapy—Therapy Assistants Furnishing Maintenance Therapy (PFS)

We currently make payment under Medicare Part B for outpatient occupational and physical therapy (§§ 410.59(a) and 410.60(a), respectively) when they are furnished by an individual meeting qualifications in part 484 for an occupational therapist (OT) or physical therapist (PT), or an appropriately supervised occupational therapy assistant (OTA) or physical therapy assistant (PTA). This includes our policy for rehabilitative services for which improvement of the beneficiary's functional status is expected. However, in cases where it is medically necessary to maintain, prevent or slow the deterioration of a patient's condition, a separate policy requires the skills of a physical or OT, not a PTA or OTA, to carry out a therapist-established maintenance program, which is generally known as ''maintenance therapy.'' For services furnished by PTAs and OTAs, claims from therapists and providers are required to use the ''CO'' and ''CQ'' modifiers for their respective OTA and PTA therapy services, to indicate that a supervised therapy assistant performed the rehabilitative or maintenance therapy services.

In response to the request for feedback discussed above, therapists and therapy providers pointed out that our Part B policy specifying that maintenance therapy requires the skills of a therapist is not consistent with the policy for services furnished in SNF and Home Health Part A settings where PTAs and OTAs are permitted to furnish these services. They recommended that we revise our policy to permit the treating therapist who established or is responsible for the maintenance program plan to determine when it is clinically appropriate to delegate the performance of maintenance therapy services to PTAs and OTAs, as they are charged with overseeing a patient's course of treatment and assigning responsibilities to assistants. They suggested that permitting PTAs and OTAs to furnish maintenance therapy services would give Medicare patients greater access to care and permit therapists and therapy providers more flexibility for resource utilization.

To increase availability of needed health care services during the COVID–19 PHE, we believe it is appropriate to synchronize our Part B payment policies as suggested by the stakeholders, and to permit the PT or OT who established the maintenance program to delegate the performance of maintenance therapy services to a PTA or OTA when clinically appropriate. We believe that, by allowing PTAs and OTAs to perform maintenance therapy services, PTs and OTs will be freed up to furnish other services, including such services as non-medication pain management therapies that may reduce reliance on opioids or other medications, as well as those services related to the COVID–19 PHE that require a therapist's assessment and evaluation skills, including communication technology-based services (CTBS) that were made available for PTs, OTs and speech-language pathologists (SLPs) during the PHE in the March 31st COVID–19 IFC (85 FR 19245 and 19265 through 19266).

3. Therapy—Student Documentation (PFS)

In the CY 2020 PFS final rule,[6] we simplified medical record documentation requirements and finalized a general principle to allow the physician, PA, or the advanced practice registered nurses (APRNs), specifically, NPs, CNSs, CNMs, and certified registered nurse anesthetist (CRNAs) who furnish and bill for their professional services to review and verify, rather than re-document, information included in the medical record by physicians, residents, nurses, students or other members of the medical team. We explained that this principle would apply across the spectrum of all Medicare-covered services paid under the PFS. We noted that the policy was intended to apply broadly, and accordingly amended regulations for teaching physicians, other physicians, PAs, and APRNs to expressly provide for this flexibility for medical record documentation requirements for professional services furnished by physicians, PAs and APRNs in all settings.

To increase the availability of clinicians who may furnish healthcare services during the PHE, we are announcing a general policy that there is broad flexibility for all members of the medical team to add documentation in the medical record which is then reviewed and verified (signed) by the appropriate clinician. Specifically, on an interim basis during the PHE for the COVID–19 pandemic, any individual who has a separately enumerated benefit under Medicare law that authorizes them to furnish and bill for their professional services, whether or not they are acting in a teaching role, may review and verify (sign and date), rather than re-document, notes in the medical record made by physicians, residents, nurses, and students (including students in therapy or other clinical disciplines), or other members of the medical team. We note that although there are currently no statutory or regulatory documentation requirements that would impact payment for therapists when documentation is added to the medical record by persons other than the therapist, we are discussing this issue in response to stakeholder concerns about burden and in consideration of the current COVID–19 PHE. Specifically, this policy will ensure that therapists, as members of the clinical workforce, are able to spend more time furnishing therapy services, including pain management therapies to patients that may minimize the use of opioids and other medications, rather than spending time documenting in the medical record. We emphasize that our established principle is focused on the clinician, as described above who furnishes and bills for their professional services rather than the individuals who may enter information into the medical record. We want to emphasize that

[6] Medicare Program; CY 2020 Revisions to Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule (84 FR 62568–63563).

information entered into the medical record should document that the furnished services are reasonable and necessary.

4. Pharmacists Providing Services Incident to a Physicians' Service

In response to the request for feedback discussed above, numerous stakeholders asked us to clarify that pharmacists are permitted to provide services to Medicare beneficiaries incident to the professional services of a physician, like other clinical staff or certain other clinicians. These stakeholders have asked us, in particular, about pharmacists who provide medication management services. Medication management is covered under both Medicare Part B and Part D. We are clarifying explicitly that pharmacists fall within the regulatory definition of auxiliary personnel under our regulations at § 410.26. As such, pharmacists may provide services incident to the services, and under the appropriate level of supervision, of the billing physician or NPP, if payment for the services is not made under the Medicare Part D benefit. This includes providing the services incident to the services of the billing physician or NPP and in accordance with the pharmacist's state scope of practice and applicable state law. This clarification does not alter current payment policy for pharmacist services furnished incident to the professional services of a physician or NPP.

Although fully consistent with current CMS policy, we believe this clarification may encourage pharmacists to work with physicians and NPPs in new ways that expand the availability of health care services during the COVID–19 PHE, and increase access to medication management of individuals with substance/opioid use disorder. We emphasize that consistent with the Controlled Substances Act (Pub. L. 91–513, enacted October 27, 1970), methadone should continue to be dispensed from certified and accredited Opioid Treatment Programs (OTPs) under the supervision of clinicians who have received appropriate training and fully understand the risks of that medication as is required by statute.

C. Modified Requirements for Ordering COVID–19 Diagnostic Laboratory Tests

The rapid expansion of COVID–19 diagnostic laboratory testing capacity is a top priority in our strategy to combat the pandemic. To that end, several large clinical diagnostic laboratory and pharmacy businesses are operating community testing sites across the country in cooperation with state and federal authorities.[7] In combination with the availability of point of care tests that provide rapid results, these sites are a key component in the expansion of COVID–19 testing capacity.

Under Medicare Part B, clinical diagnostic laboratory tests, including COVID–19 diagnostic tests, are paid for under the Clinical Laboratory Fee Schedule (CLFS), without any beneficiary cost-sharing requirements (coinsurance or Part B deductible). See generally sections 1861(s)(3), 1833(a)(1)(D)(i)(II), (b)(3)(A), (h)(5)(C) and (D), and 1834A of the Act, and 42 CFR part 414, subpart G.

Under our current regulation at § 410.32(a), diagnostic laboratory tests such as the COVID–19 tests are covered only when they are ordered by a physician or other practitioner who is treating the beneficiary, and who uses the results of the test in managing the patient's specific medical condition. If a patient arrives at a community testing site without an order for the test from his or her physician or practitioner, Medicare would not currently cover the test.

We have taken substantial steps to broaden access to safely-delivered care via telehealth and other communication technology-based services during the COVID–19 PHE in an attempt to ensure that a COVID–19 test could be ordered by a physician or other practitioner treating the beneficiary. Notwithstanding these flexibilities, not all beneficiaries have access to a doctor to obtain a COVID–19 diagnostic laboratory test. The most recently available results from the Medicare Current Beneficiary Survey indicated that only 70 percent of Medicare beneficiaries view a doctor's office as their source of care. In the same survey, 23 percent of beneficiaries indicated that a medical clinic, urgent care center, or hospital outpatient department (HOPD) was their source of care. HOPDs and urgent care clinics may not be able to furnish community patient visits because they are treating an excess number of patients already testing positive for the virus. The survey also indicated that 7 percent of beneficiaries reported no source of care.[8] We anticipate needing to test many Medicare beneficiaries quickly as part of the rapid expansion of COVID–19 testing capacity to combat the pandemic. Therefore, the need for a patient to first have a visit with a physician or practitioner to obtain an order for COVID–19 testing to meet Medicare ordering requirements could still present a significant barrier to patients who might otherwise seek a test.

Prior to the Guidance for Licensed Pharmacists, COVID–19 Test, and Immunity Under the PREP Act, which HHS issued on April 8, 2020 (April Guidance),[9] state governments had sought to increase access to testing by removing prior authorization of COVID–19 tests in the commercial health insurance market.[10] States and State Boards of Pharmacy had also sought to increase physician capacity by permitting pharmacists to test for and treat influenza and streptococcus infections under protocols.[11] State Boards of Pharmacy have in turn sought to increase pharmacist capacity by relaxing pharmacist to pharmacy technician supervision ratios.[12] With growing supplies of tests and in light of the April Guidance we anticipate that States will look increasingly to pharmacists and other qualified healthcare professionals to order and furnish COVID–19 tests.

Information provided by the CDC shows that the likelihood of severe outcomes of COVID–19 illness is highest in adults aged 65 and older and people with underlying health conditions, which suggests that the Medicare beneficiary population is at particularly high risk from the disease.[13] Additionally, as noted by the CDC in guidance on how to protect against COVID–19 infection, some studies have

[7] Guidance for Licensed Pharmacists, COVID–19 Test, and Immunity Under the PREP Act, HHS, April 8, 2020, *https://www.hhs.gov/sites/default/files/authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf.*

[8] Centers for Medicare & Medicaid Services. Medicare Current Beneficiary Survey Chart Book 2016. *https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/MCBS/Data-Tables-Items/2016Chartbook.*

[9] HHS Statements on Authorizing Licensed Pharmacists to Order and Administer COVID–19 Tests, HHS, April 8, 2020, *https://www.hhs.gov/about/news/2020/04/08/hhs-statements-on-authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.html.*

[10] Karen Pollitz, ''Private Health Coverage of COVID–19: Key Facts and Issues,'' Kaiser Family Foundation, March 18, 2020, *https://www.kff.org/private-insurance/issue-brief/private-health-coverage-of-covid-19-key-facts-and-issues/.*

[11] National Alliance of State Pharmacy Associations (NASPA), Pharmacist Prescribing: ''Test and Treat,'' February 8, 2019, available at *https://naspa.us/resource/pharmacist-prescribing-for-strep-and-flu-test-and-treat/*

[12] NASPA. ''COVID–19: Information from the States,'' April 14, 2020, available at *https://naspa.us/resource/covid-19-information-from-the-states/.*

[13] Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019—United States, February 12–March 28, 2020. MMWR Morb Mortal Wkly Rep 2020;69:382–386. DOI: *http://dx.doi.org/10.15585/mmwr.mm6913e2.*

suggested that COVID–19 may be spread by people who are not showing symptoms.[14] We believe it is vital for Medicare beneficiaries to have broad access to COVID–19 testing so that they can properly monitor their symptoms, make prompt decisions about seeking further care, and take appropriate precautions to prevent further spread of the disease.

Given the critical importance of expanding COVID–19 testing to combat the pandemic and the heightened risk that the disease presents to Medicare beneficiaries, we are amending our regulation at § 410.32(a) to remove the requirement that certain diagnostic tests are covered only based on the order of a treating physician or NPP. Under this interim policy, during the COVID–19 PHE, COVID–19 tests may be covered when ordered by any healthcare professional authorized to do so under state law. Additionally, because the symptoms for influenza and COVID–19 might present in the same way, during the COVID–19 PHE, we are also removing the same ordering requirements for a diagnostic laboratory test for influenza virus and respiratory syncytial virus, a type of common respiratory virus. CMS will make a list of diagnostic laboratory tests for which we are removing the ordering requirements publicly available. We are removing the treating physician or NPP ordering requirement for these additional diagnostic laboratory tests only when they are furnished in conjunction with a COVID–19 diagnostic laboratory test as medically necessary in the course of establishing or ruling out a COVID–19 diagnosis or of identifying patients with an adaptive immune response to SARS-CoV–2 indicating recent or prior infection. We would not expect there to be any medical necessary reason to use the specimen for unrelated or repeat testing. When COVID–19 diagnostic laboratory testing becomes sufficiently prevalent, sensitive, and specific such that laboratory tests for influenza or related respiratory conditions are no longer needed to establish a definitive COVID–19 diagnosis, we expect that additional testing for influenza or related respiratory viral illness would no longer be medically necessary. We are also making conforming amendments to our regulations at § 410.32(d)(2) and (3) to remove certain documentation and recordkeeping requirements associated with orders for COVID–19 tests during the COVID–19 PHE, as these requirements would not be relevant in the absence of a treating physician's or NPP's order. While no order is required under Medicare, we do expect the entity submitting the claim to include the ordering or referring NPI information on the claim form when an order is written for the test, consistent with current billing instructions.

When COVID–19 tests are furnished without a physician's or NPP's order as set forth in this regulation during the COVID–19 PHE, the laboratory conducting the tests is required to directly notify the patient of the results consistent with other applicable laws, as well as meet other applicable test result reporting requirements. Comprehensive and timely reporting of all testing results to local officials is critical to public health management of the pandemic, and we would expect any clinician or laboratory receiving results to report those results promptly, consistent with state and local public health requirements, typically within 24 hours.

D. Opioid Treatment Programs (OTPs)—Furnishing Periodic Assessments via Communication Technology

In the CY 2020 PFS final rule (84 FR 62634), we finalized an add-on code describing periodic assessments furnished by OTPs. The finalized add-on code is Healthcare Common Procedure Coding System (HCPCS) code G2077 (*Periodic assessment; assessing periodically by qualified personnel to determine the most appropriate combination of services and treatment*). The medical services described by this add-on code can be furnished by a program physician, a primary care physician or an authorized healthcare professional under the supervision of a program physician or qualified personnel such as NPs and PAs. The other assessments, including psychosocial assessments can be furnished by practitioners who are eligible to do so under their state law and scope of licensure. We note that to bill for the add-on code, the services need to be medically reasonable and necessary and that OTPs should document the rationale for billing the add-on code in the patient's medical record (84 FR 62647).

In light of the PHE for the COVID–19 pandemic, during which the public has been instructed to practice self-isolation or social distancing, in the March 31st COVID–19 IFC, we revised § 410.67(b)(3) and (4) to allow the therapy and counseling portions of the weekly bundles of services furnished by OTPs, as well as the add-on code for additional counseling or therapy, to be furnished using audio-only telephone calls rather than via two-way interactive audio-video communication technology during the PHE for the COVID–19 pandemic if beneficiaries do not have access to two-way audio/video communications technology, provided all other applicable requirements are met (85 FR 19258).

In addition to the flexibilities described above, we have determined that it is also necessary to revise § 410.67(b)(7) on an interim final basis to allow periodic assessments to be furnished during the PHE for the COVID–19 pandemic via two-way interactive audio-video communication technology. In addition, in cases where beneficiaries do not have access to two-way audio-video communications technology, the periodic assessments may be furnished using audio-only telephone calls rather than via two-way interactive audio-video communication technology, provided all other applicable requirements are met. We believe this change is necessary to ensure that beneficiaries with opioid use disorders are able to continue to receive these important services during the PHE for the COVID–19 pandemic. While we will allow this flexibility during the PHE for the COVID–19 pandemic, we expect that OTPs will use clinical judgment to determine whether they can adequately perform the periodic assessment over audio-only phone calls, and if not, then they should perform the assessment using two-way interactive audio-video communication technology or in person as clinically appropriate. Regardless of the format that is used, the OTP should document in the medical record the reason for the assessment and the substance of the assessment.

Additionally, we note that SAMHSA has offered flexibilities to states to ensure that individuals being treated with medication for opioid use disorders can continue to receive their medication during the PHE for the COVID–19 pandemic. SAMHSA provides specific guidance for OTPs on its website at *SAMHSA.gov/coronavirus.* The following is a list of resources posted on the SAMHSA website as of the time of publication of this rule:

- *Opioid Treatment Program (OTP) Guidance (March 16, 2020)* available at *https://www.samhsa.gov/sites/default/files/otp-guidance-20200316.pdf.*
- *OTP Guidance for Patients Quarantined at Home with the Coronavirus* available at *https://www.samhsa.gov/sites/default/files/otp-covid-implementation-guidance.pdf.*

[14] Coronavirus Disease 2019 (COVID–19): How to Protect Yourself & Others, CDC, *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.*

• *FAQs: Provision of Methadone and Buprenorphine for the Treatment of Opioid Use Disorder in the COVID–19 Emergency* available at *https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf.*

• *COVID–19 Public Health Emergency Response and 42 CFR part 2 Guidance* available at *https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf.*

• *Considerations for the Care and Treatment of Mental and Substance Use Disorders in the COVID–19 Epidemic: March 20, 2020* available at *https://www.samhsa.gov/sites/default/files/considerations-care-treatment-mental-substance-use-disorders-covid19.pdf.*

E. Treatment of Certain Relocating Provider-Based Departments During the COVID–19 PHE

1. Background

In 2015, the Congress addressed payments for services furnished by certain off-campus provider-based departments (PBDs) through section 603 of the Bipartisan Budget Act of 2015 (BBA 2015) (Pub. L. 114–74, enacted November 2, 2015). In the CY 2017 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center Payment System (ASC) proposed rule, we discussed the provisions of section 603 of the BBA 2015, which amended section 1833(t) of the Act (81 FR 45681). For the full discussion of our initial implementation of this provision, we refer readers to the CY 2017 OPPS/ASC final rule with comment period (81 FR 79699 through 79719) and interim final rule with comment period (81 FR 79720 through 79729).

Section 603 of the BBA 2015 amended section 1833(t) of the Act by amending paragraph (1)(B) and adding a new paragraph (21). As a general matter, under sections 1833(t)(1)(B)(v) and (t)(21) of the Act, applicable items and services furnished by certain off-campus outpatient departments (OPD) of a provider on or after January 1, 2017 are not considered covered OPD services as defined under section 1833(t)(1)(B) of the Act for purposes of payment under the OPPS and are instead paid ''under the applicable payment system'' under Medicare Part B if the requirements for payment are otherwise met.

In the CY 2017 OPPS/ASC final rule with comment period (81 FR 79699 through 79719) and the interim final rule with comment period (81 FR 79720 through 79729), we established a number of policies to implement section 603 of the BBA 2015. Broadly, we finalized policies that define whether certain items and services furnished by a given off-campus PBD may be considered excepted, and thus, continue to be paid under the OPPS; established the requirements for the off-campus PBDs to maintain excepted status (both for the excepted off-campus PBDs and for the items and services furnished by excepted off-campus PBDs); and described the applicable payment system for non-excepted items and services (generally, the PFS).

We created the ''PO'' modifier in the CY 2015 Outpatient Prospective Payment System Final Rule (79 FR 66910–66914), which is reported with every HCPCS code for all outpatient hospital items and services furnished in an excepted off-campus PBD of a hospital. In the CY 2017 OPPS/ASC final rule with comment period (81 FR 79699 through 79719) and the interim final rule with comment period (81 FR 79720 through 79729), we created the ''PN'' modifier to collect data for purposes of implementing section 603 of the BBA 2015 and also to trigger payment under the newly adopted PFS-equivalent rates (50 percent of the OPPS for CY 2017) for non-excepted items and services. In the CY 2018 PFS final rule (82 FR 53023 through 53030), the PFS Relativity Adjuster was revised to be 40 percent of the OPPS rate beginning in CY 2018.

2. Definition of Off-Campus Outpatient Department (OPD)

Under section 603 of the BBA 2015, certain ''off-campus departments of a provider'' are considered ''non-excepted'' and paid under the ''applicable payment system'' instead of the OPPS. In defining the term ''off-campus outpatient department of a provider,'' section 1833(t)(21)(B)(i) of the Act specifies that the term means a department of a provider (as defined at 42 CFR 413.65(a)(2) as that regulation was in effect on November 2, 2015, the date of enactment of the BBA 2015) that is not located on the campus (as defined in § 413.65(a)(2)), of the provider or within the distance (described in the definition of campus) from a remote location of a hospital facility (as defined in § 413.65(a)(2)). The definition of ''campus'' in § 413.65(a)(2) includes the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by the CMS regional office (RO), to be part of the provider's campus.

We note that on March 30, 2020, the Secretary issued several waivers [15] under section 1135(b) of the Act in response to the PHE for the COVID–19 pandemic, including a waiver of Medicare's provider-based rules in § 413.65. Importantly, the waiver does not determine whether a PBD is excepted or non-excepted for purposes of section 603 of the BBA 2015, and the definitions in § 413.65 that section 603 cross-references, including the definition of campus at § 413.65(a)(2), remain relevant to that determination.

We note that the definition of ''applicable items and services'' specifically excludes items and services furnished by a dedicated emergency department as defined at 42 CFR 489.24(b). Section 1833(t)(21)(B)(ii) of the Act also excepts from the definition of ''off-campus outpatient department of a provider,'' for purposes of paragraphs (1)(B)(v) and (21)(B) of the section, an off-campus PBD that was billing under section 1833(t) of the Act with respect to covered OPD services furnished prior to November 2, 2015, the date of enactment of the BBA 2015. As a result, the definition of ''off-campus outpatient department of a provider'' *does not* include:

• Off-campus PBDs that were billing under the OPPS for covered OPD services furnished prior to November 2, 2015;

• PBDs located on the campus of a hospital;

• Those PBDs within the distance (described in the definition of campus at § 413.65(a)(2), as of November 2, 2015) of a remote location of a hospital facility; or

• Those PBDs determined by the CMS Regional Office to be part of the provider's campus.

The items and services furnished by these excepted off-campus PBDs on or after January 1, 2017 continue to be paid under the OPPS.

3. Extraordinary Circumstances Policy

In implementing section 603 of the BBA 2015, we recognized the need to determine the status of PBDs that had been excepted but subsequently relocated. In 42 CFR 419.48(a)(2), we established a policy that excepted off-campus PBDs that have not impermissibly relocated can remain excepted. Generally speaking, this means that excepted PBDs that relocate will typically lose their excepted status and be paid under the applicable payment system (generally the PFS) instead. In the CY 2017 OPPS/ASC final

[15] *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf.*

rule (81 FR 79705), we also explained that on-campus PBDs, which are considered excepted due to their on-campus status, that relocate off-campus would be considered non-excepted following their relocation. In other words, excepted on-campus and off-campus PBDs that relocate to an off-campus location are then typically paid the PFS-equivalent rate for items and services.

In the CY 2017 OPPS/ASC proposed rule (81 FR 45684), we sought comment on potential extraordinary circumstances outside of a hospital's control that may lead a hospital to relocate an off-campus PBD. In the CY 2017 OPPS/ASC final rule (81 FR 79704 through 79706), we finalized a policy to allow excepted off-campus PBDs to relocate, temporarily or permanently, without loss of excepted status, for extraordinary circumstances outside of the hospital's control, such as natural disasters, significant seismic building code requirements, or significant public health and public safety issues. We also finalized that CMS Regional Offices would evaluate and approve or deny these relocation requests. In 2017, we provided additional subregulatory guidance on the process to request an extraordinary circumstances relocation exception, including the requested minimum information hospitals should submit to support such a request.[16]

4. Extraordinary Circumstances for Relocating PBDs During the PHE for the COVID–19 Pandemic

We continue to believe that our current extraordinary circumstances policy is appropriate under normal circumstances. However, we wish to give hospitals that provide services to Medicare beneficiaries the flexibility to respond effectively to the serious public health threats posed by the COVID–19 PHE. We are aware that many hospitals are repurposing existing clinical and non-clinical space for use as temporary expansion sites to furnish inpatient and outpatient care during the PHE for the COVID–19 pandemic. In addition, we recognize that many hospitals are financially constrained due to the reduction in volume caused by the PHE for the COVID–19 pandemic.[17] We believe these constraints may have led, in certain cases, to hospitals furloughing or otherwise laying off clinical staff. Congress recognized these financial constraints in the passage of the CARES Act and the $100 billion appropriation[18] for Medicare and Medicaid providers and suppliers for, among other things, health care-related expenses or lost revenues that are attributable to coronavirus. Nonetheless, we remain concerned that if an excepted PBD that was previously paid the OPPS rate relocates off-campus due to the COVID–19 PHE, some hospitals would have difficulty sustaining operations for necessary services during the COVID–19 PHE at the PBD if they were paid a reduced rate for services that would have otherwise been paid the OPPS rate but for the fact that the COVID–19 PHE necessitated the temporary relocation of the excepted off-campus or on-campus department. Recognizing the urgency of this situation and understanding that hospitals may need additional flexibilities and financial stability to quickly expand capacity to mitigate the impact of the pandemic on Medicare beneficiaries and the American public, we are adopting a temporary relocation exception policy specific to the PHE for the COVID–19 pandemic so that hospitals can maintain treatment capacity and deliver needed care for patients.

For purposes of enabling greater hospital flexibility, and, in particular, enabling hospitals to rapidly develop temporary expansion sites for patient care, we are temporarily adopting an expanded version of the extraordinary circumstances relocation policy during the COVID–19 PHE to include on-campus PBDs that relocate off-campus during the COVID–19 PHE for the purposes of addressing the COVID–19 pandemic. Our policy has historically applied only to excepted off-campus departments that relocate to a different off-campus location for extraordinary circumstances outside of the hospital's control, that submit an extraordinary relocation exception request to their CMS Regional Office, and for which the CMS Regional Office evaluates and approves the request. However, on-campus departments that relocate on or after March 1, 2020 through the remainder of the PHE for the purposes of addressing the COVID–19 pandemic may also seek an extraordinary circumstances relocation exception so that they may bill at the OPPS rate, as long as their relocation is not inconsistent with the state's emergency preparedness or pandemic plan. We believe it is important for hospitals to align their PBD relocations with the state's emergency preparedness or pandemic plans to ensure continuity with state efforts, as well as efforts by other health care providers in their community, to mitigate the effects of the PHE for the COVID–19 pandemic.

We note that this temporary extraordinary circumstances policy is time-limited to the PHE for COVID–19 to enable short-term hospital relocation of excepted off-campus and on-campus departments to improve access to care for patients during this time. The temporary extraordinary circumstances relocation policy established here will end following the end of the PHE for the COVID–19 pandemic, and we anticipate that most, if not all, PBDs that relocate during the COVID–19 PHE will relocate back to their original location prior to, or soon after, the COVID–19 PHE concludes. Hospitals that choose to *permanently* relocate these PBDs off-campus would be considered new off-campus PBDs billing after November 2, 2015, and therefore, would be required to bill using the PN modifier for hospital outpatient services furnished from that PBD location and would be paid the PFS-equivalent rate following the end of the COVID–19 PHE.

Following the COVID–19 PHE, hospitals may seek an extraordinary circumstances relocation exception for excepted off-campus locations that have permanently relocated, but these hospitals would need to follow the standard extraordinary circumstances application process we adopted in CY 2017[19] and file an updated CMS–855A enrollment form to reflect the new address(es) of the PBD(s). We note that our standard relocation exception policy only applies to excepted *off-campus* PBDs that relocate; on-campus PBDs that wish to permanently relocate off-campus will not be able to receive an extraordinary circumstances relocation exception under the standard extraordinary circumstances relocation request process after the conclusion of the COVID–19 PHE. We also note that hospitals should not rely on having relocated the off-campus PBD during the COVID–19 PHE as the reason the off-campus PBD should be permanently excepted following the end of the

[16] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/Subregulatory-Guidance-Section-603-Bipartisan-Budget-Act-Relocation.pdf.*

[17] For example, analysis of Medicare claims in the Integrated Data Repository paid through mid-April 2020 for hospital inpatient services furnished in the final week of March 2020 shows significant decreases (more than 50%), relative to claims paid through mid-April 2019 for hospital services furnished in the final week of March 2019, for certain high-volume elective procedures, like total knee arthroplasty and total hip arthroplasty. We note that any analysis of 2020 claims data is preliminary since providers have up to a year after a service is rendered to submit a claim.

[18] This appropriation is included in Title VIII of the CARES Act as part of the Public Health and Social Services Emergency Fund.

[19] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/Subregulatory-Guidance-Section-603-Bipartisan-Budget-Act-Relocation.pdf.*

COVID–19 PHE. In other words, the fact that the off-campus PBD relocated in response to the pandemic will not, by itself, be considered an ''extraordinary circumstance'' for purposes of a permanent relocation exception, although CMS Regional Offices will continue to have discretion to approve or deny relocation requests for hospitals that apply after the COVID–19 PHE, depending on if the relocation request meets the requirements for the normal extraordinary circumstances exception. Following the COVID–19 PHE, if temporarily relocated off-campus PBDs do not go back to their original location, they will be considered to be non-excepted PBDs and paid the PFS-equivalent rate.

5. New Exception Process for Extraordinary Circumstances Relocation of Existing On-Campus and Excepted Off-Campus PBDs

We are also taking steps to streamline the process for the extraordinary circumstances relocation exceptions for purposes of addressing the COVID–19 pandemic during the PHE. Specifically, using the process outlined below, both excepted off-campus and on-campus PBDs may relocate to off-campus locations during the COVID–19 PHE and begin furnishing and billing for services under the OPPS in the new location prior to submitting documentation to the RO to support the extraordinary circumstances relocation request.

Importantly, if the relocation is denied by the RO under the extraordinary circumstances policy, and the hospital did not bill for them using the ''PN'' modifier, any claims billed under the OPPS in the new location would need to be reprocessed as having been billed by a non-excepted PBD and will instead be paid the PFS-equivalent rate. Non-excepted off-campus departments will continue to be non-excepted during the COVID–19 PHE, even if they relocate, and thus, will continue to be paid the PFS-equivalent rate. They do not need to follow the process outlined below for relocation approval since they are already, and will continue to be, non-excepted.

- Hospitals with on-campus and excepted off-campus PBDs that relocate due to the COVID–19 PHE in a manner that is not inconsistent with their state's emergency preparedness or pandemic plan should append modifier ''PO'' to OPPS claims for services furnished at the relocated PBDs. This modifier indicates a service that is provided at an excepted off-campus PBD and is paid the OPPS payment rate.
- In place of the process adopted in the CY 2017 OPPS/ASC final rule with comment period (81 FR 79704 through 79705) and included in the existing subregulatory guidance under which off-campus PBDs can apply for an extraordinary circumstance relocation exception,[20] all hospitals that relocate excepted on- or off-campus PBDs to off-campus locations in response to the COVID–19 PHE should notify their CMS Regional Office by email of their hospital's CCN; the address of the current PBD; the address(es) of the relocated PBD(s); the date which they began furnishing services at the new PBD(s); a brief justification for the relocation and the role of the relocation in the hospital's response to COVID–19; and an attestation that the relocation is not inconsistent with their state's emergency preparedness or pandemic plan. We expect hospitals to include in their justification for the relocation why the new PBD location (including instances where the relocation is to the patient's home) is appropriate for furnishing covered outpatient items and services.

To the extent that a hospital may relocate to an off-campus PBD that otherwise is the patient's home, only one relocation request during the COVID–19 PHE is necessary. In other words, the hospital would not have to submit a unique request each time it registers a hospital outpatient for a PBD that is otherwise the patient's home; a single submission per location is sufficient. Hospitals must send this email to their CMS Regional Office within 120 days of beginning to furnish and bill for services at the relocated on- or off-campus PBD.

- To provide additional flexibility, for purposes of addressing the PHE for the COVID–19 pandemic, hospitals may divide their PBD into multiple locations during a relocation. That is, if a single excepted PBD location relocates to multiple off-campus PBD locations in response to the COVID–19 PHE and in a manner that is not inconsistent with the state's emergency preparedness or pandemic plan, it will be permissible for all of the off-campus PBDs to which the excepted PBD relocated to continue to bill under the OPPS under the temporary extraordinary circumstances policy that is in place during the COVID–19 PHE. In addition, for purposes of the COVID–19 PHE, hospitals may relocate *part* of their excepted PBD to a new off-campus location while maintaining the original PBD location. Said differently, if a hospital relocates part of an excepted PBD to one or more off-campus PBD locations, it would be permissible for the original excepted PBD location, as well as the relocated off-campus PBD location(s) of that excepted PBD, to continue to bill under the OPPS under the revised extraordinary circumstances policy that is in place during the COVID–19 PHE so long as the extraordinary circumstances policy in effect during the COVID–19 PHE (described earlier in this section) is followed. We believe these flexibilities are needed for hospitals to respond effectively to the COVID–19 PHE. For example, one PBD may need to utilize two locations to maintain separation between COVID-positive and COVID-negative patients. Further, the relocation or partial relocation of an excepted PBD for the extraordinary circumstance of the COVID–19 PHE could involve a single excepted PBD that relocates (or partially relocates) to a patient's home (for purposes of furnishing a covered OPD service), which under the Hospitals without Walls initiative, can be provider-based to the hospital during the COVID–19 PHE. We note that, during the COVID–19 PHE, a patient's home would be considered a PBD of the hospital when the patient is registered as a hospital outpatient (as discussed in section II.F. of this IFC) and is receiving covered OPD services from the hospital.

However, in most cases we do not anticipate that excepted PBDs would need to relocate or partially relocate into many different new locations. Rather, we anticipate most multi-relocations or partial relocations would be to a *limited number* of locations as needed to respond to the COVID–19 PHE in a manner not inconsistent with the state's preparedness and pandemic plan, with the exception being multiple relocations to accommodate care in patient's homes. We also expect hospitals exercising this flexibility to be able to support that the excepted PBD is still the same PBD, just split into more than one location. For example, if the excepted PBD was an oncology clinic, we would expect that the relocated PBD(s) during the COVID–19 PHE would still be providing oncologic services, including in the patient's home to the extent such location is made provider based to the hospital.

- If Medicare-certified hospitals will be rendering services in relocated excepted PBDs, but intend to bill Medicare for the services under the main hospital, no additional provider enrollment actions are required (for example, hospitals do not need to submit an updated CMS–855A enrollment form) for the off-campus

[20] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Downloads/Subregulatory-Guidance-Section-603-Bipartisan-Budget-Act-Relocation.pdf.*

relocated site during the COVID–19 PHE. Following the COVID–19 PHE, as noted in section II.E.4. of this IFC, hospitals that wish to permanently relocate their excepted PBD must file an updated CMS–855A enrollment form to reflect the new address(es) of the PBD(s).

In summary, and as discussed in more detailed above, we are adopting a temporary extraordinary circumstances relocation exception policy for excepted off-campus PBDs that relocate off-campus during the COVID–19 PHE. We are extending that temporary policy to on-campus PBDs that relocate off-campus during the COVID–19 PHE, and permitting the relocating PBDs to continue to be paid under the OPPS. Finally, we are streamlining the process for relocating PBDs to obtain the temporary extraordinary circumstances policy exception.

F. Furnishing Outpatient Services in Temporary Expansion Locations of a Hospital or a Community Mental Health Center (Including the Patient's Home)

Infection control is one of the primary goals of many initiatives CMS has undertaken during the COVID–19 PHE. Through all of the flexibilities offered, we have concentrated on increasing providers' ability to furnish services at temporary expansion locations, including the patient's home, to limit the need for patients to receive care in the hospital itself, which could unnecessarily expose the patients or providers to the pandemic contagion. Among the types of services that beneficiaries would benefit from receiving at temporary expansion locations are those critical outpatient services that hospitals, CMHCs, and CAHs furnish in their service areas. HOPDs, in particular, furnish a wide array of services, from clinic visits and counseling services, to complex surgical procedures and emergency care.

We have taken several actions to create regulatory flexibilities in response to the COVID–19 PHE, including publishing the March 31st COVID–19 IFC, issuing numerous blanket waivers of requirements for health care providers under section 1135 of the Act, and exercising the authority granted under section 1812(f) of the Act. Since that time, we have received many questions about how hospital outpatient services can be furnished when the patient is in a temporary expansion location, including his or her home, particularly for those hospital outpatient services that typically do not co-occur with a physician or NPP furnishing a professional service. Those services are billed only under the hospital OPPS when furnished by the hospital and there is no professional service that is separately billable under the PFS.

In addition, we have received questions about how the hospital should bill during the COVID–19 PHE when the practitioners typically furnishing services in HOPDs are now instead furnishing professional services as Medicare telehealth services under section 1834(m) of the Act under the flexibilities provided by both the waiver of requirements under section 1135(b)(8) of the Act and the March 31st COVID–19 IFC. Because we continue to believe that it is important for beneficiaries to be able to receive care in temporary expansion locations to maintain infection control, we explain in this section the flexibilities that are available to hospitals to enable them to furnish outpatient services to beneficiaries in their homes (or other temporary expansion locations), when such a location is considered to be a PBD of the hospital, as permitted under the waivers in effect during the COVID–19 PHE.

Under ordinary circumstances, Medicare would not pay for hospital outpatient therapeutic services that are furnished to a beneficiary in the beneficiary's home or any other location that could not ordinarily be provider-based to the hospital. Our regulations at § 410.27(a)(1)(iii) explicitly include a requirement that therapeutic outpatient hospital services must be furnished in the hospital or CAH or in a department of the hospital or CAH.

However, as noted above, we have issued numerous blanket section 1135 waivers to give health care providers needed flexibility to address the COVID–19 PHE.[21] As part of this initiative, we have waived the requirements associated with becoming a PBD of a hospital at § 413.65, as well as certain requirements under the Medicare conditions of participation in §§ 482.41 and 485.623, to facilitate the availability of temporary expansion locations. Because of these waivers, during the COVID–19 PHE, temporary expansion locations, including beneficiaries' homes, can become PBDs of hospitals and therapeutic outpatient hospital services furnished to beneficiaries in these provider-based locations can meet the requirement that these services be furnished in the hospital so long as all other requirements are met, including the hospital conditions of participation, to the extent not waived, during the COVID–19 PHE. That is, while certain locations would not normally be permitted to be considered part of a hospital, during the COVID–19 PHE, the section 1135 waivers of the provider-based rules allow temporary expansion locations to become provider-based to the hospital to bill for medically necessary hospital outpatient therapeutic services furnished at those locations, assuming all other applicable requirements are met (including, to the extent not waived, the hospital conditions of participation).

For purposes of clarifying regulatory flexibilities for hospital outpatient therapeutic services furnished to beneficiaries in their homes or other temporary expansion locations for the duration of the COVID–19 PHE, we considered hospital outpatient therapeutic services in three categories: (1) Hospital outpatient therapy, education, and training services, including partial hospitalization program services, that can be furnished other than in-person, and are furnished in a temporary expansion location (which may be the patient's home) that is a PBD of the hospital or an expanded CMHC; (2) hospital outpatient clinical staff services furnished in-person to the beneficiary in a temporary expansion location; and (3) hospital services associated with a professional service delivered by telehealth. We address each of these three categories in more detail below.

1. Hospital Outpatient and CMHC Therapy, Education, and Training Services

In many cases, hospitals provide hospital outpatient therapy (including behavioral health), education, and training services that are furnished by hospital-employed counselors or other licensed professionals. Examples of these services include psychoanalysis, psychotherapy, diabetes self-management training, and medical nutrition therapy. With few exceptions, the Medicare statute does not have a benefit category that would allow these types of professionals (for example, counselors, nurses, and registered dieticians) to bill Medicare directly for their services. These services can, in many cases, be billed by providers such as hospitals under the OPPS or by physicians and other practitioners as services incident to their professional services under the PFS.

Potentially the most prominent of these services are partial hospitalization program (PHP) services, which comprise an intensive outpatient program of psychiatric services provided as an alternative to inpatient psychiatric care

[21] *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf.*

for individuals who have an acute mental illness. We discuss treatment of PHP services separately within this section of this IFC.

Outpatient therapy, education, and training services require communication and interaction. Facility staff can effectively furnish these services using telecommunication technology and, unlike many hospital services, the clinical staff and patient are not required to be in the same location to furnish them. We have already stated that section 1135 blanket waivers in effect during the COVID–19 PHE allow the hospital to consider the beneficiary's home, and any other temporary expansion location operated by the hospital during the COVID–19 PHE, to be a PBD of the hospital, so long as the hospital can ensure the locations meet all of the conditions of participation, to the extent not waived. In light of the need for infection control and a desire for continuity of behavioral health care and treatment services, we recognize the ability of the hospital's clinical staff to continue to deliver these services even when they are not physically located in the hospital. Provided a hospital's clinical staff is furnishing hospital outpatient therapy, education, and training services to a patient in the hospital (which can include the patient's home so long as it is provider based to the hospital), and the patient is registered as an outpatient of the hospital, we will consider the requirements of the regulations at § 410.27(a)(1) to be met. We remind readers that the physician supervision level for the vast majority of hospital outpatient therapeutic services is currently general supervision under § 410.27. This means a service must be furnished under the physician's overall direction and control, but the physician's presence is not required during the performance of the service.

To facilitate public understanding of the types of services we believe can be furnished by the hospital to a patient in the hospital (including the patient's home if it is a PBD of the hospital) using telecommunications technology, we have provided on our website [22] a list of the outpatient therapy, counseling, and educational services that hospital clinical staff can furnish incident to a physician's or qualified NPP's service during the COVID–19 PHE to a beneficiary in their home or other temporary expansion location that functions as a PBD of the hospital when the beneficiary is registered as an outpatient of the hospital. We note that this list may not include every service that falls into this category and we intend to update the list periodically, to the extent that would be helpful for public awareness.

All services furnished by the hospital still require an order by a physician or qualified NPP and must be supervised by a physician or other NPP appropriate for supervising the service given their hospital admitting privileges, state licensing, and scope of practice, consistent with the requirements in § 410.27. We note that hospitals may bill for these services as if they were furnished in the hospital and consistent with any specific requirements for billing Medicare in general, including any relevant modifications in effect during the COVID–19 PHE.[23] We note that when these services are provided by clinical staff of the physician or other practitioner and furnished incident to their professional services, and are *not* provided by staff of the hospital, the hospital would not bill for the services. The physician or other practitioner should bill for such services incident to their own services and would be paid under the PFS. As always, documentation in the medical record of the reason and necessity of the visit is required.

a. Partial Hospitalization Program (PHP)

A PHP is an intensive outpatient program of psychiatric services provided as an alternative to inpatient psychiatric care for individuals who have an acute mental illness, which includes, but is not limited to, conditions such as depression and schizophrenia. Section 1861(ff)(1) of the Act defines partial hospitalization services as the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan. Section 1861(ff)(2) of the Act describes the items and services included in partial hospitalization services. Section 1861(ff)(3)(A) of the Act specifies that a PHP is a program furnished by a hospital to its outpatients or by a CMHC, as a distinct and organized intensive ambulatory treatment service, offering less than 24-hour-daily care, in a location other than an individual's home or inpatient or residential setting. Section 1861(ff)(3)(B) of the Act defines a CMHC for purposes of this benefit.

In CY 2018, which is the most recent period for which we have complete PHP claims data, there were a total of 482,973 paid PHP days, including 394,311 paid PHP days for hospital-based providers and 88,662 paid PHP days for CMHCs. In comparison, inpatient psychiatric facilities (IPFs) billed 4,291,461 utilization days in FY 2019, the most recent period for which we have complete IPF claims data. Based on this comparison, we estimate that IPF services are utilized between 8 and 9 times more frequently than PHP services.

Previously in this section, we identified that infection control is a primary goal of CMS initiatives undertaken during the COVID–19 PHE. We also believe continuity of behavioral health services is critical for those participating in a PHP, particularly at a time of heightened anxiety and uncertainty. As noted above, we have issued numerous blanket waivers under section 1135 of the Act, including for hospitals and CMHCs providing PHP services, to give health care providers needed flexibility to address the COVID–19 PHE and support the goal of infection control while maintaining access to partial hospitalization services and ensuring continuity of care for patients. Effective as of March 1, 2020 and for the duration of the COVID–19 PHE, a temporary expansion location where the beneficiary may be located, including a beneficiary's home, may be a PBD of the hospital, or may be a temporary extension of the CMHC (discussed in more detail below).

Consistent with the goals of infection control and maintaining access, for the duration of the COVID–19 PHE only, providers can furnish certain partial hospitalization services remotely to patients in a temporary expansion location of the hospital or CMHC, which may include the patient's home to the extent it is made provider-based to the hospital or an extension of the CMHC. PHP services consist of unique combinations of services designated at section 1861(ff)(2) of the Act, including individual psychotherapy, patient education, and group psychotherapy. Certain PHP services such as these require communication and interaction, but do not require the clinical staff or patient to be in the same location, nor do clinical staff need to be in the hospital or CMHC when furnishing these PHP services. Therefore, the

[22] *www.cms.gov.*

[23] *https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page.*

following types of services—to the extent they were already billable as PHP services in accordance with existing coding requirements prior to the COVID–19 PHE—can now be furnished to beneficiaries by facility staff using telecommunications technology during the COVID–19 PHE: (1) Individual psychotherapy; (2) patient education; and (3) group psychotherapy. Because of the intensive nature of PHP, we expect PHP services to be furnished using telecommunications technology involving both audio and video. However, we recognize that in some cases beneficiaries might not have access to video communication technology. In order to maintain beneficiary access to PHP services, only in the case that both audio and video are not possible can the service be furnished exclusively with audio. To be clear, services that require drug administration cannot be furnished using telecommunications technology. To facilitate public understanding of the types of PHP services that can be furnished using telecommunications technology by the hospital to a patient in the hospital (including the patient's home if it is a PBD of the hospital) or by the CMHC to a patient in an expanded CMHC location, we have provided on our website [24] a list of the individual psychotherapy, patient education, and group psychotherapy services that hospital or CMHC staff can furnish during the COVID–19 PHE to a beneficiary in their home or other temporary expansion location that functions as a PBD of the hospital or expanded CMHC when the beneficiary is registered as an outpatient. We note that this list may not include every service that falls into this category and we intend to update the list periodically, to the extent that would be helpful for public awareness.

Although these services can be furnished remotely, all other PHP requirements are unchanged and still in effect, including that all services furnished under the PHP still require an order by a physician, must be supervised by a physician, must be certified by a physician, and must be furnished in accordance with coding requirements by a clinical staff member working within his or her scope of practice. In accordance with the longstanding requirements that are detailed in the Medicare Benefit Policy Manual, Pub 100–02, chapter 6, section 70.3, documentation in the medical record of the reason for the visit and the substance of the visit is required. As noted above, when these services are provided by clinical staff of the physician or other practitioner and furnished incident to their professional services, and are not provided by staff of the hospital or CMHC, the hospital or CMHC would not bill for the services. The physician or other practitioner should bill for such services incident to their own services and would be paid under the PFS.

(i.) Hospital-Based PHP Providers

As detailed above, in CY 2018, hospital-based providers furnished 394,311 paid PHP days to Medicare beneficiaries, approximately 81.6 percent of Medicare-paid PHP days in that year. As part of the initiative to promote infection control and maintain access to PHP services, we have waived the requirements for being a PBD of the hospital in § 413.65, as well as certain requirements under the Medicare conditions of participation in §§ 482.41 and 485.623, to facilitate the availability of temporary expansion locations. As noted above, for purposes of the COVID–19 PHE and effective as of March 1, 2020, a temporary expansion location where the beneficiary may be located, including a beneficiary's home, may be a PBD of the hospital where the location meets the non-waived conditions of participation. Together, these waivers allow hospitals to consider a temporary expansion location where the beneficiary may be located, including their homes, an HOPD only in the context of the COVID–19 PHE. Thus, for the duration of the COVID–19 PHE, we will consider the PHP services furnished by hospital clinical staff, when the beneficiary is registered as an outpatient of the hospital and in accordance with the supervising practitioner's scope of practice, to the beneficiary in a temporary expansion location where the beneficiary may be located, including a beneficiary's home, to have been furnished in the hospital so long as the temporary expansion location is made provider-based to the hospital. The hospital should bill for these services as if they were furnished in the hospital and consistent with any specific requirements for billing Medicare during the COVID–19 PHE.

(ii.) Community Mental Health Centers

A CMHC is a provider of PHP services defined under section 1861(ff)(3)(B) of the Act. As detailed above, in CY 2018, CMHCs furnished 88,662 paid PHP days to Medicare beneficiaries, approximately 18.4 percent of Medicare-paid PHP days in that year. For the duration of the COVID–19 PHE, we are waiving the restriction at § 485.918(b)(1)(iii) for the purpose of providing PHP services to CMHC patients in their homes, which will be considered a temporary expansion location of a CMHC. A temporary expansion location where the beneficiary may be located, including the beneficiary's home, can be considered part of a CMHC, and certain therapeutic services furnished to beneficiaries, when the beneficiary is registered as an outpatient of the CMHC, in these temporary expansion locations can meet the requirement that these services be furnished in the CMHC. Specifically, for the purposes of the COVID–19 PHE and effective as of March 1, 2020, we will consider temporary expansion locations where the beneficiary may be located, including a beneficiary's home, to be a part of the CMHC once a patient is registered as an outpatient of the CMHC, while PHP services are being furnished at that location by CMHC staff in accordance with the supervising practitioner's scope of practice. Therefore, we will consider services furnished in that location to have been furnished in the CMHC. The CMHC should bill for these services as if they were furnished in the CMHC and consistent with any specific requirements for billing Medicare during the COVID–19 PHE.

2. Hospital In-Person Clinical Staff Services in a Temporary Expansion Location (Which May the Home)

Hospitals also provide services that are furnished by clinical staff under a physician's or qualified NPP's order that do not require professional work by the physician or qualified NPP, and thus, are billed only under the OPPS when furnished by the hospital and are not separately billable under the PFS. Wound care, chemotherapy administration, and other drug administration are examples [25] of these types of services. We note that while surgical services also fall under this category, we would not anticipate that they would be furnished in a home that becomes provider-based to the hospital, due to infection control and operating room requirements. In addition, there are several other hospital outpatient therapeutic services that require the hospital's clinical staff's presence to furnish the service. The current section 1135 blanket waivers in place during the COVID–19 PHE allow the patient's home to be considered an outpatient

[24] *www.cms.gov.*

[25] With regard to observation services, we note that to bill for observation services all existing requirements must be met. These requirements are identified in Chapter 4, Section 290 of the Medicare Claims Processing Manual.

PBD of the hospital. With a primary goal of infection control and understanding that hospitals must meet the conditions of participation, to the extent not waived during the COVID–19 PHE, we are making the public aware of the flexibilities that exist during the COVID–19 PHE that enable hospitals to furnish these clinical staff services in the patient's home as an outpatient PBD and to bill and be paid for these services as HOPD services when the patient is registered as a hospital outpatient. Because these services have to be provided in person by clinical staff, these services cannot be furnished by telecommunication technology by the hospital. In these instances, hospital clinical staff must be physically present in the patient's home or other temporary expansion location that is provider based to the hospital to furnish the hospital outpatient therapeutic service. The physician supervision level must be met for these services, and we note that for the vast majority of therapeutic hospital outpatient services, the required supervision level is currently general supervision under § 410.27. This means a service is furnished under the physician's overall direction and control, but the physician's presence is not required during the performance of the service. This includes non-surgical extended duration therapeutic services (NSEDTSs), which are services that can last a significant period of time, have a substantial monitoring component that is typically performed by auxiliary personnel, have a low risk of requiring the physician's or appropriate NPP's immediate availability after the initiation of the service, and are not primarily surgical in nature. Direct supervision is generally required for the initiation of these NSEDTs, followed by a general supervision requirement for the duration of the service. In the March 31st COVID–19 IFC, we changed the supervision requirement for NSEDTs to instead require a general level of supervision throughout the service, including at service initiation, for the duration of the COVID–19 PHE.

Importantly, during the time period that the patient is receiving services from the hospital clinical staff as a registered outpatient, the patient's place of residence cannot be considered a home for purposes of HHA services. This is because HHAs cannot bill for services furnished in PBDs of hospitals, and a patient's home has provider-based status when the patient is a registered hospital outpatient and HOPD services are being furnished. Because the home is not a traditional PBD, and because there are interactions with other types of providers or suppliers who may furnish services in the home, but not in the ''hospital,'' we note that hospitals should only consider the patient home to be provider-based to the hospital when the patient is registered as a hospital outpatient. When the patient is not receiving outpatient services by the hospital, the patient's home can be considered a home for purposes of the home health benefit and the HHA can furnish and bill for home health services. The hospital should be aware if the patient is under a home health plan of care, and it must not furnish services to the patient that could be furnished by the HHA while the plan of care is active. That is, to the extent that there is some overlap between the types of services a HHA and a HOPD can provide, and the patient has a current home health plan of care, the hospital should only furnish services that cannot be furnished by the HHA.

The fact that these services can be furnished in a patient's home or another temporary expansion location that is temporarily provider based to the hospital does not change the requirements that all services furnished by the hospital require an order by a physician or qualified NPP and must be supervised by a physician or other NPP appropriate for supervising the service given their hospital admitting privileges, state licensing, and scope of practice consistent with the requirements in § 410.27. Hospitals should bill for these services as they ordinarily bill for services along with any specific billing requirements for relocating PBDs specific to billing during a COVID–19 PHE as discussed in section II.D. of this IFC (that is, appending the PO modifier for excepted items and services and the PN modifier for nonexcepted services). Information regarding the application of section 603 of the BBA 2015 to relocating PBDs is available in section II.F.4. of this IFC, as well as section II.E. of this IFC.

3. Hospital Services Accompanying a Professional Service Furnished Via Telehealth

The majority of hospital services are furnished in conjunction with professional services of physicians and other practitioners. In these instances, practitioners furnish and bill separately for their professional services indicating the place of service as a HOPD, and the hospital bills separately to be paid for the clinical labor, equipment, overhead, and capital to support the delivery of that professional service. In the March 31st COVID–19 IFC, we instructed physicians and other practitioners furnishing telehealth services to beneficiaries in their homes as permitted during the COVID–19 PHE to bill for those services in the same way they would if they were furnishing the services in person (85 FR 19233). For many professionals, the HOPD is the usual location where they furnish services. For the duration of the COVID–19 PHE and effective March 1, 2020, when a practitioner who ordinarily practices in a HOPD furnishes a telehealth service to a patient who is located at home (or otherwise not in a telehealth originating site), they would submit a professional claim with the place of service code indicating the service was furnished in the HOPD and using the Current Procedural Terminology (CPT) telehealth modifier, modifier 95. Medicare would pay the practitioner under the PFS at the ''facility'' rate as if the service was furnished in the HOPD. We adopted the aforementioned interim rule because we believed that, but for the COVID–19 PHE, the physician or practitioner would likely have furnished the service in person at their usual practice location; and that the service was instead furnished via telehealth for purposes of infection control. The March 31st COVID–19 IFC did not provide for the hospital to submit any claim for the service under the aforementioned scenario.

We acknowledge that when a physician or practitioner who ordinarily practices in the HOPD furnishes a telehealth service to a patient who is located at home, the hospital would often still provide some administrative and clinical support for that service. When a registered outpatient of the hospital is receiving a telehealth service, the hospital may bill the originating site facility fee to support such telehealth services furnished by a physician or practitioner who ordinarily practices there. This includes patients who are at home, when the home is made provider-based to the hospital (which means that all applicable conditions of participation, to the extent not waived, are met), under the current waivers in effect for the COVID–19 PHE.

More specifically, when a telehealth service is furnished by a practitioner located at a distant site to a patient who is located in the HOPD, the hospital is presumed to provide administrative and clinical support resources. In such circumstances, section 1834(m)(2)(B) of the Act allows for an originating site facility fee to be paid to the hospital. Section 1834(m)(2)(B)(ii) of the Act further provides that no facility fee shall be paid to an originating site described in paragraph (4)(C)(ii)(X) (that is, the home). However, as described

throughout this section, the patient's home may be considered a PBD of the hospital during the COVID–19 PHE if other applicable requirements (including the non-waived conditions of participation) are met. As noted above, because the home is not a traditional PBD, and because there are interactions with other types of providers or suppliers who may furnish services in the home, but not in the ''hospital,'' we note that hospitals should only furnish hospital outpatient services to a patient (who is registered as a hospital outpatient) after the patient's home has been made provider-based to the hospital for the provision of such services. In that event, the home would be serving as a PBD of the hospital, and as the originating site for the telehealth service furnished by a physician or practitioner located at a distant site.

The originating site facility fee is the statutory payment that is made to the facility for providing the site where the patient is located, and any other administrative or clinical support, for a telehealth service. Therefore, during the COVID–19 PHE, when telehealth services are furnished by a physician or practitioner who ordinarily practices in the HOPD to a patient who is located at home or other applicable temporary expansion location that has been made provider based to the hospital, we believe it would be appropriate to permit the hospital to bill and be paid the originating site facility fee amount for those telehealth services, just as they would have ordinarily done outside of the COVID–19 PHE in this circumstance.

As such, for the duration of the COVID–19 PHE, we are making the public aware that under the flexibilities already in effect, when a patient is receiving a professional service via telehealth in a temporary expansion location that is a PBD of the hospital, and the patient is a registered outpatient of the hospital, the hospital in which the patient is registered may bill the originating site facility fee for the service. As always, documentation in the medical record of the reason for the visit and the necessity of the visit is required.

4. Intersection With Payment Policy for Hospital Outpatient PBDs

As discussed previously, we have waived [26] the requirements for being a PBD of the hospital in § 413.65, as well as certain requirements under the Medicare conditions of participation in §§ 482.41 and 485.623, to facilitate the availability of temporary expansion sites. Importantly, these waivers do not determine whether a PBD is excepted or non-excepted for purposes of section 603 of the BBA 2015, and the definitions in § 413.65 that section 603 cross-references, including the definition of campus at § 413.65(a)(2), remain relevant to that determination. However, in section II.E. of this IFC, we discuss a temporary extraordinary circumstances relocation policy for on-campus and excepted off-campus hospital outpatient PBDs that relocate due to the COVID–19 PHE, under which these PBDs that relocate in accordance with that policy can continue to bill and be paid as an on-campus or excepted off-campus PBD at the full OPPS payment rate. The hospital's relocation must not be inconsistent with their state's emergency preparedness or pandemic plan. For purposes of the COVID–19 PHE, on-campus or excepted off-campus PBDs can be considered to have relocated (or partially relocated) to a beneficiary's home, or other temporary expansion location of the hospital, when the beneficiary is registered as an outpatient of the hospital during service delivery. Under this policy, the PBD is still considered either an on-campus or excepted off-campus PBD that is not subject to section 603 of the BBA 2015 and would bill with the ''PO'' modifier for services furnished to beneficiaries in their homes as a relocated (or partially relocated) PBD and will receive the full OPPS rate. However, we note that if the hospital does not relocate (or partially relocate) an existing on-campus or excepted off-campus PBD to the patient's home and does not seek an exception under the temporary extraordinary circumstances relocation exception policy discussed in section II.E. of this IFC, the patient's home would be considered a new non-excepted off-campus PBD and the hospital would bill with the ''PN'' modifier and receive the PFS-equivalent rate.

Under section II.F.1. of this IFC, we have identified certain outpatient therapy, counseling, and educational services that hospital clinical staff can furnish (using telecommunications technology) incident to a physician's service during the COVID–19 PHE to a beneficiary who is registered as an outpatient when those services are furnished in the beneficiary's home, which functions as a PBD of the hospital. For example, hospital clinical staff can now remotely furnish psychotherapy (for example, HCPCS code 90832) to the beneficiary in their home, as long as the beneficiary is a registered outpatient of the hospital and the patient's home is made provider-based to the hospital. In this circumstance, if the hospital considers the beneficiary's home a relocated (or partially relocated) PBD, and follows the temporary extraordinary circumstances exception policy discussed in section II.E. of this IFC, the hospital would bill the applicable HCPCS code (for example, HCPCS code 90832) along with modifier ''PO'' to receive the full OPPS payment amount. The hospital will be paid under the PFS for services furnished to a beneficiary in their home if the hospital does not seek an extraordinary circumstances relocation exception for their PBD and, if applicable, include the patient's home address as one of the locations to which the PBD relocated and bill the claim for the services furnished in the patient's home using the PO modifier.

5. Summary

As discussed above, we clarified that hospital and CMHC staff can furnish certain outpatient therapy, counseling, and educational services (including PHP services) incident to a physician's service during the COVID–19 PHE to a beneficiary in their home or other temporary expansion location using telecommunications technology. In these circumstances, the hospital can furnish services to a beneficiary in a temporary expansion location (including the beneficiary's home) if that beneficiary is registered as an outpatient; and the CMHC can furnish services in an expanded CMHC (including the beneficiary's home) to a beneficiary who is registered as an outpatient. We also clarified that hospitals can furnish clinical staff services (for example, drug administration) in the patient's home, which is considered provider-based to the hospital during the COVID–19 PHE, and to bill and be paid for these services when the patient is registered as a hospital outpatient. Further, we clarified that when a patient is receiving a professional service via telehealth in a location that is considered a hospital PBD, and the patient is a registered outpatient of the hospital, the hospital in which the patient is registered may bill the originating site facility fee for the service. Finally, we clarified the applicability of section 603 of the BBA 2015 to hospitals furnishing care in the beneficiaries' homes (or other temporary expansion locations), and whether those locations are considered relocated, partially relocated, or new PBDs.

[26] *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf.*

G. Medical Education

1. Indirect Medical Education

a. Overview of Indirect Medical Education

Section 1886(d)(5)(B) of the Act provides for a payment adjustment known as the indirect medical education (IME) adjustment under the inpatient prospective payment system (IPPS) for hospitals that have residents in an approved Graduate Medical Education (GME) program, to account for the higher indirect patient care costs of teaching hospitals relative to non-teaching hospitals. The statute describes the calculation of the IME payment adjustment, which is applied to the (Medicare Severity-Diagnosis Related Group) MS–DRG payments based on the ratio of the hospital's number of full-time equivalent (FTE) residents training in the portion of the hospital subject to the IPPS or in such hospital's outpatient departments (OPDs), as well as qualifying non-provider sites to the number of inpatient hospital beds. The regulation regarding the calculation of this additional payment is located at 42 CFR 412.105.

The calculation of IME payments is affected by a hospital's resident-to-bed ratio, which is the ratio of the number of FTE residents that a hospital is allowed to count to the number of available beds at the hospital. Generally, the greater the number of allowable FTE residents a hospital counts, the greater the amount of Medicare IME payments the hospital will receive. Conversely, the greater number of beds at the hospital for the same number of residents, the lower the amount of the IME payments the hospital will receive.

Similar payment adjustments to reflect the higher costs of facilities that train medical interns and residents are applied in the inpatient rehabilitation facility (IRF) and IPF contexts (referred to as ''teaching status adjustments''). For IRFs, section 1886(j)(3)(A)(v) of the Act confers broad authority upon the Secretary to adjust the per unit payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment. For example, we adjust the federal IRF prospective payment amount to account for facility-level characteristics such as an IRF's low-income percentage, teaching status, and location in a rural area, if applicable, as described in § 412.624(e). Under § 412.624(e)(4), for discharges on or after October 1, 2005, we adjust the Federal prospective payment on a facility basis by a factor as specified by CMS for facilities that are teaching institutions or units of teaching institutions. This adjustment is made on a claim basis as an interim payment and the final payment in full for the claim is made during the final settlement of the cost report.

Under the regulatory authority set out at § 412.624(e)(4), the IRF teaching adjustment is based on the ratio of the number of FTE residents training in the IRF divided by the facility's average daily census (ADC), subject to a cap. Specifically, the amount of the adjustment is calculated by adding 1 to the ratio of interns and residents to the ADC, and then raising that sum to the 1.0163 power, as described in Chapter 3, Section 140.2.5.4 of the Medicare Claims Processing Manual (Pub. 100–04) at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.*

For IPFs, section 1886(s) of the Act authorizes the Secretary to develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units (IPFs) in accordance with section 124 of the Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113, November 29, 1999); section 124(a)(1) of the BBRA, in turn requires the Secretary to develop an adequate patient classification system that reflects the differences in patient resource use and costs among IPFs. Under this authority, we adjust the IPF federal per diem base rate to account for facility-level characteristics such as being located in a rural area, teaching status, and the cost of living for IPFs located in Alaska and Hawaii, if applicable, as described in § 412.424(d). For cost reporting periods beginning on or after January 1, 2005 under § 412.424(d)(1)(iii), we adjust the Federal per diem base rate by a factor to account for indirect teaching costs. This adjustment is made on a claim basis as an interim payment and the final payment in full for the claim is made during the final settlement of the cost report.

In accordance with § 412.424(d)(1)(iii), an IPF's teaching adjustment is based on the ratio of the number of FTE residents training in the IPF divided by the facility's ADC, subject to a cap. Specifically, the amount of the adjustment is calculated by adding 1 to the ratio of interns and residents to the ADC, and then raising that sum to the 0.5150 power, as described in Chapter 3, Section 190.6.3 of the Medicare Claims Processing Manual (Pub. 100–04) at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf.*

We continue to believe that our current policies for calculating IME payments and the IRF and IPF teaching status adjustments are consistent with the statute and appropriate under normal circumstances. However, we wish to give hospitals, IRFs, and IPFs that provide services to Medicare beneficiaries the flexibility to respond effectively to the serious public health threats posed by COVID–19. Recognizing the urgency of this situation, and understanding that hospitals may need additional flexibilities to expand capacity in the efforts to mitigate the impact of the pandemic on Medicare beneficiaries and the American public, we are changing our policies during the PHE for the COVID–19 pandemic so that hospitals, IRFs, and IPFs do not experience undue reductions in IME or teaching status adjustment payment amounts.

b. Holding Hospitals Harmless From Reductions in IME Payments Due to Increases in Bed Counts Due to COVID–19

We have been asked by multiple teaching hospitals if CMS can hold hospitals harmless from a reduction in IME payments resulting from the temporary increase in the number of available hospital beds due to the influx of COVID–19 patients. The IME payment formula (under section 1886(d)(5)(B) of the Act and § 412.105) is determined in part using each teaching hospital's ratio of allowable FTE residents in the numerator and available beds in the denominator. To accommodate the increase in COVID–19-related patients, many hospitals are increasing their number of inpatient beds. Using our exceptions and adjustments authority under section 1886(d)(5)(I)(i) of the Act, and to mitigate IME payment changes from pre-COVID levels, for the duration of the COVID–19 PHE, for purposes of determining a hospital's IME payment amount, the hospital's available bed count is considered to be the same as it was on the day before the COVID–19 PHE was declared. We are revising § 412.105(d)(1), to state that beds temporarily added during the timeframe of the COVID–19 PHE, as defined in § 400.200, is in effect, are excluded from the calculations to determine IME payment amounts.

c. Holding IRFs and IPFs Harmless From Reductions to Teaching Status Adjustment Payments Due to COVID–19

We have been asked by IRFs and IPFs if CMS can hold facilities harmless from a reduction in teaching status adjustment payments resulting from the

temporary increase in facilities' ADC due to the influx of COVID–19 patients. We are concerned that, if a teaching IRF or IPF accepts patients from the inpatient acute care hospital to alleviate bed capacity during the PHE for the COVID–19 pandemic, the IRF's or IPF's ADC would increase, which would artificially decrease the IRF's or IPF's ratio of number of interns and residents to ADC and thereby decrease the facility's teaching status adjustment. To ensure that teaching IRFs or teaching IPFs can alleviate bed capacity issues by taking patients from the inpatient acute care hospitals without being penalized by lower teaching status adjustments, we believe it is appropriate to freeze the IRFs' or IPFs' teaching status adjustment payments at their values prior to the COVID–19 PHE. Therefore, for the duration of the COVID–19 PHE, an IRF's or an IPF's teaching status adjustment payment amount will be the same as it was on the day before the COVID–19 PHE was declared.

2. Time Spent by Residents at Another Hospital During the COVID–19 PHE

a. Overview of Graduate Medical Education

Section 1886(h) of the Act, as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272, enacted April 7, 1986), establishes a methodology for determining Medicare payments to hospitals for the direct costs of approved GME programs. Section 1886(h)(2) of the Act sets forth a methodology for the determination of a hospital-specific base-period per resident amount that is calculated by dividing a hospital's allowable direct costs of GME in a base period by its number of FTE residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, October 1, 1983 through September 30, 1984). The base year per resident amount is updated annually for inflation. In general, Medicare direct GME (DGME) payments are calculated by multiplying the hospital's updated per resident amount by the weighted number of FTE residents working in all areas of the hospital complex (and at non-provider sites, when applicable), and the hospital's Medicare share of total inpatient days. The provisions of section 1886(h) of the Act are implemented in regulations at §§ 413.75 through 413.83.

As noted earlier, section 1886(d)(5)(B) of the Act provides for a payment adjustment known as the IME adjustment under the IPPS for hospitals that have residents in an approved GME program, to account for the higher indirect patient care costs of teaching hospitals relative to non-teaching hospitals. The regulation regarding the calculation of this additional payment is located at § 412.105. The hospital's IME adjustment applied to the MS–DRG payments is calculated based on the ratio of the hospital's number of FTE residents training in the portion of the hospital subject to the IPPS or the OPDs of such hospital, as well as qualifying nonprovider sites to the number of inpatient hospital beds.

The calculation of both DGME and IME payments is affected by the number of FTE residents that a hospital is allowed to count. Generally, the greater the number of FTE residents a hospital counts, the greater the amount of Medicare DGME and IME payments the hospital will receive. Congress, through the Balanced Budget Act of 1997 (Pub. L. 105–33, enacted August 5, 1997), established a limit (that is, a cap) on the number of allopathic and osteopathic residents that a hospital may include in its FTE resident count for DGME and IME payment purposes. Under section 1886(h)(4)(F) of the Act, for cost reporting periods beginning on or after October 1, 1997, a hospital's unweighted FTE count of allopathic and osteopathic residents for purposes of DGME may not exceed the hospital's unweighted FTE count for DGME in its most recent cost reporting period ending on or before December 31, 1996. Under section 1886(d)(5)(B)(v) of the Act, a similar limit based on the allopathic and osteopathic FTE count for IME during that cost reporting period is applied effective for discharges occurring on or after October 1, 1997. Dental and podiatric residents are not included in this statutorily mandated cap.

We continue to believe that our current policies for calculating DGME and IME payments are consistent with the statute and are appropriate under normal circumstances. However, we wish to give hospitals that provide services to Medicare beneficiaries the flexibility to respond effectively to the serious public health threats posed by COVID–19. Recognizing the urgency of this situation, and understanding that our current policies may inhibit use of residents or capacity that might otherwise be effective in the efforts to mitigate the impact of the COVID–19 pandemic on Medicare beneficiaries and the American public, we are changing our policies during the PHE for the COVID–19 pandemic so that hospitals do not experience undue reductions in DGME or IME payment amounts.

b. Time Spent by Residents at Another Hospital During the COVID–19 PHE

We have been asked about the Medicare GME payment consequences of teaching hospitals sending residents assigned to them to other hospitals to meet COVID–19-related surges in patient volume.

Under our current regulations, a hospital cannot claim the time spent by residents training at another hospital for purposes of GME payments (§§ 412.105(f)(1)(iii)(A) for IME and 413.78(b) for DGME).

In the unprecedented context of the nationwide COVID–19 PHE, when teaching hospitals need flexibility to determine resident training on an emergency basis to respond to the COVID–19 pandemic and hospitals are facing significant workforce challenges, we believe that teaching hospitals should be able to send residents, on an emergency basis, without regard to GME financial considerations, to hospitals where they are most needed to treat COVID–19 or non-COVID–19 patients. Therefore, we are revising §§ 412.105(f)(1)(iii)(A) for IME and 413.78 for DGME to allow teaching hospitals during the COVID–19 PHE to claim for purposes of IME and DGME payments the time spent by residents training at other hospitals. We recognize this is a significant departure from existing policy and this action is being taken only during this PHE due to the unprecedented nature of the COVID–19 PHE. If the teaching hospital to which a resident is assigned sends the resident to another hospital and claims the resident's time, no other hospital, teaching or non-teaching, would be able to claim that time. During the COVID–19 PHE, the presence of residents in non-teaching hospitals will not trigger establishment of per resident amounts or FTE resident caps at those non-teaching hospitals.

Specifically, for the timeframe that the PHE associated with COVID–19 is in effect, we are using our authority under section 1886(h)(4)(A) and (B) of the Act to suspend the requirement that a hospital cannot claim the time spent by residents training at another hospital so that a hospital which sends residents to another hospital can claim those FTE residents on its Medicare cost report while they are training at another hospital in its FTE count, if all of the following conditions and all other applicable requirements are met:

- The sending hospital sends the resident to another hospital in response to the COVID–19 pandemic. This criterion would be met if either the sending hospital or the other hospital

are treating COVID–19 patients. We would not require that the resident be involved in patient care activities for patients with COVID–19 for the sending hospital to demonstrate that it sent the resident to the other hospital in response to the COVID–19 pandemic.

• Time spent by the resident at the other hospital would be considered to be time spent in approved training if the activities performed by the resident at the other hospital are consistent with any guidance in effect during the COVID–19 PHE for the approved medical residency program at the sending hospital.

• The time that the resident spent training immediately prior to and/or subsequent to the timeframe that the PHE associated with COVID–19 was in effect was included in the sending hospital's FTE resident count.

We believe that this policy will allow hospitals to react quickly and in ''real time'' to send residents to facilities where they are most needed during the PHE associated with COVID–19.

We are revising § 413.78(b), adding new § 413.78(i), and revising § 412.105(f)(1)(iii)(A) to state the conditions under which a hospital may claim, in its FTE resident count, residents that it sends to another hospital during the PHE associated with COVID–19.

For the duration of the PHE related to COVID–19, CMS has waived certain requirements under the Medicare conditions of participation at §§ 482.41 and 485.623, and the PBD requirements at § 413.65, to the extent necessary, in order to allow hospitals to establish and operate as part of the hospital any location meeting those non-waived conditions of participation for hospitals that continue to apply during the PHE. (See *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf*). Time spent by residents at these locations is not treated any differently from time spent by residents at locations established and operated by the hospital prior to the COVID–19 PHE.

Also, for the duration of the PHE related to COVID–19, CMS has adopted a policy that if routine services are provided under arrangements outside the hospital to its inpatients, these services are deemed to have been provided by the hospital (85 FR 19280). Similarly, time spent by residents at these locations is not treated any differently from time spent by residents at locations established and operated by the hospital prior to the COVID–19 PHE.

H. Rural Health Clinics (RHCs)

1. Revision of Bed Count Methodology for Determining Provider-Based RHCs Exemption to the RHC Payment Limit

RHCs furnish services in rural areas that have been determined to be medically underserved areas or health professional shortage areas. RHCs are paid an all-inclusive rate (AIR) for medically-necessary, face-to-face visits with an RHC practitioner. Section 1833(f) of the Act established an RHC payment limit, which is adjusted annually based on the Medicare Economic Index (MEI). Under section 1833(f) of the Act, an RHC that is provider-based to a hospital with fewer than 50 beds is exempt from the national per-visit payment limit.

To determine which provider-based RHCs are exempt from the payment limit, we use the same methodology that is used to calculate hospital bed count for the Indirect Medical Education adjustment at § 412.105(b). Specifically, a provider-based RHC (as authorized by § 413.65(a)(1)(ii)(L)) that is an integral and subordinate part of a hospital (including a CAH) is excepted from the per-visit payment limit if the hospital has fewer than 50 beds. We have used the methodology set out at § 412.105(b) to make this calculation.

Due to the COVID–19 pandemic, health care providers such as hospitals have been or are planning to increase inpatient bed capacity to address the surge in need for inpatient care. Given this, we do not believe that RHCs that are currently exempt from the national per-visit payment limit should now be subject to the per-visit payment limit due to the COVID–19 PHE, and we do not want to discourage them from increasing bed capacity if needed. Allowing for these provider-based RHCs to continue to receive the payment amounts they would otherwise receive in the absence of the PHE will help maintain their ability to provide necessary health care services to underserved communities. We are implementing, on an interim basis, a change to the period of time used to determine the number of beds in a hospital at § 412.105(b) for purposes of determining which provider-based RHCs are subject to the payment limit. For the duration of the PHE, we will use the number of beds from the cost reporting period prior to the start of the PHE as the official hospital bed count for application of this policy. As such, RHCs with provider-based status that were exempt from the national per-visit payment limit in the period prior to the effective date of the PHE (January 27, 2020) would continue to be exempt for the duration of the PHE for the COVID–19 pandemic, as defined at § 400.200.

I. Durable Medical Equipment (DME) Interim Pricing in the CARES Act

1. Background

a. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Competitive Bidding Program

Section 1847(a) of the Act, as amended by section 302(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, enacted on December 8, 2003), mandates the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) for contract award purposes to furnish certain competitively priced DMEPOS items and services subject to the CBP:

• Off-the-shelf (OTS) orthotics, for which payment would otherwise be made under section 1834(h) of the Act;

• Enteral nutrients, equipment, and supplies described in section 1842(s)(2)(D) of the Act; and

• Certain DME and medical supplies, which are covered items (as defined in section 1834(a)(13) of the Act) for which payment would otherwise be made under section 1834(a) of the Act.

For a list of product categories included in the DMEPOS CBP, please refer to *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSCompetitiveBid/Round-2021/PCs.*

Areas in which the CBP are not implemented are known as non-competitive bidding areas (non-CBAs). Currently, there are no CBAs due to the 2-year gap period in the DMEPOS CBP, allowing any Medicare-enrolled DMEPOS suppliers to furnish DMEPOS items.[27] However, we use the term ''former CBAs'' to refer to areas that were CBAs prior to the 2-year gap, to distinguish those areas from non-CBAs in which the CBP has not previously been implemented.

b. Fee Schedule Adjustment Methodology for Non-CBAs

Section 1834(a)(1)(F)(ii) of the Act requires the Secretary to use information on the payment determined under the Medicare DMEPOS CBP to adjust the fee schedule amounts for DME items and services furnished in all non-CBAs on or after January 1, 2016. Section 1834(a)(1)(F)(iii) of the Act

[27] All DMEPOS CBP contracts expired on December 31, 2018. There is currently a temporary gap in the DMEPOS CBP. Round 2021 of the CBP is scheduled to begin again in January 2021 and extend through December 31, 2023.

requires the Secretary to continue to make these adjustments as additional covered items are phased in under the CBP or information is updated as new CBP contracts are awarded. Similarly, sections 1842(s)(3)(B) and 1834(h)(1)(H)(ii) of the Act authorize the Secretary to use payment information from the DMEPOS CBP to adjust the fee schedule amounts for enteral nutrition and OTS orthotics, respectively, furnished in all non-CBAs. Section 1834(a)(1)(G) of the Act requires the Secretary to specify the methodology to be used in making these fee schedule adjustments by regulation, and to consider, among other factors, the costs of items and services in non-CBAs (where the adjustments would be applied) compared to the single payment amounts for such items and services in the CBAs.

In accordance with the requirements of section 1834(a)(1)(G) of the Act, we conducted notice and comment rulemaking in 2014 to specify methodologies for adjusting the fee schedule amounts for DME, enteral nutrition, and OTS orthotics in non-CBAs in § 414.210(g). We refer readers to the proposed rule entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies,'' published on July 11, 2014 (79 FR 40208), (hereinafter CY 2015 ESRD PPS DMEPOS proposed rule), and the final rule entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies,'' published on November 6, 2014 (79 FR 66120), (hereinafter CY 2015 ESRD PPS DMEPOS final rule) for additional details.

The methodologies set forth in § 414.210(g) account for regional variations in prices, including for rural and non-contiguous areas of the United States. In accordance with § 414.210(g)(1), we determine regional adjustments to fee schedule amounts for each state in the contiguous United States and the District of Columbia, based on the definition of region in § 414.202, which refers to geographic areas defined by the Bureau of Economic Analysis (BEA) in the Department of Commerce for economic analysis purposes (79 FR 66226). Under § 414.210(g)(1)(i) through (iv), adjusted fee schedule amounts for areas within the contiguous United States are determined based on regional prices limited by a national ceiling of 110 percent of the regional average price and a floor of 90 percent of the regional average price (79 FR 66225). Under § 414.210(g)(1)(v), adjusted fee schedule amounts for rural areas are based on 110 percent of the national average of regional prices. Under § 414.210(g)(2), fee schedule amounts for non-contiguous areas are adjusted based on the higher of the average of the single payment amounts for CBAs in non-contiguous areas in the United States, or the national ceiling amount.

We use ZIP codes for rural, non-rural, and non-contiguous areas to establish geographic areas that are then used to define non-CBAs for the purposes of the DMEPOS fee schedule adjustments. A rural area is defined in § 414.202 as a geographic area represented by a postal ZIP code, if at least 50 percent of the total geographic area of the area included in the ZIP code is estimated to be outside any Metropolitan Statistical Area (79 FR 66228). A rural area also includes a geographic area represented by a postal ZIP code that is a low population density area excluded from a CBA in accordance with section 1847(a)(3)(A) of the Act at the time the rules in § 414.210(g) are applied. Non-contiguous areas refer to areas outside the contiguous United States—that is, areas such as Alaska, Guam, and Hawaii (81 FR 77936).

In the final rule entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) and Fee Schedule Amounts, and Technical Amendments To Correct Existing Regulations Related to the CBP for Certain DMEPOS,'' published in the November 14, 2018 **Federal Register** (83 FR 56922), we established fee schedule adjustment methodologies for items and services furnished from January 1, 2019 through December 31, 2020.

For the fee schedule amounts for items and services furnished from January 1, 2019 through December 31, 2020, in all rural and non-contiguous non-CBAs, the fee schedule amounts are based on a blend of 50 percent of the unadjusted fee schedule amounts and 50 percent of the fee schedule amounts adjusted in accordance with the current methodologies under § 414.210(g)(1) through (8) (83 FR 57029). For items and services furnished from January 1, 2019 through December 31, 2020 in all non-CBAs other than rural or non-contiguous areas, the fee schedule amounts are based on 100 percent of the fee schedule amounts adjusted in accordance with the current methodologies under § 414.210(g)(1) through (8) (83 FR 57029). These rules are located at § 414.210(g)(9) and, again, apply to items and services furnished from January 1, 2019 through December 31, 2020 (83 FR 57039; 83 FR 57070 through 57071).

2. Current Issues

Section 3712 of the CARES Act revises the fee schedule amounts for certain DME and enteral nutrients, supplies, and equipment furnished in non-CBAs other than former CBAs through the duration of the emergency period described in section 1135(g)(1)(B) of the Act.

Section 3712(a) of the CARES Act directs the Secretary to implement § 414.210(g)(9)(iii) (or any successor regulation), to apply the transition rule described in such section to all applicable items and services as planned through December 31, 2020, and through the duration of the emergency period described in section 1135(g)(1)(B) of the Act, if longer. Therefore, section 3712(a) of the CARES Act continues our current policy at § 414.210(g)(9)(iii) of paying for DMEPOS items and services furnished in rural and non-contiguous non-CBAs based on a 50/50 blend of adjusted and unadjusted fee schedule amounts through December 31, 2020, or through the duration of the emergency period, whichever is longer. This fee schedule adjustment in rural and non-contiguous areas results in fee schedule amounts that are approximately 66 percent higher than the fully adjusted fee schedule amounts that we currently pay for DMEPOS items and services furnished in non-rural areas in the contiguous United States.

Section 3712(b) of the CARES Act states, for items and services furnished on or after the date that is 30 days after the date of the enactment of this legislation, the Secretary shall apply § 414.210(g)(9)(iv) (or any successor regulation), as if the reference to ''dates of service from June 1, 2018 through December 31, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under this section'' were instead a reference to ''dates of service from March 6, 2020, through the remainder of the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), based on the fee schedule amount for the area is equal to 75 percent of the adjusted payment amount established under this section and 25 percent of the unadjusted fee schedule amount.'' Therefore, section

3712(b) of the CARES Act directs the Secretary to increase the fee schedule amounts for DMEPOS items and services furnished in non-CBAs other than rural and non-contiguous non-CBAs through the duration of the PHE period described in section 1135(g)(1)(B) of the Act. In accordance with § 414.210(g)(9)(iv), the fee schedule amounts in these non-CBA areas are currently based on 100 percent of the adjusted fee schedule amount, but section 3712(b) of the CARES Act requires CMS to pay for these DMEPOS items and services based on 75 percent of the adjusted fee schedule amount and 25 percent of the historic, unadjusted fee schedule amount until the end of the emergency period. This increases payments so that they are approximately 33 percent higher than the payments at the fully adjusted fee schedule amounts.

Section 3712 of the CARES Act does not affect the current adjusted fee schedule amounts in former CBAs. In accordance with § 414.210(g)(10), the fee schedule amounts in the former CBAs will continue to be based on the single payment amounts from 2018 increased by update factors for subsequent calendar years until new competitive bidding contracts are in place.

Section 3712(b) of the CARES Act references two dates on which CMS should implement the payment amount increases for items and services furnished in non-rural and contiguous non-CBAs: April 26, 2020 (April 26th is 30 days after March 27th, the date of the enactment of the CARES Act); and March 6, 2020. We believe that the law was written in a way that is ambiguous and essentially mandates two different and conflicting effective dates for the increase in the fee schedule amounts in non-rural and contiguous non-CBAs. Due to this ambiguity, we believe that we could implement the higher fee schedule amounts in non-rural and contiguous non-CBAs on either March 6, 2020 or April 26, 2020. Because we believe the purpose of the law is to aid suppliers in furnishing items under very challenging situations during the COVID–19 PHE, we believe it is in the public's interest to implement the higher fee schedule amounts starting with the earlier date of March 6, 2020. Therefore, we are revising the regulations to implement the higher fee schedule amounts required under the CARES Act as of March 6, 2020.

Additionally, section 3712(b) of the CARES Act requires CMS to pay the higher fee schedule amounts for the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), but it does not specify the fee schedule amounts that should be in effect if the emergency period ends before December 31, 2020. If not for section 3712(b) of the CARES Act, CMS would be paying the fully adjusted fee schedule amounts for DME items and services furnished in non-rural and contiguous non-CBAs until December 31, 2020. As such, we are specifying in § 414.210(g)(9)(v) that the fee schedule amounts in non-rural and contiguous non-CBAs will again be based on 100 percent of the fee schedule amounts adjusted in accordance with § 414.210(g)(9)(1) through (8) if the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) ends before December 31, 2020.

In summary, we are making conforming changes to § 414.210(g)(9), consistent with section 3712(a) and (b) of the CARES Act, but we are omitting the language in section 3712(b) of the CARES Act that references an effective date that is 30 days after the date of enactment of the law. We are revising § 414.210(g)(9)(iii), which describes the 50/50fee schedule adjustment blend for items and services furnished in rural and noncontiguous areas, to address dates of service from June 1, 2018 through December 31, 2020 or through the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later. We are also adding § 414.210(g)(9)(v) which will state that, for items and services furnished in areas other than rural or noncontiguous areas with dates of service from March 6, 2020, through the remainder of the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), based on the fee schedule amount for the area is equal to 75 percent of the adjusted payment amount established under ''this section'' (by which we mean § 414.210(g)(1) through (8)), and 25 percent of the unadjusted fee schedule amount. For items and services furnished in areas other than rural or noncontiguous areas with dates of service from the expiration date of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) through December 31, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (referred to as ''this section'' in the regulation text). In addition, we are revising § 414.210(g)(9)(iv) to specify for items and services furnished in areas other than rural and noncontiguous areas with dates of service from June 1, 2018 through March 5, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (''this section'' in the regulation text).

J. Care Planning for Medicare Home Health Services

Historically, sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act have stated that for Medicare to make payment for home health services, a physician, who does not have a direct or indirect employment relationship with the HHA, must certify that home health services are required because the individual is confined to his or her home and is in need of skilled nursing care on an intermittent basis, physical or speech therapy, or a continued need for occupational therapy as defined at section 1861(m) of the Act. The certifying physician must establish and periodically review a plan for furnishing such services to such individual while the individual is under the care of a physician. The physician must document that the physician himself or herself or a NP or CNS (as those terms are defined in section 1861(aa)(5) of the Act), who is working in collaboration with the physician in accordance with State law, or a CNM (as defined in section 1861(gg) of the Act) as authorized by State law, or a PA (as defined in section 1861(aa)(5) of the Act) under the supervision of the physician, has had a face-to-face encounter related to the reason the home health services are needed.

Section 3708 of the CARES Act amended sections 1814(a) and 1835(a) of the Act to allow NPs, CNSs, and PAs (as those terms are defined in section 1861(aa) of the Act), to order and certify patients for eligibility under the Medicare home health benefit. Additionally, section 3708 of the CARES Act amended sections 1814(a)(2)(C), 1835 (a)(2)(A)(ii), and 1861(m) of the Act to allow the home health plan of care to be established and periodically reviewed by a physician, NP, CNS, or PA where such services are or were furnished while the individual was under the care of a physician, NP, CNS, or PA. The CARES Act also amended sections 1861(o)(2) and 1861(kk) of the Act to allow (CNMs, NPs, CNSs, or PAs to perform the role originally reserved for a physician in establishing HHA policies that govern the services (and supervision of such services) provided to patients under the Medicare home health benefit, as well as certify that an individual has suffered a bone fracture related to post-menopausal osteoporosis and that the

individual is unable to learn the skills needed to self-administer the osteoporosis drug or is otherwise mentally or physically incapable of self-administering such drug. Finally, section 3708 of the CARES Act amended section 1895(c) of the Act to allow payment for the furnishing of items and services under the home health prospective payment system (HH PPS) when these items and services are prescribed by an NP, CNS, or PA.

In accordance with section 3708 of the CARES Act, these changes are required to take effect within 6 months of enactment of the law and the Secretary shall issue an IFC, if necessary to comply with the required effective date. Per the explicit statutory instructions at section 3708(f) of the CARES Act, we are addressing changes in the regulations in this IFC to ensure these requirements are issued within the timeframe required by statute. These regulations are effective on May 8, 2020, and will be retroactively applicable to March 1, 2020.We believe that enacting these provisions at this time will afford maximum flexibility for providers seeking to order home health care services during the PHE for the COVID–19 pandemic. That is, NPs, CNSs, and PAs would be able to practice to the top of their state licensure to certify eligibility for home health services, as well as establish and periodically review the home health plan of care. This is imperative during the PHE for the COVID–19 pandemic as more beneficiaries may be considered ''homebound'', either because a practitioner has determined that it is medically contraindicated for a beneficiary to leave the home because he or she has a confirmed or suspected diagnosis of COVID–19, or because a practitioner has determined that it is medically contraindicated for a beneficiary to leave the home because the patient has a condition that may make the patient more susceptible to contracting COVID–19.

In accordance with section 1861(aa)(5) of the Act, NPs, CNSs, and PAs are required to practice in accordance with state law in the state in which the individual performs such services. Individual states have varying requirements for conditions of practice, which determine whether a practitioner may work independently without a written collaborative agreement or supervision from a physician, or whether general or direct supervision and collaboration is required. HHAs or other practitioners should check with the relevant state licensing authority websites to ensure that practitioners are working within their scope of practice and prescriptive authority. A review of these websites reveals that the majority of states require physician collaboration for these NPPs. We note that even in states that allow independent practice authority, many of these practitioners continue to work in a practice environment (inpatient facility or outpatient or physician's office) that includes a physician.

Section 1861(aa)(5) of the Act allows the Secretary regulatory discretion regarding the requirements for NPs, CNSs, and PAs. As such, the regulations at §§ 410.74 through 410.76 set out in detail the qualifications needed and services provided by these practitioners under the Medicare program. We believe that we should align, for Medicare home health purposes, the definitions for such practitioners with the existing definitions in regulation at §§ 410.74 through 410.76 for consistency across the Medicare program and to ensure that Medicare home health beneficiaries are afforded the same standard of care. Therefore, we are amending the regulations at parts 409, 424, and 484 to define a NP, a CNS, and a PA (as such qualifications are defined at §§ 410.74 through 410.76) as an ''allowed practitioner''. This means that in addition to a physician, as defined at section 1861(r) of the Act, an ''allowed practitioner'' may certify, establish and periodically review the plan of care, as well as supervise the provision of items and services for beneficiaries under the Medicare home health benefit. Additionally, we are amending the regulations to reflect that we would expect the allowed practitioner to also perform the face-to-face encounter for the patient for whom they are certifying eligibility; however, if a face-to-face encounter is performed by an allowed NPP, as set out at 42 CFR 424.22(a)(1)(v)(A), in an acute or post-acute facility, from which the patient was directly admitted to home health, the certifying practitioner may be different from the provider performing the face-to-face encounter. These regulation changes will become permanent and are not time limited to the period of the PHE for COVID–19. We will review and respond to any comments received on this IFC in the CY 2021 HH PPS final rule.

K. CARES Act Waiver of the ''3-Hour Rule'' and Modification of IRF Coverage and Classification Requirements for Freestanding IRF Hospitals for the PHE During the COVID–19 Pandemic

a. CARES Act Waiver of the ''3-Hour Rule''

In the March 31st COVID–19 IFC (85 FR 19252, 19287), we provided a clarification regarding § 412.622(a)(3)(ii) (commonly referred to as the ''3-hour rule''). On March 27, 2020, the CARES Act was enacted and further addressed § 412.622(a)(3)(ii). Specifically, section 3711(a) of the CARES Act requires the Secretary to waive § 412.622(a)(3)(ii) during the emergency period described in section 1135(g)(1)(B) of the Act. This waiver was issued on April 15 2020, and is available at *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf.* We note that the clarification provided in the March 31st COVID–19 IFC does not address section 3711(a) of the CARES Act as it was developed prior to the enactment of the CARES Act. Because § 412.622(a)(3)(ii) is more directly and comprehensively addressed by section 3711(a) of the CARES Act, the clarification provided in the March 31st COVID–19 IFC is moot and hereby rescinded.

We note that the waiver required by section 3711(a) of the CARES Act is not limited to particular IRFs or patients, and therefore, is available during the emergency period described in section 1135(g)(1)(B) of the Act regardless of whether a patient was admitted for standard IRF care or to relieve acute care hospital capacity. In this IFC, we are waiving § 412.622(a)(3)(ii) to reflect the waiver required by section 3711(a) of the CARES Act.

b. Modification of IRF Coverage and Classification Requirements for Freestanding IRF Hospitals for the PHE During the COVID–19 Pandemic

IRF care is only considered by Medicare to be reasonable and necessary under section 1862(a)(1) of the Act if the patient meets all of the IRF coverage requirements outlined in § 412.622(a)(3), (4), and (5). Failure to meet the IRF coverage criteria in a particular case results in denial of the IRF claim. We note that the March 31st COVID–19 IFC removes the requirement at § 412.622(a)(4)(ii) to complete a post-admission physician evaluation during the COVID–19 PHE, as defined in § 400.200.

While we generally believe that all IRFs should have to comply with the requirements at § 412.29(d), (e), (h), and (i) and § 412.622(a)(3), (4), and (5), we

recognize that there are certain institutional differences between freestanding IRF hospitals and IRF distinct part units of hospitals that may impose barriers on freestanding IRF hospitals seeking to admit patients to relieve acute care hospital capacity during the COVID–19 PHE. Specifically, freestanding IRF hospitals do not have the same close affiliations with acute care hospitals that IRF distinct part units of hospitals have, and are not as able to establish billing procedures under the IPPS as have IRF distinct part units by virtue of the fact that the distinct part units have access to (or at least affiliations with) their parent hospitals' billing departments. Therefore, we are amending the requirements at §§ 412.29(d), (e), (h), and (i) and 412.622(a)(3), (4), and (5) to add an exception for care furnished to patients admitted to freestanding IRF hospitals (identified as those facilities with the last 4 digits of their Medicare provider numbers between 3025 through 3099) solely to relieve acute care hospital capacity during the COVID–19 PHE.

We believe that freestanding IRF hospitals need the flexibility during this COVID–19 PHE to determine the best care for each patient who is admitted solely to relieve acute care hospital capacity. Consistent with the Guidelines for Opening Up America Again at *https://www.whitehouse.gov/openingamerica/,* for the purposes of exercising these IRF flexibilities that are intended to provide broad flexibility for freestanding IRF hospitals to provide surge capacity in support of acute care hospitals in their state or community, CMS considers surge to be alleviated with regard to exercising these flexibilities when the state (or region, as applicable) in which the freestanding IRF is located is in phase 2 or phase 3. In other words, the flexibilities in this IFC are available for freestanding IRF hospitals admitting patients in support of acute care hospitals when the state is in phase 1 or prior to entering phase 1, but are no longer available to the freestanding IRF hospital when the state is in phase 2 or phase 3 of these Guidelines. These flexibilities apply to specific patients who must be discharged from the acute care hospitals to the freestanding IRFs to provide surge capacity for the acute care hospitals, and therefore apply only when those specific patients are admitted to the freestanding IRF hospitals and continue for the duration of that patient's care. We believe this will allow for continuity of care and care planning consistency at admission and throughout a patient's stay if the same flexibilities apply for the duration of a patient's IRF stay. These limitations only apply to the provisions in this IFC and not to any blanket waivers issued, which have their own conditions. Freestanding IRF hospitals must document the particular phase for the state when admitting the patient and electing to exercise these flexibilities.

For billing purposes, we are requiring freestanding IRF hospitals to append the ''DS'' modifier to the end of the IRF's unique patient identifier number (used to identify the patient's medical record in the IRF) to identify patients who are being treated in a freestanding IRF hospital solely to alleviate inpatient bed capacity in a state that is experiencing a surge during the PHE for the COVID–19 pandemic. The modifier will be used to identify those patients for whom the requirements in § 412.622(a)(3)(i), (iii), (iv), (4) and (5) do not apply. Freestanding IRF hospitals will be paid at the IRF PPS rates for patients with the ''DS'' modifier.

We anticipate that freestanding IRF hospitals will take advantage of these flexibilities for those beneficiaries (who are surge patients from inpatient hospitals), while continuing to provide standard IRF-level care for those beneficiaries who would benefit from IRF-level care and would otherwise receive such care in the absence of the COVID–19 PHE. This will provide crucial flexibility to allow freestanding IRF hospitals to aid in the response to the COVID–19 pandemic in several ways. First, we expect that some of the patients that freestanding IRF hospitals care for during the COVID–19 PHE in a state that is experiencing a surge would need high-acuity clinical care but may not need or be able to tolerate the intensive rehabilitation therapy typically provided in an IRF, such as at least two types of therapy. Second, waiving the documentation requirements in § 412.622(a)(4) and (5) for patients alleviating inpatient hospital bed capacity allows freestanding IRF hospitals to concentrate on providing care for surge patients from the acute care hospitals in a state that is experiencing a surge, instead of completing documentation that may not be applicable to these acute patients during the PHE. Third, this flexibility allows freestanding IRF hospitals to maximize their available beds to take advantage of space where COVID–19 patients or surge patients could be safely managed. We believe this policy will allow freestanding IRF hospitals to make a clinical determination about what level of care each individual patient needs during the PHE for the COVID–19 pandemic.

To effectuate these changes, we are amending § 412.622(a)(3)(i), (ii), (iii), and (iv) to state that these IRF coverage criteria continue to be required, except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE, as defined in § 400.200. Similarly, in § 412.622(a)(4), we are amending this paragraph to state that the IRF documentation requirements must be present in the IRF medical record, except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE, as defined in § 400.200. In § 412.622(a)(5), we are amending this paragraph to state that an interdisciplinary team approach to care is required, except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE, as defined in § 400.200. We are also amending § 412.29(d), (e), (h), and (i) to align the provisions we have waived in § 412.622 with the classification criteria for payment to freestanding IRF hospitals under the IRF prospective payment system. Finally, we are amending § 412.622(c) to add a definition of state (or region, as applicable) that are experiencing a surge and § 412.29 to cross-reference that definition where applicable.

L. Medicare Shared Savings Program

As of January 1, 2020, there are 517 Medicare Shared Savings Program (Shared Savings Program) Accountable Care Organizations (ACOs) serving approximately 11.2 million Medicare FFS beneficiaries across the country: 37 percent of ACOs (192 of 517) are participating under two-sided shared savings and shared losses models; and 160 ACOs have agreements ending December 31, 2020, and must renew under the BASIC track or ENHANCED track to continue in the Shared Savings Program, including 20 ACOs participating in the Medicare ACO Track 1+ Model (Track 1+ Model).

The COVID–19 pandemic, and the resulting PHE as defined in § 400.200, have created a lack of predictability for many ACOs regarding the impact of expenditure and utilization changes on historical benchmarks and performance year expenditures, and for those under performance-based risk, the potential liability for shared losses, as well as disrupting population health activities,

as clinicians, care coordinators and financial and other resources are diverted to address immediate acute care needs. ACOs and other program stakeholders have advocated for CMS to modify Shared Savings Program policies to address the impact of the COVID–19 pandemic including to:

- Adjust the methodology for determining shared savings and shared losses, such as by: Reducing or eliminating liability for ACOs under performance-based risk for shared losses for PY 2020; not sharing savings or losses with ACOs for PY 2020; or adjusting program calculations to address the impact of COVID–19 on benchmark and PY expenditures, particularly for calendar year 2020.
- Eliminate or extend the deadline for ACOs to voluntarily terminate from the program without being financially reconciled for PY 2020, which under § 425.221(b)(2)(ii)(A) is June 30, 2020, with notification 30 days prior (no later than June 1).
- Maintain or ''freeze'' ACOs in their current participation options so that ACOs required to renew their participation for a new agreement period starting on January 1, 2021, are not burdened with meeting application deadlines and forgo the requirement that ACOs participating in the BASIC track's glide path advance to the next level for PY 2021.
- Account for changes in billing and care patterns in determining beneficiary assignment.

ACOs and other program stakeholders have indicated that there is an urgent need to address these concerns because ACOs need to make participation decisions for PY 2020 and PY 2021 soon and may choose to terminate their participation in the Shared Savings Program on or before June 30th, rather than face the potential of pro-rated losses for PY 2020 if the COVID–19 PHE does not extend for the entire year or the program's policies do not adequately mitigate liability for shared losses.

We believe it is vital to the stability of the Shared Savings Program to encourage continued participation by ACOs by adjusting program policies as necessary to address the impact of the COVID–19 pandemic, including by offering certain flexibilities in program participation options to currently participating ACOs and addressing potential distortions in expenditures resulting from the pandemic to ensure that ACOs are treated equitably regardless of the degree to which their assigned beneficiary populations are affected by the pandemic. The changes we are making in this IFC will help to ensure a more equitable comparison between ACOs' expenditures for PY 2020 and ACOs' updated historical benchmarks and that ACOs are not rewarded or penalized for having higher/lower COVID–19 spread in their patient populations which, in turn, will help to protect ACOs from owing excessive shared losses and the Medicare Trust Funds from paying out windfall shared savings. As described in this section of this IFC, we are modifying Shared Savings Program policies to: (1) Allow ACOs whose current agreement periods expire on December 31, 2020, the option to extend their existing agreement period by 1-year, and allow ACOs in the BASIC track's glide path the option to elect to maintain their current level of participation for PY 2021; (2) clarify the applicability of the program's extreme and uncontrollable circumstances policy to mitigate shared losses for the period of the COVID–19 PHE; (3) adjust program calculations to mitigate the impact of COVID–19 on ACOs; and (4) expand the definition of primary care services for purposes of determining beneficiary assignment to include telehealth codes for virtual check-ins, e-visits, and telephonic communication. We also address how these adjustments to program policies will apply to ACOs participating in the Track 1+ Model.

1. Application Cycle for January 1, 2021 Start Date and Extension of Agreement Periods Expiring on December 31, 2020

A renewing ACO is defined as an ACO that continues its participation in the program for a consecutive agreement period, without a break in participation, because it is an ACO whose participation agreement expired and that immediately enters a new agreement period to continue its participation in the program, or an ACO that terminated its current participation agreement under § 425.220 and immediately enters a new agreement period to continue its participation in the program (see § 425.20). Section 425.224 specifies application procedures for a renewing ACO applying to enter a new participation agreement with CMS for participation in the Shared Savings Program. We are seeking to reduce operational burden for ACOs and their health care providers while they respond to the serious health threats posed by the spread of the COVID–19. We have received feedback from ACO stakeholders requesting that CMS delay the Shared Savings Program application cycle for a January 1, 2021 start date (occurring in CY 2020), since they have reassigned staff and care coordinators to respond to the current pandemic. Due to COVID–19, stakeholders have expressed concern about focusing resources on applying to the Shared Savings Program rather than on patient care. Additionally, stakeholders have expressed uncertainty over their continued participation in the Shared Savings Program in 2021 given the lack of predictability of the impact of COVID–19 on expenditures used to establish an ACO's historical benchmark.

In response to stakeholder feedback, we are forgoing the application cycle for a January 1, 2021 start date (herein referred to as the 2021 application cycle). We believe it is appropriate to forgo the 2021 application cycle as the COVID–19 PHE continues because this will allow ACOs and their ACO providers/suppliers currently participating in the Shared Savings Program to continue focusing on treating patients during the pandemic. There are 160 ACO Shared Savings Program participation agreements that will end on December 31, 2020, including 20 ACOs participating in the Track 1+ Model. These ACOs are eligible to apply to renew their participation agreement for the Shared Savings Program effective January 1, 2021. To reduce burden and allow these ACOs to continue participating in the program without a 2021 application cycle, ACOs that entered a first or second agreement period with a start date of January 1, 2018, may elect to extend their agreement period for an optional fourth performance year. The fourth performance year would span 12 months from January 1, 2021, to December 31, 2021. This election to extend the agreement period is voluntary and an ACO could choose not to make this election, and therefore, conclude its participation in the program with the expiration of its current agreement period on December 31, 2020. Under this approach, eligible ACOs will be able to remain under their existing historical benchmark for an additional year, which will increase stability and predictability given the potential impact of the pandemic on beneficiary expenditures under FFS Medicare and help provide greater certainty for ACOs making determinations regarding their future participation in the Shared Savings Program.

Additionally, by forgoing the 2021 application cycle for new applicants, CY 2020 will not serve as benchmark year 3 for a cohort of ACOs that would otherwise be January 1, 2021 starters. An ACO's historical benchmark is determined based on the 3 most recent years prior to the start of its agreement period. For ACOs in a first agreement

period, benchmark year 3 is given the highest weight of the 3 benchmark years and, because CY 2020 is an anomalous year, we believe it could be disadvantageous to include CY 2020 expenditures as the third benchmark year for this cohort of ACOs. Cancelling the 2021 application cycle would provide us with additional time to consider and develop approaches to further mitigate the role of 2020 as a benchmark year given the unusual expenditure and utilization trends likely to result from the pandemic.

The ACO's voluntary election to extend its agreement period must be made in the form and manner and by a deadline established by CMS, and an ACO executive who has the authority to legally bind the ACO must certify the election. We note that this optional 12-month agreement period extension is a one-time exception for all ACOs with agreements expiring on December 31, 2020; it will not be available to other ACOs or to future program entrants. We anticipate that eligible ACOs will be able to elect to extend their agreement starting June 18, 2020, and the anticipated final date to make the election will be September 22, 2020. We will provide additional guidance regarding the form and manner, and the timeframe (including any changes to the above dates), for making the election.

Under the existing provision at § 425.210(a), the ACO must provide a copy of its participation agreement with CMS to all ACO participants, ACO providers/suppliers, and other individuals and entities involved in ACO governance. In the case of an ACO that elects to extend its agreement period pursuant to this IFC, we will consider the ACO to be in compliance with § 425.210(a) if it notifies these parties that it will continue to participate in the program for an additional year. Further, under § 425.210(b), all contracts or arrangements between or among the ACO, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities must require compliance with the requirements and conditions of the program's regulations, including, but not limited to, those specified in the participation agreement with CMS (see also §§ 425.116(a)(3) (as to agreements with ACO participants) and 425.116(b)(3) (as to agreements with ACO providers/suppliers)). Thus, an ACO that elects to extend its participation agreement pursuant to this IFC must require its ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities during PY 2021 to comply with the program's requirements through December 31, 2021. We note that to remain in compliance with § 425.116, an ACO may need to extend the duration of its agreements with ACO participants and ACO providers/suppliers.

We believe there is good cause to address the extension of expiring participation agreements in this IFC. It would be impracticable and contrary to the public interest to undertake traditional notice and comment rulemaking for this policy because we previously announced on our website that the 2021 application cycle would begin on April 20, 2020 (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/for-acos/application-types-and-timeline*). If we delayed finalizing this policy until after the public has had an opportunity to comment on it, ACOs might begin applying (or make preparations to apply) to the Shared Savings Program for an agreement period beginning January 1, 2021, rather than devote their scarce resources to care delivery and coordination activities.

We are revising § 425.200(b)(3)(ii) to allow ACOs that entered a first or second agreement period with a start date of January 1, 2018, to elect to extend their agreement period for an optional fourth performance year. Lastly, while we will forgo the application cycle for ACOs to apply to enter an agreement period beginning on January 1, 2021, we note that eligible, currently participating ACOs will be able to apply for a SNF 3-day rule waiver (§ 425.612(a)(1)(i)), apply to establish a beneficiary incentive program (§ 425.304(c)(2)), modify ACO participant (§ 425.118(b)) and/or SNF affiliate lists (§ 425.612(a)(1)(i)(B)), and elect to change their assignment methodology (§ 425.226(a)(1)) for PY 2021. Also, an ACO participating under the BASIC track's glide path may still elect to transition to a higher level of risk and potential reward within the BASIC track's glide path other than the level of risk and potential reward that the ACO would be automatically transitioned to for PY 2021, absent the ACO's election to maintain its current participation level for one year as described in section II.L.2. of this IFC. For example, an ACO participating in BASIC track Level B in PY 2020 can still elect to transition to BASIC track level D or E in PY 2021.

We seek comment on the approach we are establishing with this IFC to address the extension of participation agreements that are scheduled to expire on December 31, 2020.

2. Allow BASIC Track ACOs To Elect To Maintain Their Participation Level for One Year

We finalized a redesign of Shared Savings Program's participation options in the final rule entitled ''Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations—Pathways to Success and Extreme and Uncontrollable Circumstances Policies for Performance Year 2017'', which appeared in the **Federal Register** on December 31, 2018 (83 FR 67816). We finalized the BASIC track, added as a new provision at § 425.605, which includes an option for eligible ACOs to begin participation under a one-sided model and incrementally phase-in risk (calculated based on ACO participant revenue and capped at a percentage of the ACO's updated benchmark) and potential reward over the course of a single agreement period, an approach referred to as the glide path (83 FR 67841). The glide path includes five levels: A one-sided model available only for the first 2 consecutive performance years of a 5-year agreement period, each year of which is identified as a separate level (Levels A and B); and three levels of progressively higher risk and potential reward in performance years 3 through 5 of the agreement period (Levels C, D, and E). ACOs are automatically advanced along the progression of risk/reward levels at the start of each participation year, over the course of a 5-year agreement period, unless the ACO elects to advance more quickly, until ACOs reach the BASIC track's maximum level of risk/reward (Level E) (83 FR 67844). For ACOs that entered the BASIC track's glide path for an agreement period beginning on July 1, 2019, the progression through the levels of risk and potential reward spans 6 performance years, including the ACO's first performance year from July 1, 2019, through December 31, 2019; these ACOs were not automatically advanced to the next risk/reward level at the start of PY 2020 (42 CFR 425.200(b)(4)(ii), (c)(3); § 425.600(a)(4)(i)(B)(*2*)(*i*)).

Stakeholders have expressed concern that due to the unpredictable impact of COVID–19 during PY 2020 and the uncertainty as to their ability to secure a repayment mechanism for PY 2021, ACOs are uncertain they will continue participating in the program if they are automatically transitioned to downside risk or a higher level of downside risk in PY 2021. Specifically, stakeholders have requested we ''freeze,'' or forgo the automatic advancement of, BASIC track

ACOs at their current level of participation for PY 2021. Additionally, per § 425.204(f)(3)(iii), an ACO entering an agreement period in Level A or Level B of the BASIC track must demonstrate the adequacy of its repayment mechanism prior to the start of any performance year in which it either elects to participate in, or is automatically transitioned to a two-sided model of the BASIC track, including Level C, Level D, or Level E. We have concerns whether some ACOs, particularly those that would automatically transition to Level C of the BASIC track, will have the ability to establish a repayment mechanism prior to the start of PY 2021 because the source of capital to cover potential losses may be uncertain for some ACOs given the resource intensity of responding to the pandemic. Currently, the Shared Savings Program has 136 ACOs participating under Level B of the BASIC track that are scheduled to automatically advance to Level C on January 1, 2021. Some stakeholders have indicated that they may be unable to secure a letter of credit at this time, while other stakeholders have indicated that their discretionary funds are currently fully committed to responding to the COVID–19 PHE.

We are also concerned that some of the care coordination processes ACOs have been developing may be interrupted by the pandemic. For example, ACOs may have reallocated funding and staff resources to respond to the COVID–19 PHE, thereby temporarily disrupting their ability to implement redesigned care processes that would support their transition to risk. We agree that most ACOs do not know the impact that COVID–19 will have on their expenditures or beneficiary population and the potential for losses under risk arrangements. Therefore, through this IFC, we are permitting ACOs participating in the BASIC track glide path to elect to maintain their current level under the BASIC track for PY 2021. Prior to the automatic advancement for PY 2021, an applicable ACO may elect to remain in the same level of the BASIC track's glide path that it entered for PY 2020. For PY 2022, an ACO that elects this advancement deferral option will be automatically advanced to the level of the BASIC track's glide path in which it would have participated during PY 2022 if it had advanced automatically to the next level for PY 2021 (unless the ACO elects to advance more quickly before the start of PY 2022). For example, if an ACO participating in the BASIC track, Level B, in PY 2020 elects to maintain its current level of participation for PY 2021, it will participate under Level B for PY 2021 and then will automatically advance to Level D for PY 2022, since the ACO would have moved automatically to Level C for PY 2021 under current program rules, absent this change. The ACO could also elect to advance more quickly by opting to move to Level E instead of Level D for PY 2022, in which case the ACO would participate under Level E for the remainder of its agreement period.

The ACO's voluntary election to maintain its participation level must be made in the form and manner and by a deadline established by CMS, and an ACO executive who has the authority to legally bind the ACO must certify the election. We anticipate that eligible ACOs will be able to elect to maintain their participation level for PY 2021 starting June 18, 2020, and the anticipated final date to make the election will be September 22, 2020. We will provide additional guidance regarding the form and manner, and the timeframe (including any changes to the above dates), for making the election; an ACO that does not elect to maintain its current participation level for PY 2021 by the final date specified by CMS in this guidance will be automatically advanced to the next level of the glide path for that performance year (unless it elects to advance more quickly). This option is a one-time exception for ACOs currently participating in the Shared Savings Program under the BASIC track' glide path and will not be available to other ACOs that are currently participating in the program or to future program entrants.

We believe there is good cause to address the automatic advancement of BASIC track ACOs along the glide path in this IFC. We believe we need to provide ACOs adequate time in 2020 to determine their participation options for PY 2021. It would be infeasible to finalize the necessary amendments to the program regulations with sufficient time for ACOs to be aware of the advancement deferral option, make related program participation decisions, and provide their election to CMS, if we did not implement this policy through this IFC. Additionally, this policy will provide further relief to ACOs that may not currently have the ability to establish a repayment mechanism prior to PY 2021 and that otherwise would be struggling during this period to establish one, or perhaps seeking to terminate their participation agreements early, rather than devoting scarce resources to care delivery and coordination and continuing in the program. Therefore, we are redesignating § 425.600(a)(4)(i)(B)(*2*)(*iii*) as § 425.600(a)(4)(i)(B)(*2*)(*iv*) and adding a new § 425.600(a)(4)(i)(B)(*2*)(*iii*) to allow ACOs currently participating in the BASIC track's glide path to elect to maintain their current participation level for PY 2021.

We seek comment on the advancement deferral option we are establishing with this IFC.

3. Applicability of Extreme and Uncontrollable Circumstances Policies to the COVID–19 Pandemic

In December 2017, we issued an interim final rule with comment period entitled ''Medicare Program; Medicare Shared Savings Program: Extreme and Uncontrollable Circumstances Policies for Performance Year 2017'' (hereinafter referred to as the ''December 2017 IFC''), which appeared in the **Federal Register** on December 26, 2017 (82 FR 60912 through 60919). The December 2017 IFC established a policy for mitigating shared losses for Shared Savings Program ACOs participating in a performance-based risk track, when the ACO's assigned beneficiaries were located in geographic areas that were impacted by extreme and uncontrollable circumstances, such as hurricanes, wildfires, or other triggering events, during PY 2017. In the final rule entitled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2019; Medicare Shared Savings Program Requirements; Quality Payment Program; Medicaid Promoting Interoperability Program; Quality Payment Program-Extreme and Uncontrollable Circumstance Policy for the 2019 MIPS Payment Year; Provisions From the Medicare Shared Savings Program-Accountable Care Organizations-Pathways to Success; and Expanding the Use of Telehealth Services for the Treatment of Opioid Use Disorder Under the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act'' (hereinafter referred to as the ''CY 2019 PFS final rule'') (83 FR 59452), we extended the extreme and uncontrollable circumstances policy finalized for PY 2017 to PY 2018 and subsequent performance years. Under the policy adopted in that final rule, for a given performance year, as set forth in §§ 425.605(f) (applicable to ACOs in two-sided models of the BASIC track), 425.606(i) (applicable to ACOs in Track 2) and 425.610(i) (applicable to ACOs in the ENHANCED track), CMS reduces the amount of the ACO's shared losses by an amount determined by

multiplying the shared losses by the percentage of the total months in the performance year affected by an extreme and uncontrollable circumstance, and the percentage of the ACO's assigned beneficiaries who reside in an area affected by an extreme and uncontrollable circumstance. Further, as specified in the Track 1+ Model participation agreement available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/track-1plus-model-par-agreement.pdf,* CMS adjusts the amount of shared losses for Track 1+ Model ACOs for extreme and uncontrollable circumstances in the manner described in § 425.610(i).

As specified in the Shared Savings Program regulations at §§ 425.605(f), 425.606(i) and 425.610(i), CMS applies determinations made under the Quality Payment Program with respect to whether an extreme and uncontrollable circumstance has occurred and the affected areas. Further, CMS has sole discretion to determine the time period during which an extreme and uncontrollable circumstance occurred and the percentage of the ACO's assigned beneficiaries residing in the affected areas. In November 2017, we issued an interim final rule with comment period for the Quality Payment Program entitled ''Medicare Program; CY 2018 Updates to the Quality Payment Program; and Quality Payment Program: Extreme and Uncontrollable Circumstance Policy for the Transition Year'' IFC (hereinafter referred to the ''Quality Payment Program IFC'') (82 FR 53568), which appeared in the **Federal Register** on November 16, 2017. In the Quality Payment Program IFC (82 FR 53897), we explained that we anticipated that the types of events that could trigger the extreme and uncontrollable circumstances policies would be events designated a FEMA major disaster or a PHE declared by the Secretary, although we indicated that we would review each situation on a case-by-case basis.

In the CY 2019 PFS final rule (83 FR 59969), we explained our belief that the extreme and uncontrollable circumstance policies under the Shared Savings Program address stakeholders' concerns that ACOs participating under a performance-based risk track could be held responsible for sharing losses with the Medicare program resulting from catastrophic events outside the ACO's control given the increase in utilization, difficulty of coordinating care for patient populations leaving the impacted areas, and the use of natural disaster payment modifiers making it difficult to identify whether a claim would otherwise have been denied under normal Medicare FFS rules. Absent this relief, we explained that ACOs participating in performance-based risk tracks might reconsider whether they are able to continue their participation in the Shared Savings Program under a performance-based risk track.

In the March 31st COVID–19 IFC (85 FR 19230), we briefly addressed considerations related to applying the Shared Savings Program's extreme and uncontrollable circumstances policies for mitigating shared losses for ACOs in PY 2020 because of the COVID–19 pandemic. We explained that for purposes of PY 2020 financial reconciliation, we will reduce the amount of an ACO's shared losses by an amount determined by multiplying the shared losses by the percentage of the total months in the performance year affected by an extreme and uncontrollable circumstance, and the percentage of the ACO's assigned beneficiaries who reside in an area affected by an extreme and uncontrollable circumstance (85 FR 19268). We explained that the PHE for the COVID–19 pandemic applies to all counties in the country; therefore, 100 percent of assigned beneficiaries for all Shared Savings Program ACOs reside in an affected area. However, in describing the timeframe during which the extreme and uncontrollable circumstances policy would apply for mitigating shared losses because of the COVID–19 pandemic, we inadvertently stated that it would begin in March 2020 and continue through the end of the COVID–19 PHE, as defined in § 400.200. This statement was inconsistent with the beginning of the COVID–19 PHE as defined in § 400.200 (January 2020). Therefore, we are clarifying in this IFC that, for purposes of the Shared Savings Program, the months affected by an extreme and uncontrollable circumstance will begin with January 2020, consistent with the COVID–19 PHE determined to exist nationwide as of January 27, 2020, by the Secretary on January 31, 2020, and will continue through the end of the PHE, as defined in § 400.200, which includes any subsequent renewals.

Catastrophic events outside the ACO's control can also increase the difficulty of coordinating care for patient populations, and due to the unpredictability of changes in utilization and cost of services furnished to beneficiaries, may have a significant impact on expenditures for the applicable performance year and the ACO's benchmark in the subsequent agreement period (as further discussed in section II.L.4. of this IFC). These factors could jeopardize the ACO's ability to succeed in the Shared Savings Program, and ACOs, especially those in performance-based risk tracks, may reconsider whether they are able to continue their participation in the program.

Therefore, we believe it is important to make clear that, under the existing extreme and uncontrollable circumstances policies for the Shared Savings Program, the timeframe for the extreme and uncontrollable circumstance of the COVID–19 pandemic for purposes of mitigating shared losses will extend for the duration of the COVID–19 PHE as specified in § 400.200, which begins in January 2020. If the COVID–19 PHE extends through all of CY 2020, all shared losses for PY 2020 will be mitigated for all ACOs participating in a performance-based risk track: Including Track 2, the ENHANCED track, Levels C, D and E of the BASIC track, and the Track 1+ Model (as discussed in section II.L.6. of this IFC). At this time, the COVID–19 PHE has already covered 4 months (January through April 2020) meaning any shared losses an ACO incurs for PY 2020 will be reduced by at least one-third. Further, if the COVID–19 PHE extends for a large portion, if not all of the year, the existing extreme and uncontrollable circumstances policy under the Shared Savings Program would mitigate a significant portion of, if not all, shared losses an ACO may owe for PY 2020. For example, if the COVID–19 PHE covers 6 months (January through June 2020) any shared losses an ACO incurs for PY 2020 would be reduced by one-half; if the COVID–19 PHE covers 9 months (January through September 2020) any shared losses an ACO incurs for PY 2020 would be reduced by three-fourths; and if the COVID–19 PHE covers the full year (January through December 2020) any shared losses an ACO incurs for PY 2020 would be reduced completely, and the ACO would not owe any shared losses.

4. Adjustments to Shared Savings Program Calculations To Address the COVID–19 Pandemic

a. Background

Section 1899(d)(1)(B)(ii) of the Act addresses how ACO benchmarks are to be established and updated under the Shared Savings Program. This provision specifies that the Secretary shall estimate a benchmark for each agreement period for each ACO using the most recent available 3 years of per

beneficiary expenditures for Parts A and B services for Medicare FFS beneficiaries assigned to the ACO. Such benchmark shall be adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate, and updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services. Section 1899(d)(1)(B)(i) of the Act specifies that, in each year of the agreement period, an ACO is eligible to receive payment for shared savings only if the estimated average per capita Medicare expenditures under the ACO for Medicare FFS beneficiaries for Parts A and B services, adjusted for beneficiary characteristics, is at least the percent specified by the Secretary below the applicable benchmark under section 1899(d)(1)(B)(ii) of the Act.

Section 1899(i)(3) of the Act grants the Secretary the authority to use other payment models if the Secretary determines that doing so would improve the quality and efficiency of items and services furnished under Title XVIII and the alternative methodology would result in program expenditures equal to or lower than those that would result under the statutory payment model. The authority under section 1899(i)(3) of the Act to use other payment models includes authority to adopt alternatives to the benchmarking methodology set forth in section 1899(d)(1)(B)(ii) of the Act, and alternatives to the methodology for determining expenditures for each performance year as set forth in section 1899(d)(1)(B)(i) of the Act. As discussed in earlier rulemaking, we have used our authority under section 1899(i)(3) of the Act to adopt alternative policies to the provisions of section 1899(d)(1)(B) of the Act for updating the historical benchmark,[28] and calculating performance year expenditures.[29] We have also used our authority under section 1899(i)(3) of the Act to establish the Shared Savings Program's two-sided payment models,[30] and to mitigate shared losses owed by ACOs affected by extreme and uncontrollable circumstances during PY 2017 and subsequent performance years.[31]

Under the Shared Savings Program, providers and suppliers continue to bill for services furnished to Medicare beneficiaries and receive FFS payments under traditional Medicare. CMS uses payment amounts for Parts A and B FFS claims for a variety of Shared Savings Program operations, which include: Calculations under the benchmarking methodology; determining an ACO's eligibility for shared savings and liability for shared losses for each performance year under the program's financial models as specified in the regulations in subpart G; determining an ACO's eligibility for certain participation options as set forth in § 425.600(d); and calculating the amount of the repayment mechanism required for ACOs participating in a two-sided model according to § 425.204(f)(4). These operations typically require the determination of expenditures for Parts A and B services under the original Medicare FFS program for a specified population of Medicare FFS beneficiaries or the Medicare Parts A and B FFS revenue of ACO participants. We note that the Medicare FFS beneficiary population for which expenditures are determined may differ depending on the specific program operation being performed and may reflect expenditures for the ACO's assigned beneficiaries, assignable beneficiaries as defined in § 425.20, or all Medicare FFS beneficiaries. The applicable Medicare FFS beneficiary population is specified in the regulations governing each program operation.

b. Removing Payment Amounts for Episodes of Care for Treatment of COVID–19 From Shared Savings Program Expenditure and Revenue Calculations

Section 3710 of the CARES Act amended section 1886(d)(4)(C) of the Act to specify that for discharges occurring during the emergency period described in section 1135(g)(1)(B) of the Act, in the case of a discharge of an individual diagnosed with COVID–19, the Secretary shall increase the weighting factor that would otherwise apply to the diagnosis-related group (DRG) to which the discharge is assigned by 20 percent. Further, the Secretary shall identify a discharge of such an individual through the use of diagnosis codes, condition codes, or other such means as may be necessary. In this section of this IFC, we refer to this increase in the weighting factor for DRGs as the ''DRG adjustment.''

We anticipate that the localized nature of infections (for example, rapid outbreaks in individual nursing facilities (NFs)) and the unanticipated increase in expenditures, along with the increased flexibilities that have been implemented to allow health care providers to identify and treat COVID–19 patients will affect the level of Medicare Parts A and B expenditures during 2020, both for the Medicare FFS beneficiaries assigned to ACOs and for the other populations of Medicare FFS beneficiaries whose expenditures are considered in performing calculations under the Shared Savings Program. The localized nature of outbreaks and the increased utilization of acute care occurring in PY 2020 and the associated higher costs are not reflected in ACOs' historical benchmarks, which are determined under §§ 425.601(b), 425.602(b), or 425.603(d), as applicable, based on Parts A and B expenditures for the beneficiaries who would have been assigned to that ACO during the three benchmark years. For some ACOs, the higher costs associated with COVID–19 may not be fully accounted for (or in other cases may be over-represented) by the retrospective application of the update factor to the benchmark at the time of financial reconciliation. In addition, the prospective CMS–HCC risk scores, which are used to adjust the historical benchmark each performance year for changes in severity and case mix (refer to §§ 425.601(a)(10), 425.602(a)(9) and 425.603(c)(10); and §§ 425.604(a)(1), 425.605(a)(1), 425.606(a)(1), 425.610(a)(1), (2)), would not be expected to meaningfully adjust for such variability because they are prospective, and therefore, use diagnoses from 2019 to predict costs in 2020.

Furthermore, including the increased expenditures related to treatment of COVID–19 in calculations of ACO benchmarks for which CY 2020 is a benchmark year could lead to higher than anticipated future historical benchmarks unnecessarily advantaging some ACOs once the prevalence of COVID–19 in the population begins to decrease, and the corresponding reduction in expenditures is reflected in performance year expenditures. In

[28] Such as using only assignable beneficiaries instead of all Medicare FFS beneficiaries in calculating the benchmark update based on national FFS expenditures (81 FR 37986–37989), calculating the benchmark update using factors based on regional FFS expenditures (81 FR 37977–37981), and calculating the benchmark update using a blend of national and regional expenditure growth rates (83 FR 68027–68030).

[29] Such as excluding indirect medical education and disproportionate share hospital payments from ACO performance year expenditures (76 FR 67921–67922), and determining shared savings and shared losses for the 6-month performance years (or performance period) in 2019 using expenditures for the entire CY 2019 and then pro-rating these amounts to reflect the shorter performance year or performance period (83 FR 59949–59951, 83 FR 67950–67956).

[30] See earlier rulemaking establishing two-sided models: Track 2 (76 FR 67904–67909), Track 3 (subsequently renamed the ENHANCED track) (80 FR 32771–32772), and the BASIC track (83 FR 67834–67841).

[31] See earlier rulemaking establishing policies for mitigating shared losses owed by ACOs affected by extreme and uncontrollable circumstances (82 FR 60916–60917, 83 FR 59974–59977).

contrast, we anticipate that the methodology used to update benchmarks will appropriately reflect any reduction in expenditures due to a cumulative yearlong decline in elective services and the deferral of other services as a result of regionally-uniform responses by beneficiaries and providers/suppliers to directives issued at federal, state, and local levels. Therefore, the retrospective application of the historical benchmark update (which for PY 2020 is either an update factor based on national growth rates, regional growth rates, or a blend of national and regional growth rates, depending on the start date of the ACO's agreement period) is expected to reasonably account for lower utilization of services by non-COVID–19 patients and prevent windfall shared savings payments to ACOs for PY 2020.

Including payment amounts for treatment of acute care for COVID–19 in calculations for which calendar year 2020 is used as a reference year could also distort repayment mechanism estimates and the identification of high and low revenue ACOs and influence ACO participation options. For example, ACOs could potentially be misclassified as either high revenue or low revenue, due to changes in expenditures arising from the COVID–19 pandemic, and either moved more quickly to higher levels of risk and reward if they are identified as high revenue ACOs or allowed additional time under a one-sided model (if eligible) or in relatively lower levels of performance-based risk if they are identified as low revenue ACOs.

ACOs currently participating in a performance-based risk track have an urgent need to understand how we will address any distortions in expenditures resulting from the COVID–19 pandemic. Under the Shared Savings Program's regulations at § 425.221(b)(2)(ii)(A), an ACO under a two-sided model that voluntarily terminates its participation agreement with an effective date of termination after June 30th of the applicable performance year is liable for a pro-rated share of any shared losses determined for that performance year. Under § 425.220(a) of the regulations, ACOs are required to provide CMS at least 30 days' advance notice of their decision to voluntarily terminate from the program. As a result, ACOs that are participating under a two-sided model would need to provide notice to CMS no later than June 1, 2020, to avoid liability for a pro-rated share of any shared losses that may be determined for PY 2020. ACOs and other program stakeholders have expressed concern that ACOs need to make participation decisions in advance of this June 1, 2020 deadline, and may choose to terminate their participation in the Shared Savings Program on or before June 30th, rather than risk owing pro-rated shared losses for PY 2020. We note that as we explain in section II.L.3. of this IFC, the Shared Savings Program's extreme and uncontrollable circumstances policy will mitigate shared losses for these ACOs. However, given the uncertainty surrounding whether the COVID–19 PHE will cover the entire year and absent information regarding the steps that CMS intends to take to address the high costs associated with COVID–19 patients, many risk-based ACOs may choose to leave the program by June 30, 2020, to avoid the risk of owing shared losses.

We believe it is necessary to revise the policies governing Shared Savings Program financial calculations, as well as certain other program operations, to mitigate the impact of unanticipated increased expenditures related to the treatment of COVID–19. Given that ACOs in two-sided models have very limited time (less than 2 months at the time of development of this IFC) to decide whether to continue their participation in the program or voluntarily terminate without being liable for shared losses, we believe there is an urgent need to establish policies that address the impact of COVID–19 on Shared Savings Program financial calculations. More generally, ACOs engage in care coordination and population-based activities for Medicare FFS beneficiaries, as they work towards achieving the Shared Savings Program's goals of lowering growth in Medicare FFS expenditures and improving the quality of care furnished to Medicare beneficiaries. We believe there is an urgency in taking steps to avoid adversely impacting ACOs, many of which have rapidly adapted to current circumstances in order to continue to coordinate care and deliver value-based care to Medicare FFS beneficiaries and meet program goals. In the absence of policies that adjust certain program calculations to remove payment amounts for episodes of care for treatment of COVID–19, ACOs may choose to leave the Shared Savings Program, setting back progress made in transitioning the health care system from volume-based to value-based payment. For these reasons, we find good cause to waive prior notice and comment rulemaking to establish policies to mitigate the impact of the COVID–19 pandemic on Shared Savings Program financial calculations.

We are revising our policies under the Shared Savings Program to exclude from Shared Savings Program calculations all Parts A and B FFS payment amounts for an episode of care for treatment of COVID–19, triggered by an inpatient service, and as specified on Parts A and B claims with dates of service during the episode. We are relying on our authority under section 1899(d)(1)(B)(ii) of the Act to adjust benchmark expenditures for other factors in order to remove COVID–19-related expenditures from the determination of benchmark expenditures. As discussed elsewhere in this section, we are also exercising our authority under section 1899(i)(3) of the Act to apply this adjustment to certain other program calculations, including the determination of performance year expenditures.

We believe an approach that makes the triggering event for this adjustment the beneficiary's receipt of inpatient care for COVID–19, will identify the most acutely ill patients and, as a result, those patients with the highest-costs associated with acute care treatment. In contrast, we believe that treatment for COVID–19 that does not result in an inpatient admission does not raise the same level of concern in terms of generating unexpected performance year expenditures that are not appropriately reflected in the benchmark calculations. As William Bleser and colleagues have described,[32] citing a recent actuarial estimate of COVID–19 costs,[33] outpatient care was approximately 10 percent of the cost of hospital care, indicating that hospital costs are the dominant source of overall costs for treatment of COVID–19. We believe these findings support an approach that bases the exclusion of expenditures on the triggering event of an inpatient admission for treatment of COVID–19. Furthermore, we believe that some outpatient care will occur close-in-time to an eventual inpatient admission and following discharge. Under the approach we are establishing, where an episode of care includes the month of admission and the month following discharge, outpatient care occurring within the timeframe for an episode of care would also be excluded from financial calculations.

[32] Bleser WK, et al. Maintaining Progress Toward Accountable Care And Payment Reform During A Pandemic, Part 1: Utilization And Financial Impact. *Health Affairs*. April 14, 2020. Available at *https://www.healthaffairs.org/do/10.1377/hblog20200410.281882/full/*.

[33] COVERED California. The Potential National Health Cost Impacts to Consumers, Employers and Insurers Due to the Coronavirus (COVID–19). Policy/Actuarial Brief (March 22, 2020). Available at *https://hbex.coveredca.com/data-research/library/COVID-19-NationalCost-Impacts03-21-20.pdf*.

Accordingly, under the approach we are adopting in this IFC, we will identify an episode of care triggered by an inpatient service for treatment of COVID–19, based on either: (1) Discharges for inpatient services eligible for the 20 percent DRG adjustment under section 1886(d)(4)(C) of the Act; or (2) discharges for acute care inpatient services for treatment of COVID–19 from facilities that are not paid under the IPPS, such as CAHs, when the date of admission occurs within the COVID–19 PHE as defined in § 400.200.

For example, we will identify discharges of an individual diagnosed with COVID–19 using the following ICD–10–CM codes:

- B97.29 (Other coronavirus as the cause of diseases classified elsewhere) for discharges occurring on or after January 27, 2020, and on or before March 31, 2020.
- U07.1 (COVID–19) for discharges occurring on or after April 1, 2020, through the duration of the COVID–19 PHE period, as defined in § 400.200.[34]

Episodes of care for treatment of COVID–19 may be triggered by an inpatient admission for acute care either at an acute care hospital or other healthcare facility, which may include temporary expansion sites, Medicare-enrolled ASCs providing hospital services to help address the urgent need to increase hospital capacity to treat COVID–19 patients, CAHs, and potentially other types of providers.[35]

We will define the episode of care as starting in the month in which the inpatient stay begins as identified by the admission date, all months during the inpatient stay, and the month following the end of the inpatient stay as indicated by the discharge date. This approach to measuring the length of the episode of care in units of months aligns with the Shared Savings Program's existing methodology for calculating benchmark year and performance year expenditures by performing separate calculations for each of four Medicare enrollment types (ESRD, disabled, aged/dual eligible for Medicare and Medicaid, and aged/non-dual eligible for Medicare and Medicaid). As described in the final rule entitled ''Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations—Revised Benchmark Rebasing Methodology, Facilitating Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations'', which appeared in the **Federal Register** on June 10, 2016 (81 FR 37950), we account for circumstances where a beneficiary is enrolled in a Medicare enrollment type for only a fraction of a year (see 81 FR 37981). Specifically, we determine the number of months that an assigned beneficiary is enrolled in each specific Medicare enrollment type and divide by 12. Summing these fractions across all assigned beneficiaries in each Medicare enrollment type results in total person years for the beneficiaries assigned to the ACO. Benchmark and performance year expenditures for each enrollment type are calculated on a per capita basis. The numerator of the per capita expenditure calculation for a particular enrollment type reflects the total Parts A and B expenditures incurred by all assigned beneficiaries in that enrollment type during the year, with adjustments made to exclude indirect medical education and disproportionate share hospital payments, to include individually beneficiary identifiable final payments made under a demonstration, pilot or time limited program, and to truncate beneficiary expenditures to minimize variation from catastrophically large claims. The denominator reflects total person years for the enrollment type.

In addition to excluding Parts A and B payment amounts with dates of service in the months associated with an episode of care for treatment of COVID–19, we will also exclude the affected months from total person years used in per capita expenditure calculations. For example, if a beneficiary had an episode of care for COVID–19 that lasted for 2 months, but was otherwise enrolled as an aged/non-dual eligible beneficiary for the full calendar PY, we will exclude their Parts A and B expenditures for those two months and compute their fraction of the year enrolled in the aged/non-dual eligible population as 10/12. Adjusting both expenditures and person years will ensure that both the numerator and denominator used to calculate per capita expenditures are based on the same number of months of beneficiary experience and allow ACOs to be treated equitably regardless of the degree to which their assigned beneficiary population is affected by the pandemic.

We believe that the approach described in this section will provide for a more equitable comparison between an ACO's performance year expenditures and its historical benchmark and will help to ensure that ACOs are not rewarded or penalized for having higher/lower COVID–19 spread in their assigned beneficiary populations which, in turn, will help to protect CMS against paying out windfall shared savings and ACOs in two-sided models from owing excessive shared losses. Further, as described previously in this section of this IFC, we believe that the retrospective application of the historical benchmark update, which will be calculated based on factors that reflect actual expenditure and utilization changes nationally and regionally, other than expenditures for episodes of care for treatment of COVID–19, will also help to mitigate the potential for windfall savings due to potentially lower utilization of services not related to treatment for COVID–19.

We will adjust the following Shared Savings Program calculations to exclude all Parts A and B FFS payment amounts for a beneficiary's episode of care for treatment of COVID–19:

- Calculation of Medicare Parts A and B FFS expenditures for an ACO's assigned beneficiaries for all purposes, including the following: Establishing, adjusting, updating, and resetting the ACO's historical benchmark and determining performance year expenditures.
- Calculation of FFS expenditures for assignable beneficiaries as used in determining county-level FFS expenditures and national Medicare FFS expenditures, including the following calculations:

++ Determining average county FFS expenditures based on expenditures for the assignable population of beneficiaries in each county in the ACO's regional service area according to §§ 425.601(c) and 425.603(e) for purposes of calculating the ACO's regional FFS expenditures. For example, for ACOs in agreement periods beginning on July 1, 2019, and in subsequent years, we will use county FFS expenditures from which we exclude all Parts A and B FFS payment amounts for a beneficiary's episode of care for treatment of COVID–19 in determining the regional component of the blended national and regional growth rates used to (1) trend forward benchmark year 1 and benchmark year 2 expenditures to benchmark year 3 according to § 425.601(a)(5)(iii), and (2) to update the benchmark according to § 425.601(b)(3). Further, we will use county expenditures from which we exclude all Parts A and B FFS payment amounts for a beneficiary's episode of care for treatment of COVID–19 to

[34] See for example, MLN Matters, ''New Waivers for Inpatient Prospective Payment System (IPPS) Hospitals, Long-Term Care Hospitals (LTCHs), and Inpatient Rehabilitation Facilities (IRFs) due to Provisions of the CARES Act'' (April 15, 2020), available at *https://www.cms.gov/files/document/se20015.pdf.*

[35] See CMS fact sheet, ''Hospitals: CMS Flexibilities to Fight COVID–19'', dated March 30, 2020, available at *https://www.cms.gov/files/document/covid-hospitals.pdf,* describing flexibilities CMS specified for hospitals for the provision of inpatient care to fight COVID–19.

update the ACO's rebased historical benchmark, according to § 425.603(d) for ACOs in a second agreement period beginning on or before January 1, 2019, based on regional growth rates in Medicare FFS expenditures.

++ Determining the 99th percentile of national Medicare FFS expenditures for assignable beneficiaries for purposes of the following: (1) Truncating assigned beneficiary expenditures used in calculating benchmark expenditures (§§ 425.601(a)(4), 425.602(a)(4), 425.603(c)(4)), and performance year expenditures (§§ 425.604(a)(4), 425.605(a)(3), 425.606(a)(4), 425.610(a)(4)); and (2) truncating expenditures for assignable beneficiaries in each county for purposes of determining county FFS expenditures according to §§ 425.601(c)(3) and 425.603(e)(3).

++ Determining 5 percent of national per capita expenditures for Parts A and B services under the original Medicare FFS program for assignable beneficiaries for purposes of capping the regional adjustment to the ACO's historical benchmark according to § 425.601(a)(8)(ii)(C).

++ Determining the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program for assignable beneficiaries, for purposes of updating the ACO's historical benchmark according to § 425.602(b)(2).

++ Determining national growth rates that are used as part of the blended growth rates used to trend forward benchmark year 1 and benchmark year 2 expenditures to benchmark year 3 according to § 425.601(a)(5)(ii) and as part of the blended growth rates used to update the benchmark according to § 425.601(b)(2).

• Calculation of Medicare Parts A and B FFS revenue of ACO participants for purposes of calculating the ACO's loss recoupment limit under the BASIC track as specified in § 425.605(d).

• Calculation of total Medicare Parts A and B FFS revenue of ACO participants and total Medicare Parts A and B FFS expenditures for the ACO's assigned beneficiaries for purposes of identifying whether an ACO is a high revenue ACO or low revenue ACO, as defined under § 425.20, and determining an ACO's eligibility for participation options according to § 425.600(d).

• Calculation or recalculation of the amount of the ACO's repayment mechanism arrangement according to § 425.204(f)(4).

We note that there are certain payments related to the COVID–19 PHE that fall outside of Medicare FFS Parts A and B claims, and by virtue of this fact, these payments would not be utilized under the Shared Savings Program methodology for determining beneficiary expenditures. For example, we would not account for recoupment of accelerated or advance payments,[36] which occurs outside of the FFS claims processing system. This is because the underlying Parts A and B claims used in Shared Savings Program expenditure calculations would continue to reflect the amount the providers/suppliers are eligible to be paid, although that payment may be subject to offset for repayment of accelerated or advance payments. Further, Shared Savings Program expenditure calculations would also not account for lump sum payments made to hospitals and other healthcare providers through the CARES Act Provider Relief Fund,[37] that occur outside of Parts A and B claims. We will continue to capture Medicare FFS Parts A and B payments to providers/suppliers in Shared Savings Program calculations from hospitals and other healthcare providers receiving these funds.

It is necessary to use our authority under section 1899(i)(3) of the Act to remove payment amounts for episodes of care for treatment of COVID–19 from the following calculations: (1) Performance year expenditures; (2) updates to the historical benchmark; and (3) ACO participants' Medicare FFS revenue used to determine the loss sharing limit in the two-sided models of the BASIC track. To use our authority under section 1899(i)(3) of the Act to adopt an alternative payment methodology to remove payment amounts for episodes of care for treatment of COVID–19 from these calculations, we must determine that the alternative payment methodology will improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without resulting in additional program expenditures. We believe that these adjustments, which will remove payment amounts for episodes of care for treatment of COVID–19 from the specified Shared Savings Program calculations, will capture and remove from program calculations expenditures that are outside of an ACO's control, but that could significantly affect the ACO's performance under the program. In particular, we believe that failing to remove this spending would likely create highly variable savings and loss results for individual ACOs that happen to have over-representation or under-representation of COVID–19 hospitalizations in their assigned beneficiary populations.

As described in the Regulatory Impact Analysis (section VI. of this IFC), we do not believe excluding payment amounts for episodes of care for treatment of COVID–19 from the specified calculations will result in an increase in spending beyond the expenditures that would otherwise occur under the statutory payment methodology in section 1899(d) of the Act. Further, we believe that these adjustments to our payment calculations to remove expenditures associated with treatment of COVID–19, in combination with the optional 1-year extension for ACOs whose current agreement periods expire on December 31, 2020 (as discussed in section II.L.1. of this IFC), and the option for ACOs in the BASIC track's glide path to elect to maintain their current level of risk and reward for PY 2021 (as discussed in section II.L.2. of this IFC) will provide greater certainty for currently participating ACOs. As a result, we expect these policies will support ACOs' continued participation in the Shared Savings Program in the face of significant uncertainty arising from the disruptions due to the COVID–19 pandemic and the resulting PHE. This, in turn, means that these organizations would continue working towards meeting the Shared Savings Program's goals of lowering growth in Medicare FFS expenditures and improving the quality of care furnished to Medicare beneficiaries.

Based on these considerations, and as specified in the Regulatory Impact Analysis (section VI. of this IFC), we believe adjusting certain Shared Savings Program calculations to remove payment amounts for episodes of care for treatment of COVID–19 from the calculation of performance year expenditures, updates to the historical benchmark, and ACO participants' Medicare FFS revenue used to determine the loss sharing limit in the two-sided models of the BASIC track, meets the requirements for use of our authority under section 1899(i)(3) of the Act.

We also acknowledge that some trends and longer lasting effects of the COVID–19 pandemic are challenging to anticipate at the time of development of

[36] See CMS, ''Fact Sheet: Expansion of the Accelerated and Advance Payments Program for Providers and Suppliers During COVID–19 Emergency,'' available at *https://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf.*

[37] See HHS website, CARES Act Provider Relief Fund, at *https://www.hhs.gov/provider-relief/index.html.*

this IFC, and we will continue to evaluate the ongoing impact of the COVID–19 pandemic to determine whether additional rulemaking is necessary to further adjust Shared Savings Program policies. For example, it is unclear whether the COVID–19 pandemic may have longer-term effects into 2021, such as through rebounding elective procedure costs in 2021 following potentially sustained reductions in 2020 or to what extent the reduction in these procedures may persist. Further, we anticipate learning more about the potential longer-term implications of the COVID–19 pandemic on Medicare beneficiaries' health and the health care system.

We are adding a new provision at § 425.611 to describe the adjustments CMS will make to Shared Savings Program calculations to address the impact of the COVID–19 pandemic.

We seek comment on the approach to adjusting program calculations to mitigate the financial impact of the COVID–19 pandemic on ACOs that we are establishing with this IFC.

5. Expansion of Codes Used in Beneficiary Assignment

a. Background

Section 1899(c)(1) of the Act, as amended by the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) and the Bipartisan Budget Act of 2018 (BBA 2018) (Pub. L. 115–123, enacted February 9, 2018), provides that for performance years beginning on or after January 1, 2019, the Secretary shall assign beneficiaries to an ACO based on their utilization of primary care services provided by physicians participating in the ACO and all services furnished by RHCs and Federally Qualified Health Centers (FQHCs) that are ACO participants. However, the statute does not specify which kinds of services may be considered primary care services for purposes of beneficiary assignment.

For performance years beginning on January 1, 2019, and subsequent performance years, we defined primary care services in § 425.400(c)(1)(iv) for purposes of assigning beneficiaries to ACOs under § 425.402 as the set of services identified by the following HCPCS/CPT codes:

CPT codes:

- 99201 through 99215 (*codes for office or other outpatient visit for the evaluation and management of a patient*).
- 99304 through 99318 (*codes for professional services furnished in a NF; services identified by these codes furnished in a SNF are excluded*).
- 99319 through 99340 (*codes for patient domiciliary, rest home, or custodial care visit*).
- 99341 through 99350 (*codes for evaluation and management services furnished in a patient's home for claims identified by place of service modifier 12*).
- 99487, 99489 and 99490 (*codes for chronic care management*).
- 99495 and 99496 (*codes for transitional care management services*).
- 99497 and 99498 (*codes for advance care planning*).
- 96160 and 96161 (*codes for administration of health risk assessment*).
- 99354 and 99355 (*add-on codes, for prolonged evaluation and management or psychotherapy services beyond the typical service time of the primary procedure; when the base code is also a primary care service code*).
- 99484, 99492, 99493 and 99494 (*codes for behavioral health integration services*).

HCPCS codes:

- G0402 (*code for the Welcome to Medicare visit*).
- G0438 and G0439 (*codes for the annual wellness visits*).
- G0463 (*code for services furnished in ETA hospitals*).
- G0506 (*code for chronic care management*).
- G0444 (*code for annual depression screening service*).
- G0442 (*code for alcohol misuse screening service*).
- G0443 (*code for alcohol misuse counseling service*).

On March 17, 2020, we announced the expansion of payment for telehealth services on a temporary and emergency basis pursuant to waiver authority added under section 1135(b)(8) of the Act by the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 such that Medicare can pay for telehealth services, including office, hospital, and other visits furnished by physicians and other practitioners to patients located anywhere in the country, including in a patient's place of residence, starting March 6, 2020. In the context of the PHE for the COVID–19 pandemic, we recognize that physicians and other health care professionals are faced with new challenges regarding potential exposure risks, including for Medicare beneficiaries, for health care providers, and for members of the community at large. For example, the CDC has urged health care professionals to make every effort to interview persons under investigation for COVID–19 infection by telephone, text messaging system, or video conference instead of in-person. In the March 31st COVID–19 IFC, to facilitate the use of telecommunications technology as a safe substitute for in-person services, we added, on an interim basis, many services to the list of eligible Medicare telehealth services, eliminated frequency limitations and other requirements associated with particular services furnished via telehealth, and clarified several payment rules that apply to other services that are furnished using telecommunications technologies that can reduce exposure risks (85 FR 19232).

Section 1834(m) of the Act specifies the payment amounts and circumstances under which Medicare makes payment for a discrete set of services, all of which must ordinarily be furnished in-person, when they are instead furnished using interactive, real-time telecommunication technology. When furnished under the telehealth rules, many of these specified Medicare telehealth services are still reported using codes that describe ''face-to-face'' services but are furnished using audio/video, real-time communication technology instead of in-person. As such, the majority of the codes for primary care services included in the additional telehealth services added in the March 31st COVID–19 IFC on an interim basis for the duration of the PHE for COVID–19 are already included in the definition of primary care services for purposes of the Shared Savings Program assignment methodology in § 425.400(c)(1)(iv).

The March 31st COVID–19 IFC also established flexibilities and separate payment for certain services that are furnished virtually using technologies but that are not considered Medicare telehealth services such as virtual check-ins, e-visits, and telephone E/M services, for which payment has been authorized during the COVID–19 PHE. The codes for these virtual services are not currently included in the definition of primary care services for purposes of the Shared Savings Program assignment methodology. We believe it is critical to include these additional codes in the definition of primary care services to ensure these services are included in our determination of where beneficiaries receive the plurality of their primary care for purposes of beneficiary assignment, so that the assignment methodology appropriately reflects the expanded use of technology that is helping people who need routine care during the PHE for the COVID–19 pandemic and allowing vulnerable beneficiaries and beneficiaries with mild symptoms to remain in their homes, while maintaining access to the

care they need. By including services provided virtually, either through telehealth, virtual check-ins, e-visits or telephone, in the definition of primary care services, we ensure that physicians and other practitioners can offer options to beneficiaries whom they treat, while also allowing this care to be included in our consideration of where beneficiaries receive the plurality of their primary care, for purposes of assigning beneficiaries to ACOs. As a result, revising the definition of primary care services used in assignment to include these services will further allow for continuity and coordination of care. We also reiterate our policy defined at § 425.404(b) that, for performance years starting on January 1, 2019, and subsequent performance years, under the assignment methodology in § 425.402, CMS treats a service reported on an FQHC/RHC claim as a primary care service performed by a primary care physician.

b. Use of Codes for Virtual Check-Ins, Remote Evaluation E-Visits, Telephone Evaluation and Management Services, and Telehealth in Beneficiary Assignment

Based on feedback from ACOs and the expansion of payment, on an interim basis, for the virtual services discussed above, we are revising the definition of primary care services used in the Shared Savings Program assignment methodology for the performance year starting on January 1, 2020, and for any subsequent performance year that starts during the PHE for the COVID–19 pandemic, as defined in § 400.200, to include the following additions: (1) HCPCS code G2010 (*remote evaluation of patient video/images*) and HCPCS code G2012 (*virtual check-in*); (2) CPT codes 99421, 99422 and 99423 (*online digital evaluation and management service (e-visit)*); and (3) CPT codes 99441, 99442, and 99443 (*telephone evaluation and management services*).

Because the services listed above and described in detail in the preamble discussion below are similar to and may replace an E/M service for a beneficiary, we believe it is appropriate to include these CPT and HCPCS codes in the definition of primary care services used for assignment because the services represented by these codes are being used in place of similar E/M services, the codes for which are already included in the list of codes used for assignment. We believe it is important to include these services in our assignment methodology because we determine assignment to ACOs based upon where beneficiaries receive the plurality of their primary care services or whether they have designated an ACO professional as their primary clinician, responsible for their overall care, and hold ACOs accountable for the resulting assigned beneficiary population. Including these codes in the definition of primary care services used in assignment for performance years during the PHE for the COVID–19 pandemic will result in a more accurate identification of where beneficiaries have received the plurality of their primary care services.

In preamble discussion below, we are also clarifying that CPT codes 99304, 99305 and 99306, 99315 and 99316, 99327 and 99328, 99334 through 99337, 99341 through 99345, and 99347 through 99350 will be included in the assignment methodology when these services are furnished using telehealth, consistent with additions to the Medicare telehealth list for the duration of the PHE for the COVID–19 pandemic as discussed in the March 31st COVID–19 IFC (85 FR 19235 through 19237). We use the assignment methodology described in §§ 425.402 and 425.404 for purposes of assigning beneficiaries to ACOs for a performance year or benchmark year based on preliminary prospective assignment with retrospective reconciliation (including quarterly updates) or prospective assignment.

With the emergence of the virus that causes COVID–19, there is an urgency to expand the use of technology to allow people who need routine care, vulnerable beneficiaries, and beneficiaries with mild symptoms to remain in their homes, while maintaining access to the care they need. Limiting community spread of the virus, as well as limiting beneficiaries' exposure to other patients and health care staff members, will slow viral spread. We anticipate that the patterns and types of care provided during the COVID–19 PHE will be different and, in an effort to capture these changes in the methodology used to assign beneficiaries to ACOs as soon as possible, so that ACOs, particularly those that have elected preliminary prospective assignment with retrospective reconciliation for PY 2020, can understand the beneficiary population for which they will be responsible during PY 2020, we have determined that there is good cause to waive prior notice and comment rulemaking in order to implement these changes to the definition of primary care services in § 425.400(c) immediately.

As discussed in the March 31st COVID–19 IFC (85 FR 19244), in the CY 2019 PFS final rule, we finalized separate payment for a number of services that could be furnished via telecommunications technology, but that are not Medicare telehealth services. Specifically, beginning with CY 2019, we finalized separate payment for remote evaluation of video and/or images, HCPCS code G2010 *(Remote evaluation of recorded video and/or images submitted by an established patient (e.g., store and forward), including interpretation with follow-up with the patient within 24 business hours, not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment),* and virtual check-in, HCPCS code G2012 *(Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report E/M services, provided to an established patient, not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5–10 minutes of medical discussion).*

These codes were finalized as part of the set of codes that is only reportable by the physicians and practitioners who can furnish E/M services. Per the March 31st COVID–19 IFC, on an interim basis for the PHE for the COVID–19 pandemic, we will allow these codes to be used for new patients. In the March 31st COVID–19 IFC (85 FR 19244), we explained that, in the context of the PHE for the COVID–19 pandemic, when brief communications with practitioners and other non-face-to-face services might mitigate the need for an in-person visit that could represent an exposure risk for vulnerable patients, we believe that these services should be available to as large a population of Medicare beneficiaries as possible. In some cases, use of telecommunication technology could mitigate the exposure risk, and in such cases, the clinical benefit of using technology to furnish the service is self-apparent. This would be especially true should a significant increase in the number of people or health care professionals needing treatment or isolation occur in a way that would limit access to brief communications with established providers. Therefore, on an interim basis, during the PHE for the COVID–19 pandemic, we finalized that these services, which may only be reported if they do not result in a visit, including a telehealth visit, can be furnished to both new and established patients

As discussed in the March 31st COVID–19 IFC (85 FR 19254), in the CY 2019 PFS final rule (83 FR 59452), we

finalized payment for new online digital assessment services, also referred to as ''E-Visits,'' beginning with CY 2020 for practitioners billing under the PFS. These are non-face-to-face, patient-initiated communications using online patient portals. These digital assessment services are for established patients who require a clinical decision that otherwise typically would have been provided in the office. Per the March 31st COVID–19 IFC (85 FR 19244), while the code descriptors for these e-visit codes refer to an ''established patient'', during the PHE for the COVID–19 pandemic, we are exercising enforcement discretion on an interim basis to relax enforcement of this aspect of the code descriptors. Practitioners who may independently bill Medicare for E/M visits (for instance, physicians and NPs) can bill the following codes:

- 99421 *(Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 5–10 minutes.)*
- 99422 *(Online digital evaluation and management service, for an established patient, for up to 7 days cumulative time during the 7 days; 11–20 minutes.)*
- 99423 *(Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 21 or more minutes.)*

We also considered adding additional e-visit HCPCS codes which are used by clinicians who may not independently bill for E/M visits and who are not included in the definition of ACO professional in § 425.20 (for example, PTs, OTs, SLPs, CPs). However, because these services are not furnished by ACO professionals, we determined it was not necessary to include the following codes in our definition of primary care services for use in assignment:

- G2061 *(Qualified nonphysician healthcare professional online assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 5–10 minutes.)*
- G2062 *(Qualified nonphysician healthcare professional online assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 11–20 minutes.)*
- G2063 *(Qualified nonphysician qualified healthcare professional assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 21 or more minutes.)*

As discussed in the March 31st COVID–19 IFC (85 FR 19264 through 19265) and as discussed previously in this IFC, CMS finalized, on an interim basis for the duration of the PHE for the COVID–19 pandemic, separate payment for CPT codes 99441 through 99443 and 98966 through 98968, which describe E/M and assessment and management services furnished via telephone. While the code descriptors for these services refer to an ''established patient'' during the COVID–19 PHE we are exercising enforcement discretion on an interim basis to relax enforcement of this aspect of the code descriptors. Practitioners who may independently bill Medicare for E/M visits (for instance, physicians and NPs) can bill the following codes:

- 99441 *(Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5–10 minutes of medical discussion.)*
- 99442 *(Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 11–20 minutes of medical discussion.)*
- 99443 *(Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 21–30 minutes of medical discussion.)*

We also considered adding the additional telephone assessment and management CPT codes which are used by clinicians who may not independently bill for E/M visits and who are not included in the definition of ACO professional in § 425.20 (for example, PTs, OTs, SLPs, CPs). However, because these services are not furnished by ACO professionals, we determined it was not necessary to include these codes in our definition of primary care services for use in assignment:

- 98966 *(Telephone assessment and management service provided by a qualified nonphysician health care professional to an established patient, parent, or guardian not originating from a related assessment and management service provided within the previous 7 days nor leading to an assessment and management service or procedure within the next 24 hours or soonest available appointment; 5–10 minutes of medical discussion.)*
- 98967 *(Telephone assessment and management service provided by a qualified nonphysician health care professional to an established patient, parent, or guardian not originating from a related assessment and management service provided within the previous 7 days nor leading to an assessment and management service or procedure within the next 24 hours or soonest available appointment; 11–20 minutes of medical discussion.)*
- 98968 *(Telephone assessment and management service provided by a qualified nonphysician health care professional to an established patient, parent, or guardian not originating from a related assessment and management service provided within the previous 7 days nor leading to an assessment and management service or procedure within the next 24 hours or soonest available appointment; 21–30 minutes of medical discussion.)*

Several codes, detailed below, that are included on the ''Covered Telehealth Services for PHE for the COVID–19 pandemic, effective March 1, 2020'' list available at *https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes,* are already included in the definition of primary care services used in the Shared Savings Program assignment methodology:

- 99304 *(Initial nursing facility care, per day, for the evaluation and management of a patient, which requires these 3 key components: A detailed or comprehensive history; A detailed or comprehensive examination; and Medical decision making that is straightforward or of low complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the problem(s) requiring admission are of low severity. Typically, 25 minutes are spent at the bedside and on the patient's facility floor or unit.)*
- 99305 *(Initial nursing facility care, per day, for the evaluation and management of a patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and*

Medical decision making of moderate complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the problem(s) requiring admission are of moderate severity. Typically, 35 minutes are spent at the bedside and on the patient's facility floor or unit.)

• 99306 *(Initial nursing facility care, per day, for the evaluation and management of a patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and Medical decision making of high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the problem(s) requiring admission are of high severity. Typically, 45 minutes are spent at the bedside and on the patient's facility floor or unit.)*

• 99315 *(Nursing facility discharge day management; 30 minutes or less.)*

• 99316 *(Nursing facility discharge day management; more than 30 minutes.)*

• 99327 *(Domiciliary or rest home visit for the evaluation and management of a new patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and Medical decision making of moderate complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of high severity. Typically, 60 minutes are spent with the patient and/or family or caregiver.)*

• 99328 *(Domiciliary or rest home visit for the evaluation and management of a new patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and Medical decision making of high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the patient is unstable or has developed a significant new problem requiring immediate physician attention. Typically, 75 minutes are spent with the patient and/or family or caregiver.)*

• 99334 *(Domiciliary or rest home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: A problem focused interval history; A problem focused examination; Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are self-limited or minor. Typically, 15 minutes are spent with the patient and/or family or caregiver.)*

• 99335 *(Domiciliary or rest home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: An expanded problem focused interval history; An expanded problem focused examination; Medical decision making of low complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Typically, 25 minutes are spent with the patient and/or family or caregiver.)*

• 99336 *(Domiciliary or rest home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: A detailed interval history; A detailed examination; Medical decision making of moderate complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Typically, 40 minutes are spent with the patient and/or family or caregiver.)*

• 99337 *(Domiciliary or rest home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: A comprehensive interval history; A comprehensive examination; Medical decision making of moderate to high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. The patient may be unstable or may have developed a significant new problem requiring immediate physician attention. Typically, 60 minutes are spent with the patient and/or family or caregiver.)*

• 99341 *(Home visit for the evaluation and management of a new patient, which requires these 3 key components: A problem focused history; A problem focused examination; and Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low severity. Typically, 20 minutes are spent face-to-face with the patient and/or family.)*

• 99342 *(Home visit for the evaluation and management of a new patient, which requires these 3 key components: An expanded problem focused history; An expanded problem focused examination; and Medical decision making of low complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate severity. Typically, 30 minutes are spent face-to-face with the patient and/or family.)*

• 99343 *(Home visit for the evaluation and management of a new patient, which requires these 3 key components: A detailed history; A detailed examination; and Medical decision making of moderate complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Typically, 45 minutes are spent face-to-face with the patient and/or family.)*

• 99344 *(Home visit for the evaluation and management of a new patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and Medical decision making of moderate complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of high severity.*

Typically, 60 minutes are spent face-to-face with the patient and/or family.)

- 99345 *(Home visit for the evaluation and management of a new patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and Medical decision making of high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the patient is unstable or has developed a significant new problem requiring immediate physician attention. Typically, 75 minutes are spent face-to-face with the patient and/or family.)*
- 99347 *(Home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: A problem focused interval history; A problem focused examination; Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are self limited or minor. Typically, 15 minutes are spent face-to-face with the patient and/or family.)*
- 99348 *(Home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: An expanded problem focused interval history; An expanded problem focused examination; Medical decision making of low complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Typically, 25 minutes are spent face-to-face with the patient and/or family.)*
- 99349 *(Home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: A detailed interval history; A detailed examination; Medical decision making of moderate complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are moderate to high severity. Typically, 40 minutes are spent face-to-face with the patient and/or family.)*
- 99350 *(Home visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: A comprehensive interval history; A comprehensive examination; Medical decision making of moderate to high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. The patient may be unstable or may have developed a significant new problem requiring immediate physician attention. Typically, 60 minutes are spent face-to-face with the patient and/or family.)*

Because these CPT codes are already included in the definition of primary care services used in the Shared Savings Program assignment methodology, we are clarifying that these CPT codes will continue to be included in the definition of primary care services used for assignment, including when they are furnished via telehealth during the PHE for the COVID–19 pandemic, beginning March 1, 2020. We believe it is important to include these services in our assignment methodology, regardless of whether they are furnished in-person or via telehealth, because we determine assignment based upon where beneficiaries receive the plurality of their primary care services or whether they have designated an ACO professional as their primary clinician, responsible for their overall care, and hold ACOs accountable for the resulting assigned beneficiary population. Include these codes in the definition of primary care services used in assignment during the PHE for the COVID–19 pandemic, even when services are furnished via telehealth, will result in a more accurate identification of where beneficiaries have received the plurality of their primary care services.

Accordingly, we are adding a paragraph (c)(2) to our regulation at § 425.400, in which we specify additional primary care service codes that will be considered for purposes of beneficiary assignment for the performance year starting on January 1, 2020, and for any subsequent performance year that starts during the PHE for the COVID–19 pandemic, as defined in § 400.200. Under this provision the existing CPT codes and HCPCS codes included in the definition of primary care services at § 425.400(c)(1) will continue to apply for purposes of determining beneficiary assignment under § 425.402.

We seek comment on the revisions to the definition of primary care services that we are adopting in this IFC including the alternatives considered with regard to adding codes used by non-ACO professionals.

6. Applicability of Policies to Track 1+ Model ACOs

The Track 1+ Model was established under the Innovation Center's authority at section 1115A of the Act, to test innovative payment and service delivery models to reduce program expenditures while preserving or enhancing the quality of care for Medicare, Medicaid, and Children's Health Insurance Program beneficiaries. The Track 1+ Model, which is a time-limited model that began on January 1, 2018, is based on Shared Savings Program Track 1, but tests a payment design that incorporates more limited downside risk, as compared to Track 2 and the ENHANCED track. We discontinued all future application cycles for the Track 1+ Model, as explained in earlier rulemaking (83 FR 68032 and 68033). As of January 1, 2020, there are 20 Track 1+ Model ACOs participating in performance year 3 of a 3-year agreement under the model.

ACOs approved to participate in the Track 1+ Model are required to agree to the terms and conditions of the model by executing a Track 1+ Model Participation Agreement. See *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/track-1plus-model-par-agreement.pdf.* Track 1+ Model ACOs are also required to have been approved to participate in the Shared Savings Program (Track 1) and to have executed a Shared Savings Program Participation Agreement. As indicated in the Track 1+ Model Participation Agreement, in accordance with our authority under section 1115A(d)(1) of the Act, we have waived certain requirements of the Shared Savings Program that otherwise would be applicable to ACOs participating in Track 1 of the Shared Savings Program, as necessary for purposes of testing the Track 1+ Model, and established alternative requirements for the ACOs participating in the Track 1+ Model. Unless stated otherwise in the Track 1+ Model Participation Agreement, the requirements of the Shared Savings Program under part 425 continue to apply. Consistent with § 425.212, Track 1+ Model ACOs generally are subject to all applicable regulatory changes,

including but not limited to, changes to the regulatory provisions referenced within the Track 1+ Model Participation Agreement that become effective during the term of the ACO's Shared Savings Program Participation Agreement and Track 1+ Model Participation Agreement, unless otherwise specified through rulemaking or amendment to the Track 1+ Model Participation Agreement. We note that the terms of the Track 1+ Model Participation Agreement also permit the parties (CMS and the ACO) to amend the agreement at any time by mutual written agreement.

Therefore, unless specified otherwise, the changes to the Shared Savings Program regulations established in this IFC that are applicable to ACOs within a current agreement period will apply to ACOs in the Track 1+ Model in the same way that they apply to ACOs in Track 1, so long as the applicable regulation has not been waived under the Track 1+ Model. Similarly, to the extent that certain requirements of the regulations that apply to ACOs under Track 2 or the ENHANCED track have been incorporated for ACOs in the Track 1+ Model under the terms of the Track 1+ Model Participation Agreement, changes to those regulations as adopted in this IFC will also apply to ACOs in the Track 1+ Model in the same way that they apply to ACOs in Track 2 or the ENHANCED track. For example, the following policies apply to Track 1+ Model ACOs:

- Revisions to the definition of primary care services used in beneficiary assignment (section II.L.5. of this IFC), to include telehealth codes for virtual check-ins, e-visits, and telephonic communication. These codes are applicable beginning with beneficiary assignment for the performance year starting on January 1, 2020, and for any subsequent performance year that starts during the PHE for the COVID–19 pandemic, as defined in § 400.200.
- Clarification that the total months affected by an extreme and uncontrollable circumstance for the COVID–19 pandemic will begin with January 2020 and continue through the end of the COVID–19 PHE, for purposes of mitigating shared losses for PY 2020 (section II.L.3. of this IFC).
- Adjustments to expenditure calculations to remove expenditures for episodes of care for treatment of COVID–19 (section II.L.4. of this IFC).

We will also apply the following policies established in this IFC to Track 1+ Model ACOs through an amendment to the Track 1+ Model Participation Agreement executed by CMS and the ACO:

- Adjustments to revenue calculations to remove expenditures for episodes of care for treatment of COVID–19 (section II.L.4. of this IFC).

M. Additional Flexibility Under the Teaching Physician Regulations

In the March 31st COVID–19 IFC (85 FR 19258 through 19261), we introduced flexibilities in our regulations governing PFS payment for teaching physicians and residents. Since we published the March 31st COVID–19 IFC, stakeholders have asked us to relax additional requirements related to the provision of services furnished by a resident without the presence of a teaching physician under the so-called primary care exception specified in our regulation at 42 CFR 415.174.

For teaching physicians, section 1842(b) of the Act specifies that in the case of physicians' services furnished to a patient in a hospital with a teaching program, the Secretary shall not provide payment for such services unless the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which payment is sought. Regulations regarding PFS payment for teaching physician services are codified in part 415. Under § 415.174, Medicare makes PFS payment in primary care settings for certain services of lower and mid-level complexity furnished by a resident without the physical presence of a teaching physician, referred to as the primary care exception. Our regulation at § 415.174(a)(3) requires that the teaching physician must not direct the care of more than four residents at a time, and must direct the care from such proximity as to constitute immediate availability (that is, provide direct supervision) and must review with each resident during or immediately after each visit, the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies. Section 415.174(a)(3) also requires that the teaching physician must have no other responsibilities at the time, assume management responsibility for the beneficiaries seen by the residents, ensure that the services furnished are appropriate, and review with each resident during or immediately after each visit the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies.

As provided in the regulation at § 415.174(a), the E/M codes of lower and mid-level complexity that can be furnished under the primary care exception are specified in Section 100 of Chapter 12 of the Medicare Claims Processing Manual (*https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf*). They are the following:

- CPT code 99201 (*Office or other outpatient visit for the evaluation and management of a new patient, which requires these 3 key components: A problem focused history; A problem focused examination; Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are self limited or minor. Typically, 10 minutes are spent face-to-face with the patient and/or family*);
- CPT code 99202 (*Office or other outpatient visit for the evaluation and management of a new patient, which requires these 3 key components: An expanded problem focused history; An expanded problem focused examination; Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Typically, 20 minutes are spent face-to-face with the patient and/or family*);
- CPT code 99203 (*Office or other outpatient visit for the evaluation and management of a new patient, which requires these 3 key components: A detailed history; A detailed examination; Medical decision making of low complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate severity. Typically, 30 minutes are spent face-to-face with the patient and/or family*);
- CPT code 99211 (*Office or other outpatient visit for the evaluation and management of an established patient, that may not require the presence of a physician or other qualified health care professional. Usually, the presenting problem(s) are minimal. Typically, 5 minutes are spent performing or supervising these services*);
- CPT code 99212 (*Office or other outpatient visit for the evaluation and*

management of an established patient, which requires at least 2 of these 3 key components: A problem focused history; A problem focused examination; Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are self limited or minor. Typically, 10 minutes are spent face-to-face with the patient and/or family);

• CPT code 99213 (*Office or other outpatient visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components: An expanded problem focused history; An expanded problem focused examination; Medical decision making of low complexity. Counseling and coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Typically, 15 minutes are spent face-to-face with the patient and/or family*);

• HCPCS code G0402 *(Initial preventive physical examination; face-to-face visit, services limited to new beneficiary during the first 12 months of Medicare enrollment);*

• HCPCS code G0438 (*Annual wellness visit; includes a personalized prevention plan of service (PPS), initial visit*); and

• HCPCS code G0439 (*Annual wellness visit, includes a personalized prevention plan of service (PPS), subsequent visit*).

In the context of the PHE for the COVID–19 pandemic, teaching hospitals have expressed a need to increase their capacity to respond to the increased demand for physicians to meet patient needs. Additionally, there are often circumstances where the teaching physician may be under quarantine or otherwise at home, or the physical proximity of the teaching physician might present additional exposure risks. In section II.E. the March 31st COVID–19 IFC (85 FR 19245 through 19246), we stated that as a general rule under § 415.172, the requirement for the presence of a teaching physician can be met, at a minimum, through direct supervision by audio/video real-time communications technology. We also revised the scope of E/M codes that can be furnished under the primary care exception and amended § 415.174 of our regulations to allow all levels of office/outpatient E/M services furnished in primary care centers under the primary care exception to be furnished under direct supervision of the teaching physician by interactive telecommunications technology. We are making clarifying technical edits to the regulation text at §§ 415.172, 415.174, 415.180, and 415.184 to reflect the audio/video real-time requirement for communications technology.

Since we published the March 31st COVID–19 IFC, stakeholders have requested that we also revise our regulations to allow the teaching physician to meet the requirement to review the service with the resident, during or immediately after the visit, through virtual or remote means via interactive audio/video real-time communications technology. Given the circumstances of the COVID–19 PHE, the teaching physician may be under quarantine or otherwise not physically available to review the service with the resident. We note that in the March 31st COVID–19 IFC, we inadvertently deleted the former § 415.174(b) which stated that, nothing in paragraph (a) of the section may be construed as providing a basis for the coverage of services not determined to be covered under Medicare, such as routine physical check-ups. We are reinstating the former paragraph (b) and adding a new paragraph (c) to allow that, on an interim basis for the duration of the PHE for the COVID–19 pandemic, the teaching physician may not only direct the care furnished by residents, but also review the services provided with the resident, during or immediately after the visit, remotely through virtual means via audio/video real time communications technology.

We believe that permitting the teaching physician to interact with the resident remotely through virtual means would still allow the teaching physician to direct, manage, and review the care furnished by residents as specified in § 415.174(a). For example, this means that Medicare may make payment under the PFS for teaching physician services when a resident furnishes services permitted under the primary care exception, including via telehealth, and the teaching physician can provide the necessary direction, management and review of the resident's services using interactive audio/video real-time communications technology. The remainder of the policies at § 415.174(a)(3) continue to apply in that the teaching physician must have no other responsibilities at the time, assume management responsibility for the beneficiaries seen by the residents, ensure that the services furnished are appropriate, and review with each resident during or immediately after each visit the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies.

Since we published the March 31st COVID–19 IFC, stakeholders have requested that additional services be added to the primary care exception, such as the telephone E/M services we added for separate payment in the March 31st COVID–19 IFC, as well as transitional care management, and communication technology-based services. Adding services to the primary care exception would permit the resident to provide a more expansive array of services to patients who may be quarantined at home or who may need to be isolated for purposes of minimizing exposure risk based on presumed or confirmed COVID–19 infection. Consequently, on an interim basis for the duration of the COVID–19 PHE, Medicare may make PFS payment to the teaching physician for the following additional services when furnished by a resident under the primary care exception:

• CPT code 99441 (*Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5–10 minutes of medical discussion*);

• CPT code 99442 (*Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 11–20 minutes of medical discussion*);

• CPT code 99443 (*Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 21–30 minutes of medical discussion*);

• CPT code 99495 (*Transitional Care Management services with the following required elements: Communication (direct contact, telephone, electronic) with the patient and/or caregiver within two business days of discharge; medical decision making of at least moderate complexity during the service period; face-to-face visit within 14 calendar days of discharge*);

• CPT code 99496 (*Transitional Care Management services with the following required elements: Communication (direct contact, telephone, electronic) with the patient and/or caregiver within two business days of discharge; medical decision making of at least high complexity during the service period; face-to-face visit within 7 calendar days of discharge*);

• CPT code 99421 (*Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 5–10 minutes*);

• CPT code 99422 (*Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 11–20 minutes*);

• CPT code 99423 (*Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 21 or more minutes*);

• CPT code 99452 (*Interprofessional telephone/internet/electronic health record referral service(s) provided by a treating/requesting physician or qualified health care professional, 30 minutes*);

• HCPCS code G2012 (*Brief communication technology-based service, e.g., virtual check-in, by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient, not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5–10 minutes of medical discussion*); and

• HCPCS code G2010 (*Remote evaluation of recorded video and/or images submitted by an established patient (e.g., store and forward), including interpretation with follow-up with the patient within 24 business hours, not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment*).

Finally, consistent with policy that we established in the March 31st COVID–19 IFC for selecting the level of Office/Outpatient E/M visits when furnished as Medicare Telehealth services, (85 FR 19268 through 19269), we are clarifying that the office/outpatient E/M level selection for services under the primary care exception when furnished via telehealth can be based on MDM or time, with time defined as all of the time associated with the E/M on the day of the encounter; and the requirements regarding documentation of history and/or physical exam in the medical record do not apply. As described in section II.Z. of this IFC, the typical times for purposes of level selection for an office/outpatient E/M are the times listed in the CPT code descriptor. This policy is similar to the policy that will apply to all office/outpatient E/M services beginning in 2021 under policies finalized in the CY 2020 PFS final rule. Taken together, these policies mean that, on an interim basis for the duration of the PHE for the COVID–19 pandemic, Medicare may make PFS payment for teaching physician services when a resident furnishes a service included in this expanded list of services in primary care centers, including via telehealth, and the teaching physician can provide the necessary direction, management and review for the resident's services using audio/video real-time communications technology. We believe that these policies will increase the capacity of teaching settings to respond to the PHE for the COVID–19 pandemic as more practitioners are being asked to assist with the response.

N. Payment for Audio-Only Telephone Evaluation and Management Services

In the March 31st COVID–19 IFC, we established separate payment for audio-only telephone evaluation and management services. The telephone evaluation and management (E/M) services are CPT codes:

• 99441 (*Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5–10 minutes of medical discussion*);

• 99442 (*Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 11–20 minutes of medical discussion*); and

• 99443 (*Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 21–30 minutes of medical discussion*).

We noted that, although these services were previously considered non-covered under the PFS, in the context of PHE and with the goal of reducing exposure risks associated with the COVID–19 pandemic, especially in the case that two-way, audio and video technology required to furnish a Medicare telehealth service might not be available, we believed there are circumstances where prolonged, audio-only communication between the practitioner and the patient could be clinically appropriate, yet not fully replace a face-to-face visit. For example, an established patient who was experiencing an exacerbation of their condition could have a 25-minute phone conversation with their physician during which the physician determines that an adjustment to the patient's medication would alleviate their symptoms. The use of CPT code 99443 in this situation prevents a similar in-person service. We stated we believed that these telephone E/M codes, with their established description and valuation, were the best way to recognize the relative resource costs of these kinds of services and make payment for them under the PFS.

For these codes, we finalized on an interim basis during the PHE for the COVID–19 pandemic, work relative value units (RVUs) as recommended by the American Medical Association (AMA) Relative Value Scale Update Committee (RUC) as discussed in the CY 2008 PFS final rule (72 CFR 66371) of 0.25 for CPT code 99441, 0.50 for CPT code 99442, and 0.75 for CPT code 99443. We also finalized the RUC-recommended direct practice expense (PE) inputs which consist of 3 minutes of post-service Registered Nurse/Licensed Practical Nurse/Medical Technical Assistant clinical labor time for each code.

In the time since we established these payment amounts, stakeholders have informed us that use of audio-only services is more prevalent than we had previously considered, especially because many beneficiaries are not

utilizing video-enabled communication technology from their homes. In other words, there are many cases where practitioners would under ordinary circumstances utilize telehealth or in-person visits to evaluate and manage patients' medical concerns, but are instead using audio-only interactions to manage more complex care. While we previously acknowledged the likelihood that, under the circumstances of the PHE, more time would be spent interacting with the patient via audio-only technology, we are now recognizing that the intensity of furnishing an audio-only visit to a beneficiary during the unique circumstances of the COVID–19 pandemic is not accurately captured by the valuation of these services we established in the March 31st COVID–19 IFC. This is particularly true to the extent that these audio-only services are actually serving as a substitute for office/outpatient Medicare telehealth visits for beneficiaries not using video-enabled telecommunications technology contrary to the situation we anticipated when establishing payment for them in the March 31st COVID–19 IFC. Given our new understanding that these audio-only services are being furnished primarily as a replacement for care that would otherwise be reported as an in-person or telehealth visit using the office/outpatient E/M codes, we are establishing new RVUs for the telephone E/M services based on crosswalks to the most analogous office/outpatient E/M codes, based on the time requirements for the telephone codes and the times assumed for valuation for purposes of the office/outpatient E/M codes. Specifically, we are crosswalking CPT codes 99212, 99213, and 99214 to 99441, 99442, and 99443 respectively. We are finalizing, on an interim basis and for the duration of the COVID–19 PHE the following work RVUs: 0.48 for CPT code 99441; 0.97 for CPT code 99442; and 1.50 for CPT code 99443. We are also finalizing the direct PE inputs associated with CPT code 99212 for CPT code 99441, the direct PE inputs associated with CPT code 99213 for CPT code 99442, and the direct PE inputs associated with CPT code 99214 for CPT code 99443. We are not finalizing increased payment rates for CPT codes 98966–98968 as these codes describe services furnished by practitioners who cannot independently bill for E/Ms and so these telephone assessment and management services, by definition, are not furnished in lieu of an office/outpatient E/M service.

We note that to the extent that these extended phone services are taking place instead of office/outpatient E/M visits (either in-person or via telehealth), the direct crosswalk of RVUs also better maintains overall budget neutrality and relativity under the PFS. We believe that the resources required to furnish these services during the PHE for the COVID–19 pandemic are better captured by the RVUS associated with the level 2–4 established patient office/outpatient E/M visits. Additionally, given our understanding that these audio-only services are being furnished as substitutes for office/outpatient E/M services, we recognize that they should be considered as telehealth services, and are adding them to the list of Medicare telehealth services for the duration of the PHE. We also note that, for these audio-only E/M services, we will be separately issuing a waiver under section 1135(b)(8) of the Act, as amended by section 3703 of the CARES Act, of the requirements under section 1834(m) of the Act and our regulation at § 410.78 that Medicare telehealth services must be furnished using video technology. The full list of Medicare telehealth services, including those added during the PHE, is available here *https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.* We note that these codes describe medical discussion, and should not be used for administrative or other non-medical discussion with the patient. Although practitioners have been provided flexibility around cost-sharing for the duration of the PHE, beneficiaries are still liable for cost-sharing for these services in instances where the practitioner does not waive cost-sharing. Practitioners should educate beneficiaries on any applicable cost-sharing. We are seeking comment on how best to minimize unexpected cost sharing for beneficiaries. We plan to monitor utilization of these services and will consider making refinements to billing rules, documentation requirements or claims edits through future rulemaking.

O. Flexibility for Medicaid Laboratory Services

Section 6004(a) of the Families First Coronavirus Response Act added a new mandatory benefit in the Medicaid statute at section 1905(a)(3)(B) of the Act, and this provision was amended by section 3717 of the CARES Act. Section 1905(a)(3)(B) of the Act provides that, for any portion of the COVID–19 emergency period defined in section 1135(g)(1)(B) of the Act that begins on or after March 18, 2020, Medicaid coverage must include in vitro diagnostic products (as defined in Food and Drug Administration (FDA) regulations at 21 CFR 809.3(a)) for the detection of SARS-CoV–2 or diagnosis of the virus that causes COVID–19, and the administration of such in vitro diagnostic products. As discussed in CMS guidance issued on April 13, 2020,[38] FDA has advised that serological tests for COVID–19 meet the definition in 21 CFR 809.3(a) of an in vitro diagnostic product for the detection of SARS-CoV–2 or the diagnosis of COVID–19. Therefore, coverage under section 1905(a)(3)(B) of the Act must include those serological tests. Section 1905(a)(3)(B) was an addition to the existing mandatory benefit for laboratory and X-ray services that was formerly at section 1905(a)(3) of the Act, and that is now at section 1905(a)(3)(A) of the Act.

The regulation currently implementing section 1905(a)(3) of the Act, at 42 CFR 440.30, includes certain limitations and conditions on Medicaid coverage of laboratory tests and X-rays, and describes who may provide laboratory tests and where laboratory tests may be administered. Specifically, § 440.30(a) requires that Medicaid-covered laboratory and X-ray services be ordered and provided by or under the direction of a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law or ordered by a physician but provided by a referral laboratory. Section 440.30(b) specifies that Medicaid will cover laboratory and X-ray services only if provided in an office or similar facility other than a HOPD or clinic, and § 440.30(c) specifies that Medicaid will cover these services only if they are furnished by a laboratory that meets the requirements of 42 CFR part 493.

As the CDC noted when issuing advice on how to protect against COVID–19 infection, some recent studies have suggested that COVID–19 may be spread by people who are not showing symptoms.[39] We believe it is vital for Medicaid beneficiaries to have broad access to tests to detect the SARS-CoV–2 virus, antibodies to the SARS-CoV–2 virus, or COVID–19, so that they can properly monitor their symptoms, make decisions about seeking further care, and take appropriate precautions

[38] Families First Coronavirus Response Act, Public Law 116–127; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136; Frequently Asked Questions (FAQs) (April 13, 2020) 5–6, at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf.*

[39] *https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.htm; https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.*

to prevent further spread of disease. The requirements at § 440.30(a) and (b) could present an obstacle to Medicaid coverage for administering and processing COVID–19 laboratory and diagnostic tests in certain non-office settings, such as parking lots or other temporary outdoor locations, where the setting is intended to maximize physical distancing and thereby minimize transmission of COVID–19. Given the nature and scope of the COVID–19 pandemic, the critical importance of expanding COVID–19 testing to combat the pandemic, and the heightened risk the disease presents to Medicaid beneficiaries, we also would like to accommodate evolving COVID–19 diagnostic mechanisms, such as FDA-authorized tests that allow for patients to self-collect a specimen in alternative locations (such as at home) to send to a laboratory, to detect the SARS-CoV–2 virus, antibodies to the SARS-CoV–2 virus, or COVID–19 (sometimes referred to as ''self-collection''). Self-collection of tests at home is likely to minimize transmission of COVID–19, and the need for a Medicaid beneficiary to obtain an order for coverage of a self-collected COVID–19 test could present a significant barrier to beneficiaries who might otherwise seek a test that FDA authorizes as not requiring a prescription. We are using the term self-collection to encompass evolving mechanisms for testing that would be processed by a laboratory that can receive Medicaid payment.

Accordingly, we are amending § 440.30 to permit flexibility for coverage of COVID–19 tests, including coverage for tests administered in non-office settings, and coverage for laboratory processing of self-collected COVID–19 tests that are FDA-authorized for self-collection. The flexibility would apply not only during the current COVID–19 PHE, but also during any subsequent periods of active surveillance, to allow for continued surveillance as part of strategies to detect recurrence of the virus in individuals and populations to prevent further spread of the disease. State officials may continue to need the flexibility offered under this amendment during such periods of active surveillance after the COVID–19 PHE ends. We define a period of active surveillance as an outbreak of communicable disease during which no approved treatment or vaccine is widely available. A period of active surveillance ends on the date the Secretary terminates it, or the date that is two incubation periods after the last known case of the communicable disease, whichever is sooner. We seek comments on this definition of the period of active surveillance.

To allow similar flexibilities in future emergencies with similar circumstances, these amendments would not be limited to the COVID–19 PHE and any subsequent period of active surveillance (as defined above), but would also apply to future PHEs resulting from outbreaks of communicable disease (and subsequent periods of active surveillance, as defined above), during which measures are necessary to avoid transmission of the communicable disease, and when such measures might result in difficulty meeting the requirements of § 440.30(a) or (b). The flexibilities available under this amendment would be applicable as described below for the COVID–19 PHE, and with respect to future PHEs, would be applicable only upon formal declaration of a PHE that CMS determines meets these criteria, and would last for the duration of that future PHE and any subsequent period of active surveillance.

We are therefore adding a new § 440.30(d) that specifies that, during the COVID–19 PHE or any future PHE resulting from an outbreak of communicable disease, and during any subsequent period of active surveillance (as defined above), Medicaid coverage is available for laboratory tests and X-ray services that do not meet conditions specified in § 440.30(a) or (b) so long as the purpose of the laboratory or X-ray service is to diagnose or detect SARS-CoV–2, antibodies to SARS-CoV–2, COVID–19, or the communicable disease named in the PHE or its causes, and so long as the deviation from the conditions specified in § 440.30(a) or (b) is intended to avoid transmission of the communicable disease. We further specify that under these same circumstances and subject to these same conditions, Medicaid coverage is available for laboratory processing of self-collected laboratory test systems that the FDA has authorized for home use, if available to diagnose or detect SARS-CoV–2, antibodies to SARS-CoV–2, COVID–19, or the communicable disease named in the PHE or its causes, even if those self-collected tests would not otherwise meet the requirements in § 440.30(a) or (b). Among other flexibilities, these amendments would permit states to cover laboratory processing of self-collected test systems that the FDA has authorized for home use, without the order of a treating physician or other licensed non-physician practitioner (NPP). Laboratories that process such test systems without an order, as permitted under this new § 440.30(d), must notify the patient and the patient's physician or NPP, if known by the laboratory, of the results. Again, in order to protect the public, the flexibilities that would permit self-collection of testing will apply only for test systems authorized by the FDA for home use. We are soliciting comment on the implications of applying this provision to future public health emergencies, and the specifications that should be included in doing so.

These changes to § 440.30 apply not only to the benefit described at section 1905(a)(3)(B) of the Act, but also apply to the longstanding laboratory and X-ray services benefit that was formerly at section 1905(a)(3) of the Act, and is now at section 1905(a)(3)(A) of the Act. In light of the urgent need to provide these flexibilities during the COVID–19 PHE, and because this provision will ease restrictions under existing law and make Medicaid coverage of testing more available, new paragraph (d) in § 440.30 will be effective retroactive to March 1, 2020.

Lastly, while § 440.30(d) does not provide flexibility regarding § 440.30(c), which provides that services under § 440.30 must be furnished by a laboratory that meets the requirements of part 493, we are soliciting comment on whether continuing to apply the requirements of § 440.30(c) would present any obstacle to providing Medicaid coverage for COVID–19 testing.

P. Improving Care Planning for Medicaid Home Health Services

1. Background

a. General Information

Title XIX of the Act requires that to receive federal Medicaid matching funds, a state must offer certain services to the categorically needy populations specified in the statute. Home health services for Medicaid-eligible individuals who are entitled to NF services is one of these mandatory services. Individuals entitled to NF services include the basic categorically needy populations that receive the standard Medicaid benefit package, and can include medically needy populations if NF services are offered to the medically needy within a state. Home health services include part-time or intermittent nursing, home health aide services, medical supplies, equipment, and appliances, and may include therapy services (physical therapy, occupational therapy, speech pathology and audiology services). Prior to 1997, Medicaid regulations required an individual's physician to order home

health services as part of a written plan of care, and review the plan of care every 60 days. In 1997, Medicaid regulations (62 FR 47902), were amended to allow the plan of care for medical supplies, equipment and appliances to be reviewed by a physician annually.

Title XIX was amended in 2010, when section 6407 of the Patient Protection and Affordable Care Act of 2010 [40] added the requirement that physicians document the occurrence of a face-to-face encounter (including through the use of telehealth) with the Medicaid beneficiary within reasonable timeframes when ordering home health services. Section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, enacted on April 16, 2015) amended Medicare requirements at section 1834(a)(11)(B)(ii) of the Act to allow certain authorized NPPs to document the face-to-face encounter and applied such changes to the Medicaid program. CMS finalized the implementing provisions on February 2, 2016, in the Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarification Related to Home Health final rule (81 FR 5529) became effective July 1, 2016.

In the March 31st COVID–19 IFC, we amended the Medicaid home health regulations to allow other licensed practitioners to order all components of home health services in accordance with state scope of practice laws, for the period of this COVID–19 PHE.

b. Changes To Modernize Requirements for Ordering Medicaid Home Health Nursing, Aide and Therapy Services; and Modernize Face-to-Face Encounter Requirements

When the Medicaid program was signed into law in 1965, most skilled medical professional services in the United States were provided by physicians, with the assistance of nurses. Over the decades, the medical professional field has diversified and allowed for a wider range of certifications and specialties, including the establishment of mid-level practitioners such as NPs and PAs that are also known as NPPs. Both Medicare and Medicaid policies and regulations have been updated over recent years to make changes to allow NPPs to provide certain services within the extent of their scope of practice as defined by state law.

The recognition of the advanced training and qualifications of these practitioners continues with the enactment of the CARES Act. Section 3708 of the CARES Act amended Medicare requirements at sections 1814(a) and 1835(a) of the Act to expand the list of practitioners who can order home health services. Specifically, sections 1814(a)(2)(C) of the Act under Part A and section 1835(a)(2)(A) of the Act under Part B of the Medicare program were amended to allow an NP, CNS or PA to order home health services in addition to physicians so long as these NPPs are permitted to provide such services under the scope of practice laws in the state. Section 3708(e) of the CARES Act also provides that the requirements for ordering home health services shall apply under title XIX in the same manner and to the same extent as such requirements apply under title XVIII of such Act. In accordance with this language on applying these requirements ''in the same manner'' as Medicare is, in light of the urgent need to provide these flexibilities during the COVID–19 PHE, and because this provision will increase flexibility in the delivery of benefits and make Medicaid coverage of home health services more available, the Medicaid regulations discussed in this section will take effect on the same date as the Medicare regulations implementing section 3708 discussed in section II.J. of this IFC, ''Care Planning for Medicare Home Health Services.'' Further, the language in section 3708 of the CARES Act is not time limited to the period of the COVID–19 PHE; the revisions to the Medicaid home health program will be permanently in effect.

The purpose of this regulation is to implement this statutory directive in the CARES Act within the Medicaid program. In implementing the CARES Act home health provisions, it is important to note the structural differences between the Medicare home health benefit and the Medicaid home health benefit that require some adaptation for the requirement to apply the new Medicare rules in section 3708 of the CARES Act to Medicaid ''in the same manner and to the same extent as such requirements apply'' under Medicare. Under the Medicare program, the home health benefit includes skilled part-time or intermittent nursing, home health aide service, therapies and medical social services. DME is a separate benefit under Medicare, and could already be ordered, prior to the enactment of section 3708 of the CARES Act, by a more extensive list of NPPs than the practitioners identified in section 3708 of the CARES Act for Medicare home health services. Comparatively, as noted previously in this section of the IFC, the Medicaid home health benefit includes part-time or intermittent nursing, home health aide services, and medical supplies, equipment and appliances, also known as DME. Therapy services can be included at the state's option.

Based on the statutory directive to apply section 3708 of the CARES Act changes to Medicaid in the same manner as Medicare, we had to determine whether to interpret this directive as applying the rules for who can order services under the more limited Medicare home health services benefit only to the subset of Medicaid home health services that align with Medicare, or to apply the Medicare rules on who can order services to the full range of Medicaid home health services. As discussed earlier in this section, Medicare allows a more extensive list of NPPs to order DME, than the practitioners identified for Medicaid or the practitioners identified in the CARES Act. Because DME (''medical supplies, equipment and appliances'') is covered under the Medicaid home health benefit, this would mean applying the current Medicare rules on who can order DME under that Medicare benefit to that component of the Medicaid home health benefit. We believe that aligning the Medicaid program with Medicare regarding who can order medical supplies, equipment and appliances promotes access to services for Medicaid beneficiaries, including those who are dually eligible, and will eliminate burden to states and providers on dealing with inconsistencies between the Medicare and Medicaid programs. Specifically, we are amending the home health regulation at § 440.70(a)(3) to allow other licensed practitioners, to order medical equipment, supplies and appliances in addition to physicians, when practicing in accordance with state laws.

For other services covered under the Medicaid home health benefit, we are applying the new list of practitioners set forth in section 3708 of the CARES Act to who can order those services, specifically, part-time or intermittent nursing services, home health aide services, and if included in the state's home health benefit, therapy services. Specifically, § 440.70(a)(2) is amended to allow a NP, CNS and PA to order home health services described in § 440.70(b)(1), (2) and (4).

[40] The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this IFC, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act''.

Through this IFC, we are also amending the current regulation to remove the requirement that the NPPs described in § 440.70(a)(2) have to communicate the clinical finding of the face-to-face encounter to the ordering physician. With expanding authority to order home health services, the CARES Act also provides that such practitioners are now capable of independently performing the face-to-face encounter for the patient for whom they are the ordering practitioner, in accordance with state law. If state law does not allow such flexibility, the NPP is required to work in collaboration with a physician.

Finally, we note that the flexibility allowed in this IFC to NPs, CNSs and PAs to order home health services must be done in accordance with state law. Individual states have varying requirements for conditions of practice, which determine whether a practitioner may work independently, without a written collaborative agreement or supervision from a physician, or whether general or direct supervision and collaboration is required. State Medicaid Agencies can consult the specific practitioner association or relevant state agency website to ensure that practitioners are working within their scope of practice and prescriptive authority.

Q. Basic Health Program Blueprint Revisions

1. Background

Section 1331 of the Patient Protection and Affordable Care Act [41] provides states with a coverage option, the Basic Health Program (BHP), for specified individuals who do not qualify for Medicaid but whose income does not exceed 200 percent of the federal poverty level (FPL). More information about the BHP is available in the ''Basic Health Program'' final rule [42] which was published in the March 12, 2014 **Federal Register** (79 FR 14112). The BHP regulations are codified at part 600. As of April 2020, Minnesota and New York are the only states operating a BHP.

2. Changes to Requirements for Revisions of a Certified Blueprint

As we explain in § 600.110, the BHP Blueprint is a comprehensive written document submitted by the State to the Secretary for certification of a BHP. Section 600.110(a) specifies what content needs to be included in the BHP Blueprint that must be certified by HHS. Section 600.125(a) currently requires that a state that seeks to make significant changes to its BHP must submit a revised BHP Blueprint to the Secretary for review and certification.[43] We previously explained in the September 25, 2013 BHP proposed rule [44] (78 FR 59125) that, while not an exhaustive list, the types of changes that would be considered ''significant'' for purposes of this provision include changes that have a direct impact on the enrollee experience in BHP or the program financing. Section 600.125(b) currently requires that a state is responsible for continuing to operate under the terms of the existing Blueprint until and unless a revised Blueprint is certified. Taken together, these regulations require that states wishing to make significant changes to a certified Blueprint must do so on a prospective basis and such changes cannot be implemented until a revised Blueprint is certified by HHS.

We believe that during the PHE for the COVID–19 pandemic, it is not feasible for a state to receive certification by HHS prior to implementing certain necessary significant changes to their BHP. Specifically, during the PHE for the COVID–19 pandemic, states may need to immediately revise certain provisions of or add certain provisions to their BHP Blueprints that would be considered significant changes to ensure BHP enrollees can access necessary services without delay or access these services without cost sharing. For example, based on our experience with the PHE for the COVID–19 pandemic, we recognize that states operating a BHP may need to temporarily waive limitations on certain benefits covered under its BHP or temporarily waive enrollee premiums and cost sharing.

Therefore, at § 600.125, we are revising paragraph (b) and adding a new paragraph (c) to allow a state to submit to the Secretary for review and certification a revised Blueprint that makes temporary significant changes to respond to the PHE for the COVID–19 pandemic with the option for the states to make such changes effective retroactive to the start of the PHE for the COVID–19 pandemic as defined in § 400.200. While we would generally expect that revisions submitted under § 600.125(c) would no longer be in effect as of the end of the PHE for the COVID–19 pandemic as defined in § 400.200, there may be instances in which policies will need to temporarily be in effect for a longer period of time. For example, following the end of the PHE for the COVID–19 pandemic, a state may need additional time to process all of the renewals or changes in circumstance that were not completed during the PHE. A state may need an additional, temporary period of time (for example, 90 days), before resuming its usual processing standards. We will work with states to determine a reasonable amount of time after the PHE for returning to normal course of business.

Specifically, the flexibility in the new § 600.125(c) only applies to Blueprint revisions that make temporary significant changes that are directly tied to the PHE for the COVID–19 pandemic and would increase enrollee access to coverage.[45] States may not submit under § 600.125(c), and we will not certify, retroactive Blueprint revisions under this provision that are not directly tied to the PHE for the COVID–19 pandemic. In addition, states may not submit under § 600.125(c), and we will not certify, retroactive Blueprint revisions under this provision that are restrictive in nature, such as Blueprint revisions that increase enrollee cost sharing, reduce BHP benefits, or limit or reduce eligibility for BHP coverage. Revised Blueprints submitted under § 600.125(c) can only implement temporary revisions to increase access to coverage that would remain in effect only through the

[41] The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this IFC, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act''.

[42] Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity; Final Rule (79 FR 14111 through 14151, March 12, 2014).

[43] This provision states that ''in the event that a State seeks to make significant change(s) that alter program operations the BHP benefit package, enrollment, disenrollment and verification policies described in the certified BHP Blueprint, the State must submit a revised Blueprint to the Secretary for review and certification.''

[44] Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity; Proposed Rule, 78 FR 59121 at 59125 (September 25, 2013).

[45] These flexibilities are similar to those that are currently available in the Medicaid State Plan Amendment (SPA) template and instructions that CMS created in March 2020 to assist states in responding to the PHE for the COVID–19 pandemic and CHIP SPAs that allow for temporary adjustments to enrollment and redetermination policies during disaster events. More information about these Medicaid and CHIP flexibilities is available at *https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/state-plan-flexibilities/index.html.*

duration of the PHE for the COVID–19 pandemic, or a reasonable additional amount of time as discussed above. To submit and receive certification for a revised Blueprint under § 600.125(c), a state will need to submit a cover letter to CMS that lists each change for which it is seeking certification alongside an explanation for how each change is directly related to the PHE for the COVID–19 pandemic and how each change is not restrictive in nature. The state should also specify the requested duration of each of the changes. If the state is seeking certification to implement temporary changes beyond the end of the COVID–19 pandemic, the state should specify why the later end date is needed. The state should also submit a revised Blueprint that incorporates the temporary changes. In addition, as noted above, the process outlined in the new section § 600.125(c) does not apply to Blueprint revisions that do not make significant changes.

Revised Blueprints submitted under § 600.125(c) will not be subject to the public comment requirements under § 600.115(c), as we have determined that the existence of unforeseen circumstances resulting from the PHE for the COVID–19 pandemic warrants an exception to the normal public notice procedures to expedite the certification of a revised Blueprint that implements temporary changes to expand access to coverage. We have determined that it would not be practical to solicit public comment during the PHE for the COVID–19 pandemic, and we recognize that there is a need to ensure consumers have access to the care they need as expeditiously as possible. Nonetheless, we encourage states to seek public input, when appropriate, consistent with applicable state requirements.

If a state seeks to make a permanent, significant change to its BHP, such as permanently altering verification, enrollment, or disenrollment policies, the state must follow the usual process for submission of a revised Blueprint with a prospective effective date in accordance with § 600.125(a). In addition, when seeking to make permanent, significant changes to its BHP, the state must continue to operate under the terms of the existing certified Blueprint until HHS certifies the revision.

R. Merit-Based Incentive Payment System (MIPS) Qualified Clinical Data Registry (QCDR) Measure Approval Criteria

We have heard from third party intermediaries, specifically QCDRs, that due to the COVID–19 pandemic they anticipate being unable to complete QCDR measure testing or collect data on QCDR measures for the 2021 MIPS performance period as specified at § 414.1400(b)(3)(v)(C) and (D). Both QCDR measure approval criteria necessitate QCDRs collecting data from clinicians in order to assess the measure. Over 50 percent of the QCDRs approved for the 2020 performance period are supported by specialty societies that represent and support clinicians on the front lines of the COVID–19 pandemic, or are hospitals that are directly impacted by the pandemic. We also anticipate that there will be a lack of available data for some QCDR measures because clinicians who work in specialties that are not primarily caring for COVID–19 patients may have their cases or elective procedures canceled or delayed so that resources can be redistributed. As a result, we anticipate that QCDRs may be unable to collect, and clinicians unable to submit, data on QCDR measures due to prioritizing the care of COVID–19 patients.

We believe that clinicians who are on the frontlines taking care of COVID–19 cases should not be burdened with having to submit data to a QCDR for purposes of QCDR measure assessment (testing and data collection). In consideration of clinicians' limited resources and in an effort to reduce burden on clinicians and health care organizations that are responding to the COVID–19 pandemic, we are amending the QCDR measure approval criteria previously finalized in the CY 2020 PFS final rule (84 FR 63065 through 63068), specifically: (1) Completion of QCDR measure testing at § 414.1400(b)(3)(v)(C) as discussed in section II.R.1. of this IFC; and (2) collection of data on QCDR measures at § 414.1400(b)(3)(v)(D) as discussed in section II.R.2. of this IFC.

1. Completion of QCDR Measure Testing

In the CY 2020 PFS final rule (84 FR 63065 through 63067), we finalized at § 414.1400(b)(3)(v)(C) that beginning with the 2021 performance period, all QCDR measures must be fully developed and tested, with complete testing results at the clinician level, prior to submitting the QCDR measure at the time of self-nomination. For the reasons discussed in section II.R. of this IFC, we are delaying the implementation of this policy by 1 year. Specifically, we are amending § 414.1400(b)(3)(v)(C) to state that beginning with the 2022 performance period, all QCDR measures must be fully developed and tested, with complete testing results at the clinician level, prior to submitting the QCDR measure at the time of self-nomination.

During this 1 year delay, we will continue to review QDCR measures as in past years to ensure they are valid, reliable, and align with the goals of the Meaningful Measure initiative.[46] This process includes review by quality measure experts; QCDR policy subject matter experts; clinicians, including physicians, nurses, and PTs/OTs, who work on our support contractor team; and CMS Medical Officers. We will continue to review QCDR measures for potential risk of patient harm (for example, QCDR measures that promote clinical practices related to overuse). We also will continue to review QCDR measures for feasibility and accuracy and reliability of results. For more information, we refer readers to the 2020 QCDR Measure Development Handbook.[47]

2. Collection of Data on QCDR Measures

In the CY 2020 PFS final rule (84 FR 63067 through 63068), we finalized at § 414.1400(b)(3)(v)(D) that beginning with the 2021 performance period, QCDRs are required to collect data on a QCDR measure, appropriate to the measure type, prior to submitting the QCDR measure for CMS consideration during the self-nomination period. For the reasons discussed in section II.R. of this IFC, we are delaying the implementation of this policy by 1 year. Specifically, we are amending § 414.1400(b)(3)(v)(D) to state that beginning with the 2022 performance period, QCDRs are required to collect data on a QCDR measure, appropriate to the measure type, prior to submitting the QCDR measure for CMS consideration during the self-nomination period.

During this 1-year delay, we will continue to review QDCR measures as in past years to ensure they are valid and identify performance gaps in the area of measurement. As described in the 2020 QCDR Measure Development Handbook,[48] this process includes vetting the measures to ensure they are implementable and collectible, which includes an evaluation of the measure and coding constructs (for example, whether the measure is constructed as a ratio, proportional, or inverse measure). Additionally, we will review the

[46] See *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.*

[47] Available at *https://qpp-cm-prod-content.s3.amazonaws.com/uploads/580/2020%20Self-Nomination%20Toolkit%20for%20QCDRs%20%26%20Qualified%20Registries.zip.*

[48] Available at *https://qpp-cm-prod-content.s3.amazonaws.com/uploads/580/2020%20Self-Nomination%20Toolkit%20for%20QCDRs%20%26%20Qualified%20Registries.zip.*

evidence provided by the QCDR (for example, clinical studies and/or scientific journals) that would support the need for measurement in lieu of insufficient data collection to demonstrate that there is a measurement gap.

S. Application of Certain National Coverage Determination and Local Coverage Determination Requirements During the PHE for the COVID–19 Pandemic

National Coverage Determinations (NCDs) are determinations by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII. Local Coverage Determinations (LCDs) are determinations by a Medicare Administrative Contractor (MAC) with respect to whether or not a particular item or service is covered under section 1862(a)(1)(A) of the Act in the particular MAC's geographical areas. Articles are often published alongside LCDs and contain coding or other guidelines that complement an LCD. NCDs and LCDs contain clinical conditions a patient must meet to qualify for coverage of the item or service.

In section II.U. of the March 31st COVID–19 IFC, we finalized on an interim basis that to the extent an NCD or LCD (including articles) would otherwise require a face-to-face or in-person encounter or other implied face-to-face services, those requirements would not apply during the PHE for the COVID–19 pandemic. Additionally, we finalized on an interim basis that we will not enforce the clinical indications for coverage across respiratory, home anticoagulation management and infusion pump NCDs and LCDs (including articles) allowing for flexibility for practitioners to care for their patients. This section provides clarification and expands upon section II.U. of the March 31st COVID–19 IFC.

1. Applicability of Reasonable and Necessary Requirement for Covered Items and Services

Some external stakeholders appear to be misinterpreting statements that CMS made in the March 31st COVID–19 IFC as waiving medical necessity requirements; there are now questions as to whether items and services can be furnished or ordered without reason during the PHE for the COVID–19 pandemic. We note there is nothing in guidance or the March 31st COVID–19 IFC, that could be interpreted to permanently or temporarily waive the reasonable and necessary statutory requirement, which is expressed in section 1862(a)(1)(A) of the Act and cannot be waived under the section 1135 PHE waiver authority. Except as expressly permitted by statute, we remind physicians, practitioners and suppliers that most items and services must be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member to be paid under Part A or Part B of Title XVIII. Physicians, practitioners, and suppliers are required to continue documenting the medical necessity for all services. Accordingly, the medical record must be sufficient to support payment for the services billed (that is, the services were actually provided, were provided at the level billed, and were medically necessary).

2. Enforcement Discretion of Clinical Indications for Additional LCDs

In the March 31st COVID–19 IFC, we finalized on an interim basis that we will not enforce the clinical indications for coverage across respiratory, home anticoagulation management and infusion pump NCDs and LCDs (including articles) allowing for more flexibility for practitioners to care for their patients. This enforcement discretion will only apply during the PHE for the COVID–19 pandemic.

In this IFC, we are finalizing on an interim basis that we will not enforce the clinical indications for therapeutic continuous glucose monitors in LCDs. For example, we will not enforce the current clinical indications restricting the type of diabetes that a beneficiary must have or relating to the demonstrated need for frequent blood glucose testing in order to permit COVID–19 infected patients with diabetes to receive a Medicare covered therapeutic continuous glucose monitor. This discretion is intended to permit COVID–19 patients to more closely monitor their glucose levels given that they are at risk for unpredictable impacts of the infection on their glucose levels and health. The use of therapeutic continuous glucose monitors may allow patients to proactively treat their diabetes and prevent the need for hospital-based diabetic care. Practitioners will also have greater flexibility to allow more of their diabetic patients to better monitor their glucose and adjust insulin doses from home by using a therapeutic continuous glucose monitor. This enforcement discretion will only apply during the PHE for the COVID–19 pandemic.

T. Delay in the Compliance Date of Certain Reporting Requirements Adopted for IRFs, LTCHs, HHAs and SNFs

1. Delay of the Compliance Date of the Transfer of Health (TOH) Information Quality Measures and Certain Standardized Patient Assessment Data Elements (SPADEs) Adopted for the IRF QRP, LTCH QRP, and HH QRP

In the FY 2020 IRF PPS final rule (84 FR 39100 through 39161), we adopted the TOH Information to Provider-Post-Acute Care and TOH Information to Patient-Post-Acute Care quality measures (collectively, the TOH Information Measures) beginning with the FY 2022 IRF QRP and finalized that IRFs would be required to collect data on both measures beginning with patients discharged on or after October 1, 2020. We also adopted standardized patient assessment data elements (SPADEs) for six categories that IRFs must report for patients beginning with the FY 2022 IRF QRP, with data collection beginning with admissions and discharges (except for the hearing, vision, race and ethnicity SPADEs, which would be collected for admissions only) on October 1, 2020 (84 FR 39114 through 84 FR 39149). In the FY 2020 Inpatient Prospective Payment System (IPPS)/Long-Term Care Hospital (LTCH) PPS final rule (84 FR 42526 through 84 FR 84534), we adopted the same two measures and SPADEs for reporting by LTCHs beginning with FY 2022 LTCH QRP with data collection beginning with patients discharged on October 1, 2020 and data collection on the SPADEs beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected for admissions only) on October 1, 2020.

In the CY 2020 HH PPS final rule (84 FR 60557 through 60610), we also adopted these measures for reporting by HHAs in the CY 2022 HH QRP beginning with patients discharged or transferred January 1, 2021 and data collection on the SPADEs beginning with the start of care, resumption of care, and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected at the start of care only) on January 1, 2021.

The current assessment instruments that IRFs, LTCHs, and HHAs use to submit data to meet the requirements of their respective QRPs do not include the data elements that these providers need to report the TOH Information Measures or the SPADEs that we previously finalized for data collection beginning either October 1, 2020 for IRFs and

LTCHs or January 1, 2021 for HHAs. We have developed updated assessment instruments that include these new data elements, and under our current implementation timeline, we would be in the process of training providers on how to operationalize them. Each of these providers would also be in the process of training their staffs on how to use the updated versions, as well as working with their vendors to make programming changes necessary to implement them timely. However, we want to provide maximum flexibilities for these providers to respond to the public health threats posed by the COVID–19 PHE, and to reduce the burden in administrative efforts associated with attending training, training their staffs and working with their vendors to incorporate the updated assessment instruments into their operations. Accordingly, we are delaying the release of updated versions of the IRF Patient Assessment Instrument (IRF–PAI), LTCH Continuity Assessment Record and Evaluation Data Set (LTCH CARE Data Set), and HHA's Outcome and Assessment Information Set (OASIS) Instrument to reduce the burden that these providers would otherwise incur as a result of being required to incorporate the updated versions into their operations before October 1, 2020 (for IRFs and LTCHs) or January 1, 2021 (for HHAs). This delay will enable these providers to continue using the current versions of their assessment instruments, with which they are already familiar. The current version of the IRF–PAI has been in use since October 1, 2019 (IRF–PAI v. 3.0). The current version of the LTCH CARE Data Set has also been in use since October 1, 2019 (LTCH CARE Data Set v. 4.00). The current version of the OASIS Instrument has been in use since January 1, 2019 (OASIS–D).

This delay of the updated assessment instruments will impact the ability of IRFs, LTCHs and HHAs to collect and report data on the two TOH Information Measures and SPADEs under their respective QRPs. Accordingly, in this IFC, we are delaying the compliance dates for the collection and reporting of these TOH Information Measures and SPADEs. Specifically, we will require IRFs to use IRF–PAI V4.0 and LTCHs to use LTCH CARE Data Set V5.0 to begin collecting data on the two TOH Information Measures beginning with discharges on October 1st of the year that is at least 1 full fiscal year after the end of the COVID–19 PHE. For example, if the COVID–19 PHE ends on September 20, 2020, IRFs and LTCHs will be required to begin collecting data on these measures beginning with patients discharged on October 1, 2021. We will also require IRFs and LTCHs to begin collecting data on the SPADEs for admissions and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected for admissions only) on October 1st of the year that is at least 1 full fiscal year after the end of the COVID–19 PHE. HHAs will be required to use OASIS–E to begin collecting data on the two TOH Information Measures beginning with discharges and transfers on January 1st of the year that is at least 1 full calendar year after the end of the COVID–19 PHE. For example, if the COVID–19 PHE ends on September 20, 2020, HHAs will be required to begin collecting data on those measures beginning with patients discharged or transferred on January 1, 2022. We will also require HHAs to begin collecting data on the SPADEs beginning with the start of care, resumption of care, and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected at the start of care only) on January 1st of the year that is at least 1 full calendar year after the end of the COVID–19 PHE.

We believe that these delays will give IRFs, LTCHs, and HHAs enough time to operationalize the updated versions of their respective assessment instruments, including taking any necessary training and ensuring that their vendors can make appropriate programming updates. We plan to release the drafts of the new instruments again for these programs shortly after the COVID–19 PHE ends to provide ample time for training and any vendor programming.

2. Delay in the Compliance Date of the Transfer of Health Information Measures and Certain SPADEs Adopted for the SNF QRP

In the FY 2020 SNF PPS final rule (84 FR 38755 through 84 FR 38764), we adopted the TOH quality measures beginning with the FY 2022 SNF QRP and finalized that SNFs would be required to collect data on both measures beginning with patients discharged on October 1, 2020. We also adopted SPADEs for six categories that SNFs must report for patients beginning with the FY 2022 SNF QRP, with data collection for patients discharged October 1, 2020 for admissions and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected for admissions only).

The current version of the Minimum Data Set (MDS), MDS 3.0 v1.17.1, that SNFs use to submit data in order to meet the requirements of the SNF QRP does not include the data elements that are needed to report the TOH Information Measures and the SPADEs that we previously finalized for data collection beginning October 1, 2020. We previously released a draft version of the updated MDS 3.0 v1.18.1 that includes these new data elements, and under our current implementation timeline, we would be in the process of training providers on how to operationalize them. Each of these providers would also be in the process of training their staffs on how to use the updated versions, as well as working with their vendors to make programming changes necessary to timely implement them. However, as we previously noted in a March 19, 2020 notice posted on our website [49] stakeholders have expressed concerns that the length of our planned implementation period is too short for SNFs to properly educate their staffs on how to operationalize the updated MDS given that the updated version did not adequately address the needs of states that use the instrument for payment and to report data. For these reasons, we stated that we were delaying the release of the updated version of the MDS. This delay will enable SNFs to continue using the current version of the MDS, with which they are already familiar.

Our delay of the release of the updated version of the MDS 3.0 v1.18.1 will impact the ability of SNFs to collect and report data on the two TOH Information Measures and SPADEs. Accordingly, in this IFC, we are delaying the compliance dates for the collection and reporting of these measures and SPADEs. Although we did not originally delay the release of the updated version of the MDS because of the COVID–19 PHE, we believe that this PHE is appropriate to take into consideration when determining when it will be feasible to release the updated version, and when it will likewise be feasible to require SNFs to begin to report the new quality measure and SPADEs data.

Therefore, we will require SNFs to begin collecting data on the two TOH Information Measures beginning with discharges on October 1st of the year that is at least 2 full fiscal years after the end of the COVID–19 PHE. For example, if the COVID–19 PHE ends on September, 20, 2020, SNFs will be required to begin collecting data on these measures beginning with patients discharged on October 1, 2022. We will

[49] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Spotlights-and-Announcements.*

also require SNFs to begin collecting data on the SPADEs beginning with admissions and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected for admissions only) on October 1st of the year that is at least 2 full fiscal years after the end of the COVID–19 PHE. Although this delay is longer than the delay we are adopting for IRFs, LTCHs and HHAs, we believe that the additional delay for SNFs is appropriate because it will give us enough time to work with stakeholders to ensure that their concerns are addressed while also allowing SNFs a reasonable amount of time to complete required training, train their staffs, and work with their vendors to make necessary programming updates. Shortly after the COVID–19 PHE ends, we plan to work with stakeholders to develop a mutually agreeable timeline for releasing the updated MDS 3.0 v1.18.1 that provides sufficient time for SNFs to incorporate the updated version into their operations.

U. Update to the Hospital Value-Based Purchasing (VBP) Program Extraordinary Circumstance Exception (ECE) Policy

In the FY 2014 IPPS/LTCH final rule (78 FR 50704 through 50707), we finalized a disaster/extraordinary circumstance exception (ECE) policy for the Hospital VBP Program. The intent of the Hospital VBP ECE policy is to mitigate any adverse impact on quality performance as a direct result of unforeseen extraordinary circumstances outside of the hospital's control and the resulting impact on their value-based incentive payment amounts.

Under the current policy and upon a hospital's request, we will consider providing an exception from the Hospital VBP Program requirements to hospitals affected by natural disasters or other extraordinary circumstances (78 FR 50704 through 50706). Specifically, in the FY 2014 IPPS/LTCH final rule, we stated that we interpreted the minimum number of cases and measures requirement in sections 1886(o)(1)(C)(ii)(III) and (IV) of the Act to not include any measures or cases for which a hospital has submitted data during a performance period for which the hospital has been granted a Hospital VBP Program ECE. We also stated that, if after the applicable quality measure data from a performance period has been excepted due to the granting of an ECE, the hospital still reports the minimum number of cases and measures required for the program year, the hospital will still receive a Total Performance Score (TPS) that has been calculated without use of the excepted quality data.

Based on our previously finalized policy, a hospital must submit the Hospital VBP Program ECE request form (OMB control #0938–1022), including any available evidence of the impact of the extraordinary circumstances on the hospital's quality measure performance, within 90 calendar days of the date on which the natural disaster or other extraordinary circumstance occurred (78 FR 50706).

We continue to recognize that unforeseen extraordinary circumstances, such as the current PHE for COVID–19, could substantially affect the ability of hospitals to perform under the Hospital VBP Program at the same level at which they might otherwise have performed if the natural disaster or extraordinary circumstance had not occurred. We also continue to acknowledge that using quality measure data from these periods to generate the Hospital VBP Program TPS might substantially impact the value-based incentive payment amount that the hospital would otherwise receive. Further, we believe that during an extraordinary circumstance that affects an entire geographic region or locale, which could include the entire United States (such as the COVID–19 PHE), the requirement for hospitals to submit individual ECE request forms along with supporting evidence to CMS within 90 days of the date the extraordinary circumstance occurred could be overly burdensome for hospitals by requiring additional administrative actions from hospital personnel, who may need to focus on care delivery and related priorities during and subsequent to the extraordinary circumstance.

Therefore, we believe it is necessary to update the Hospital VBP Program's ECE policy to include the ability for us to grant exceptions to hospitals located in entire regions or locales, which could include the entire United States, without a request where we determine that the extraordinary circumstance has affected the entire region or locale. Accordingly, in this IFC, we are modifying the Hospital VBP Program's ECE policy to allow us to grant ECE exceptions to hospitals which have not requested them when we determine that an extraordinary circumstance that is out of their control, such as an act of nature (for example, a hurricane) or PHE (for example, the COVID–19 pandemic), affects an entire region or locale, in addition to retaining the individual ECE request policy. We are codifying this updated ECE policy at § 412.165(c) of our regulations. When we make the determination to grant an exception to all hospitals in a region or locale, we will communicate this decision through routine communication channels to hospitals, vendors, and Quality Improvement Organizations (QIOs), including but not limited to issuing memos, emails, and notices on the public QualityNet website (see *https://www.qualitynet.org*). This policy will more closely align the Hospital VBP Program ECE policy with the ECE policy adopted for other quality reporting and VBP programs, including the Hospital Inpatient Quality Reporting, Hospital Outpatient Quality Reporting, Inpatient Psychiatric Facility Quality Reporting, Ambulatory Surgical Center Quality Reporting, PPS-Exempt Cancer Hospital Quality Reporting, Hospital-Acquired Condition Reduction, and Hospital Readmissions Reduction Programs. If we grant an ECE to hospitals located in an entire region or locale under this revised policy and, as a result of granting that ECE, one or more hospitals located in that region or locale does not report the minimum number of cases and measures required to enable us to calculate a TPS for that hospital for the applicable program year, the hospital will be excluded from the Hospital VBP Program for the applicable program year. We refer readers to the FY 2020 IPPS/LTCH PPS final rule (84 FR 42399 through 42400) for the minimum number of measures and cases that we currently require hospitals to report to receive a TPS for a program year under the Hospital VBP Program.

A hospital that does not report the minimum number of cases or measures for a program year will not receive a 2 percent reduction to its base operating DRG payment amount for each discharge in the applicable program year, and will also not be eligible to receive any value-based incentive payments for the applicable program year.

In accordance with this updated policy and consistent with the ECE guidance we issued on March 22, 2020 and March 27, 2020,[50] we are granting an ECE with respect to the COVID–19 PHE to all hospitals participating in the Hospital VBP Program for the following reporting requirements:

- Hospitals will not be required to report National Healthcare Safety Network (NHSN) HAI measures and HCAHPS survey data for the following quarters: October 1, 2019–December 31,

[50] *https://www.cms.gov/newsroom/press-releases/cms-announces-relief-clinicians-providers-hospitals-and-facilities-participating-quality-reporting,* and *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf%20.*

2019 (Q4 2019), January 1, 2020–March 31, 2020 (Q1 2020), and April 1, 2020–June 30, 2020 (Q2 2020). However, hospitals can optionally submit part or all of these data by the posted submission deadlines on the HVBP QualityNet site (available at *https://www.qualitynet.org/inpatient/iqr/participation*). We refer readers to the March 27 guidance memo for more information on the HAI and HCAHPS measures in that are included in the Hospital-Acquired Condition Reduction Program.

- We will exclude qualifying claims data from the mortality, complications, and Medicare Spending per Beneficiary measures for the following quarters: January 1, 2020–March 31, 2020 (Q1 2020) and April 1, 2020—June 30, 2020 (Q2 2020).

We are granting these exceptions to assist hospitals while they direct their resources during the PHE related to COVID–19 toward caring for their patients and ensuring the health and safety of patients and staff. We believe it is appropriate to except hospitals from the requirement to report HAI measure data, HCAHPS survey data, and claims-based data for Q1 and Q2 2020 discharges because the data collected during that period may be greatly impacted by the hospital's response to COVID–19. While hospitals will continue to submit claims for reimbursement, we will not use discharge data from these quarters for measure calculations because we are concerned that these claims data may not be fully reflective of their quality or cost of care. For the Q4 2019 HAI and HCAHPS data, the exception is being granted because the April and May 2020 data submission deadlines for those data fall during the COVID–19 PHE, and we believe it is important to reduce the data collection and reporting burden so that hospitals can direct their resources toward responding to the COVID–19 PHE. We continue to closely monitor and analyze the impact that the COVID–19 PHE has on the HVBP program, and if necessary, will communicate any other exceptions and/or extensions that we believe are appropriate for the Hospital VBP Program through routine communication channels to hospitals, vendors, and QIOs, including but not limited to issuing memos, emails, and notices on the public QualityNet website (see *https://www.qualitynet.org*).

V. COVID–19 Serology Testing

A blood-based serology test can be used to detect whether a patient may have previously been infected with the virus that causes COVID–19 by identifying whether the patient has antibodies specific to the SARS-CoV–2 virus. Patients who have these antibodies may have developed an immune response to SARS-CoV–2 indicating recent or prior infection, and therefore, potentially may not be at immediate risk for re-infection. It is expected that patients have been infected with COVID–19 who either had characteristic symptoms and were not tested or had minor or non-specific symptoms and did not seek testing. An FDA-authorized serology test that detects antibodies to SARS-CoV–2, the virus that causes COVID–19, may potentially aid in identifying patients who have had an immune response to current or prior SARS-CoV–2 infection.

Based on this information, we are finalizing on an interim basis that these FDA-authorized COVID–19 serology tests fall under the Medicare benefit category of diagnostic laboratory test (section 1861(s)(3) of the Act). Therefore, these tests are coverable by the Medicare program because they fall under at least one Medicare benefit category. This may not be an exhaustive list of benefit categories as CMS did not evaluate information about the test to identify additional benefit categories.

Having COVID–19 serology test results is useful to individual patients, their practitioners, and their communities because it could change the decisions Medicare beneficiaries make for themselves and influences practitioner management of the beneficiaries' medical treatment.

If it can be determined that they are immune, these patients would possibly not be at risk for contracting COVID–19 and not be risking the health of their communities if they travel outside of their home as they would not spread COVID–19. Among the biggest risks to the community are patients with COVID–19 infection who have not developed symptoms or had minor non-specific symptoms, yet are infectious.[51]

Beneficiaries who are negative for COVID–19 antibodies through serology testing may need to take more preventive measures to reduce their personal risk of infection as some persons, based on age and other factors, are at higher risk of serious illness or death from the disease. Further, a practitioner should discuss the results of the serology test with the beneficiary to ensure that the beneficiary understands the results of the test and the results are considered in the overall management of the patient.

In circumstances outside of the COVID–19 PHE, we would ordinarily use the NCD process to establish a benefit category and establish that an item or service is reasonable and necessary under section 1862(a)(1)(A) of the Act. The NCD process is established in section 1862(l) of the Act and requires the Secretary to make a proposed decision available to the public for 30 days of public comment followed by issuing a final decision not later than 60 days after the close of the comment period. Given the need to establish timely and uniform national coverage that is relevant during the PHE for the COVID–19 pandemic, we have determined that coverage for FDA-authorized COVID–19 serology tests should be established in an interim final manner through this IFC. Since we are not aware of any professional society recommendations for confirmatory or repeat testing on the same sample, CMS would expect to be billed once per sample. Further, we would not expect such tests to be performed and billed unless clinically indicated.

We are finalizing on an interim basis, that during the PHE for the COVID–19 pandemic, Medicare will cover FDA-authorized COVID–19 serology tests as they are reasonable and necessary under section 1862(a)(1)(A) of the Act for beneficiaries with known current or known prior COVID–19 infection or suspected current or suspected past COVID–19 infection. We are amending § 410.32 to reflect this determination of coverage.

W. Modification to Medicare Provider Enrollment Provision Concerning Certification of Home Health Services

1. Background—Provider Enrollment

Section 1866(j)(1)(A) of the Act requires the Secretary to establish a process for the enrollment of providers and suppliers in the Medicare program. The overarching purpose of the enrollment process is to help ensure that providers and suppliers that seek to bill the Medicare program for services or items furnished to Medicare beneficiaries are qualified to do so under federal and state laws.

The applicable provider enrollment regulations are largely, though not exclusively, contained in part 424, subpart P (currently §§ 424.500 through 424.570). Several of our previous provider enrollment rulemaking efforts have focused on strengthening existing enrollment procedures and eliminating existing vulnerabilities; in other words, the objectives have been to enhance our

[51] Wei WE, Li Z, Chiew CJ, Yong SE, Toh MP, Lee VJ. Presymptomatic Transmission of SARS-CoV–2—Singapore, January 23–March 16, 2020. MMWR Morb Mortal Wkly Rep 2020;69:411–415. DOI: *http://dx.doi.org/10.15585/mmwr.mm6914e1.*

ability to: (1) Conduct strict screening activities; (2) take prompt action against problematic providers and suppliers; and (3) implement important safeguards against improper Medicare payments. Yet we believe that the current COVID–19 PHE requires us to undertake provider enrollment rulemaking for a different reason; specifically, the need to help providers and suppliers concentrate their resources on treating those beneficiaries affected by COVID–19. Therefore, as discussed in section III. of this IFC, ''Waiver of Proposed Rulemaking,'' we believe the urgency of this COVID–19 PHE constitutes good cause to waive the normal notice-and-comment process under the Administrative Procedure Act and statute. Accordingly, this IFC contains an important revision to part 424, subpart P that will give providers and suppliers certain flexibilities in their activities during the existing COVID–19 PHE.

2. Certification of Home Health Services—Revision to § 424.507

Currently, § 424.507(b)(1) contains certain payment requirements for covered Part A or Part B home health services. Specifically, and consistent with section 6405(b) of the Patient Protection and Affordable Care Act (which amended sections 1814(a)(2) and 1835(a)(2) of the Act), to receive payment for such services, the provider's claim must meet all of the following requirements:

- The ordering/certifying physician must be identified by his or her legal name and National Provider Identifier (NPI) on the claim.
- The ordering/certifying physician must be enrolled in Medicare in an approved status or have validly opted-out of the Medicare program.

However, and as previously mentioned in this IFC, section 3708 of the CARES Act made several important amendments to sections 1814(a)(2) and 1835(a)(2) of the Act (as well as other related sections of the statute). One amendment was that NPs, CNSs, and PAs (as those terms are defined in section 1861(aa)(5) of the Act) working in accordance with state law may also certify the need for home health services. Section 3708(f) of the CARES Act authorizes us to promulgate an interim final rule, if necessary, to implement the provisions in section 3708 by the statutory deadline. Further, given the need for flexibility in the provision of health care services in the COVID–19 PHE, we believe it is appropriate to implement these statutory changes in this IFC, rather than through notice-and-comment rulemaking. Consequently, we are revising § 424.507(b)(1) to include ordering/certifying physicians, PAs, NPs, and CNSs as individuals who can certify the need for home health services. We note that, for reasons similar to those related to our other modifications to Medicare rules concerning the certification and provision of home health services, this change to § 424.507 is final and applicable to services provided on or after March 1, 2020. We will review and respond to any comments thereon in the CY 2021 HH PPS final rule or in another future rule.

X. Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges: Separate Billing and Segregation of Funds for Abortion Services

In light of these extraordinary circumstances and the immediate need for qualified health plan (QHP) issuers to devote resources to respond to the COVID–19 PHE, we are revising 45 CFR 156.280(e)(2)(ii) to delay implementation of the separate billing policy for 60 days from the effective date we finalized in the ''Patient Protection and Affordable Care Act; Exchange Program Integrity'' final rule (84 FR 71674) (''2019 Program Integrity Rule'').[52] Under this 60-day extension, QHP issuers must comply with the separate billing policy finalized at § 156.280(e)(2)(ii) beginning on or before the QHP issuer's first billing cycle following August 26, 2020.

To better align QHP issuer billing for coverage of non-Hyde abortion services with the separate payment requirement in section 1303 of the Patient Protection and Affordable Care Act,[53] we finalized a policy in the 2019 Program Integrity Rule requiring issuers of individual market QHPs offering coverage of non-Hyde abortion services to separately bill policy holders for the portion of their premium attributable to coverage of non-Hyde abortion services. We explained in the 2019 Program Integrity Rule that separately billing policy holders in this manner for coverage of non-Hyde abortion services is a necessary change to better align issuer billing with the statutory requirements specified in section 1303 of the Patient Protection and Affordable Care Act, which requires non-Hyde abortion services be treated differently from other covered services. Specifically, requiring separate billing for coverage of non-Hyde abortion services better aligns with Congress's intent for QHP issuers to collect two distinct premium payments for coverage of these services, one for the coverage of non-Hyde abortion services, and one for coverage of all other services covered under a QHP.

Under the separate billing policy finalized in the 2019 Program Integrity Rule at § 156.280(e)(2)(ii), issuers of individual market QHPs are required to begin separately billing policy holders for the portion of the policy holder's premium attributable to non-Hyde abortion services, as specified by the regulation, on or before the QHP issuer's first billing cycle following June 27, 2020.

To address the risk of coverage terminations related to failure on the part of policy holders to pay the separately billed amount for coverage of non-Hyde abortion services, we determined that HHS would exercise enforcement discretion in two scenarios related to policy holder nonpayment of the separate bill for coverage of non-Hyde abortion services. Under the first scenario, we explained that HHS will not take enforcement action against a QHP issuer that adopts and implements a policy, applied uniformly to all its QHP enrollees, under which an issuer does not place an enrollee into a grace period and does not terminate QHP coverage based solely on the policy holder's failure to pay the separate payment for coverage of non-Hyde abortion services. We further explained that the QHP issuer would: (1) Be prohibited from using any federal funds for coverage of non-Hyde abortion services; (2) be required to collect the premium for the non-Hyde abortion coverage; and (3) not be able to relieve the policy holder of the duty to pay the amount of premium attributable to coverage for non-Hyde abortion services. We explained that this enforcement posture would take effect upon the effective date of the separate billing requirements on June 27, 2020.

Under the second scenario, we explained that HHS will not take enforcement action against QHP issuers that, on or after the effective date of the final rule (February 25, 2020), modify the benefits of a plan either at the time of enrollment or during a plan year to effectively allow enrollees to opt out of

[52] A typographical error in the date in the regulation text promulgated in the 2019 Program Integrity Rule was corrected on January 17, 2020. 85 FR 2888.

[53] The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this IFC, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act''.

coverage of non-Hyde abortion services by not paying the separate bill for such services, resulting in an enrollee effectively having a modified plan that does not cover non-Hyde abortion services.

We also stated in the 2019 Program Integrity rule that, for those State Exchanges and QHP issuers that may face uncommon or unexpected impediments to timely compliance, HHS would consider extending enforcement discretion to an Exchange or QHP issuer that fails to timely comply with the separate billing policy as required under the final rule, if we find that the Exchange or QHP issuer attempted in good faith to timely meet the requirements. However, we noted that HHS would be unlikely to exercise such discretion for an Exchange or QHP issuer that fails to meet the separate billing requirements after more than 1 year following publication of the 2019 Program Integrity Rule.

We have received a number of requests from QHP issuers requesting that HHS exercise its enforcement discretion for delayed implementation in light of the heightened burden QHP issuers are experiencing related to addressing the COVID–19 PHE. QHP issuers explained in their requests to HHS that the dedication of numerous cross-functional resources in response to the COVID–19 PHE has led to an overall reduction in resources available for other initiatives, such as preparatory arrangements to timely implement the separate billing policy. QHP issuers further explained how the already existing challenges to timely compliance with the separate billing policy pose an even greater obstacle when considered in conjunction with the mounting demands on QHP issuers in responding to the COVID–19 PHE. We are also aware that for many QHP issuers, some, if not all, of their daily work is being accomplished while staff is working remotely, adding yet another barrier to timely compliance.

We believe that despite timely QHP initiation of planning for compliance with the separate billing policy, there are circumstances outside of the control of QHP issuers, due to the COVID–19 PHE, that make timely compliance with the separate billing policy impractical by the deadline, on or before the first billing cycle following June 27, 2020. Moreover, we believe it is imprudent to require QHP issuers to devote resources to timely compliance with the separate billing policy when these resources can instead be directed towards addressing the immediate needs associated with the COVID–19 PHE. Therefore, in light of these extraordinary circumstances and the immediate need for QHP issuers to divert resources to responding to the COVID–19 PHE, we are revising § 156.280(e)(2)(ii) to delay implementation of the separate billing policy for 60 days. Under this 60-day delay, QHP issuers must comply with the separate billing policy finalized at § 156.280(e)(2)(ii) beginning on or before the QHP issuer's first billing cycle following August 26, 2020.

We acknowledge that a particular QHP issuer's or Exchange's ability to comply with the separate billing policy by the extended deadline of August 26, 2020, may depend on the particular impact the COVID–19 PHE has on the resources, systems, and operations of that QHP issuer or Exchange. We also acknowledge that the timeline for how long the COVID–19 PHE continues to impact QHP issuers and Exchanges is uncertain, and therefore, QHP issuers and Exchanges may be confronted with additional unexpected impediments to timely compliance past the 60-day delay we are finalizing in this IFC. HHS will still consider exercising its enforcement discretion in connection with an Exchange or QHP issuer that fails to timely comply with the separate billing policy on or before the first billing cycle following August 26, 2020, if HHS finds that the Exchange or QHP issuer attempted in good faith to timely meet the requirements. We do not anticipate that HHS would exercise such discretion for an Exchange or QHP issuer that fails to meet the separate billing requirements after more than 1 year following publication of the 2019 Program Integrity Rule or more than 6 months after the end of the COVID–19 PHE, whichever comes later. However, we emphasize that QHP issuers and Exchanges should make good faith efforts to fully comply by the extended deadline of the first billing cycle following August 26, 2020. We believe the 60-day delay will sufficiently alleviate burden on resources in the short-term, as well as provide sufficient time for QHP issuers and Exchanges, such that responding to the COVID–19 PHE and timely compliance with the separate billing policy are both practical. As a consequence, we do not anticipate formally extending the compliance deadline again.

As QHP issuers and Exchanges work to respond to the COVID–19 PHE, and implement and establish policies to ensure access to COVID–19-related care for enrollees, HHS is working to assess and extend regulatory flexibility to QHP issuers, Exchanges, and other health industry stakeholders, where doing so may enable these stakeholders to divert existing resources to the COVID–19 PHE response. We believe extending the deadline 60 days for QHP issuers and Exchanges to comply with the separate billing policy is appropriate, so that they may adequately respond to the COVID–19 PHE and divert resources to address the COVID–19 PHE that may otherwise have been used for timely compliance with the separate billing policy.

Although the 2019 Program Integrity Rule provides an existing framework for HHS to exercise its enforcement discretion in connection with QHP issuers and Exchanges unable to timely comply with the separate billing policy based on the circumstances of the particular Exchange or QHP issuer, based on reports from a number of QHP issuers and Exchanges, we have concluded that handling requests for additional time to come into compliance on a case-by-case basis is not an efficient mechanism to address these requests and does not adequately acknowledge the shared burden that the COVID–19 PHE is placing on QHP issuers and Exchanges. We believe that the COVID–19 PHE is an unexpected impediment to timely compliance with the separate billing policy for all QHP issuers and Exchanges alike. As a consequence, we have determined that it is appropriate to extend the deadline for compliance 60 days through this IFC, and to codify this change in the **Federal Register**.[54]

As previously noted, we finalized in the 2019 Program Integrity Rule that HHS would exercise enforcement discretion in two scenarios related to policy holder nonpayment of the separate bill. We note that the extension for compliance we are finalizing here only impacts the first of those scenarios, by delaying when this enforcement posture becomes available by 60 days. As previously stated, HHS will not take enforcement action against a QHP issuer that adopts and implements a policy, applied uniformly to all its QHP enrollees, under which an issuer does not place an enrollee into a grace period and does not terminate QHP coverage based solely on the policy holder's

[54] In light of the ongoing litigation challenging the separate billing policy and the delayed briefing schedule for this litigation, delaying implementation of the separate billing policy by 60 days would also be justified, as the 60-day delay provides the court additional time to resolve the issues before compliance with the separate billing provision is required and offers regulated parties more certainty before dedicating limited resources to the necessary changes during this PHE. This extension is also consistent with the representations made by the federal government to the federal court in lawsuits challenging the separate billing policy in response to requests that HHS delay implementation of the separate billing policy in light of COVID–19.

failure to pay the separate payment for coverage of non-Hyde abortion services. This enforcement posture will now take effect on the earliest date on which QHP issuers will need to begin complying with the separate billing requirements, August 26, 2020. We are not making any additional revisions to the separate billing provisions finalized in the 2019 Program Integrity Rule other than extending the date for compliance with the separate billing policy by 60 days.

When explaining our rationale for the implementation deadline of the first billing cycle following June 27, 2020 in the 2019 Program Integrity Rule, we expressed the importance of QHP issuers implementing the separate billing policy changes at the earliest date feasible to better align QHP issuer billing of non-Hyde abortion services with the separate payment requirement in section 1303 of the Patient Protection and Affordable Care Act. Although expeditious implementation of this policy continues to be important, we believe the impact of the COVID–19 PHE on QHP issuer and Exchange operations has shifted the date by which it is operationally and administratively feasible to require QHP issuers to timely comply with the separate billing policy. We acknowledge that extending the date for compliance by 60 days also delays the added transparency the separate billing policy would provide for policy holders related to whether QHPs cover non-Hyde abortion services. However, we believe the delay in increasing transparency and better aligning QHP issuer billing with the separate payment requirement in section 1303 of the Patient Protection and Affordable Care Act is outweighed by the immediate need for QHP issuers and Exchanges to divert resources to respond to the current COVID–19 PHE.

Y. Requirement for Facilities To Report Nursing Home Residents and Staff Infections, Potential Infections, and Deaths Related to COVID–19

Under sections 1866 and 1902 of the Act, providers of services seeking to participate in the Medicare or Medicaid program, or both, must enter into an agreement with the Secretary or the state Medicaid agency, as appropriate. Long-term care (LTC) facilities seeking to be Medicare and Medicaid providers of services must be certified as meeting federal participation requirements. LTC facilities include SNFs for Medicare and NFs for Medicaid. The federal participation requirements for SNFs, NFs, and dually certified facilities, are set forth in sections 1819 and 1919 of the Act and codified in the implementing regulations at 42 CFR part 483, subpart B.

Sections 1819(d)(3) and 1919(d)(3) of the Act explicitly require that LTC facilities develop and maintain an infection control program that is designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. In addition, sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act explicitly authorize the Secretary to issue any regulations he deems necessary to protect the health and safety of residents. Infection prevention and control is a primary goal of initiatives taking place in LTC facilities during the COVID–19 PHE. Under the explicit instructions of Congress, existing regulations at § 483.80 require facilities to, among other things, establish and maintain an infection prevention and control program (IPCP) designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections. Furthermore, current § 483.80(a)(2) requires facilities to have written standards, policies, and procedures for the program, which among other things, must include a system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility and when and to whom possible incidents of communicable disease or infections should be reported. In an effort to support surveillance of COVID–19 cases, we are revising the requirements to establish explicit reporting requirements for confirmed or suspected cases. Specifically, we are revising our requirements by adding a new provision at § 483.80(g)(1), to require facilities to electronically report information about COVID–19 in a standardized format specified by the Secretary. The report includes, but is not limited to, information on: Suspected and confirmed COVID–19 infections among residents and staff, including residents previously treated for COVID–19; total deaths and COVID–19 deaths among residents and staff; personal protective equipment and hand hygiene supplies in the facility; ventilator capacity and supplies available in the facility; resident beds and census; access to COVID–19 testing while the resident is in the facility; staffing shortages; and other information specified by the Secretary. This information will be used to monitor trends in infection rates, and inform public health policies.

In addition, at § 483.80(g)(2), facilities are required to provide the information specified above at a frequency specified by the Secretary, but no less than weekly to the Center for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN) (OMB Control Number 0920–1290). Furthermore, we note that the information reported will be shared with CMS and we will retain and publicly report this information to support protecting the health and safety of residents, personnel, and the general public, in accordance with sections 1819(d)(3)(B) and 1919(d)(3) of the Act. The Freedom of Information Act (FOIA) (found in Title 5 of the United States Code, section 552) provides that, upon request from any person, a Federal agency must release any agency record unless that record falls within one of the nine statutory exemptions and three exclusions (see *https://www.foia.gov/faq.html* for detailed information). Further, FOIA requires that agencies make available for public inspection copies of records, that because of the nature of their subject matter, the agency determines the records have become or are likely to become the subject of subsequent requests for substantially the same information. We have received, and expect to continue to receive, COVID–19 related FOIA requests. These requirements will support our efforts to proactively inform interested parties and ensure that the most complete information on COVID–19 cases is available. The new reporting requirements at § 483.80(g)(1) and (2) do not relieve LTC facilities of the obligation to continue to comply with § 483.80(a)(2)(ii), which requires facilities to report possible incidents of communicable disease and infections. This includes complying with state and local reporting requirements for COVID–19.

At § 483.80(g)(3), we are adding a new provision to require facilities to inform residents, their representatives, and families of those residing in facilities of confirmed or suspected COVID–19 cases in the facility among residents and staff. This reporting requirement supports the overall health and safety of residents by ensuring they are informed participants in the care that they receive as well as providing assurances of the mitigating steps the facility is taking to prevent and control the spread of COVID–19. Facilities must inform residents, their representatives, and families by 5 p.m. the next calendar day following the occurrence of either: A single confirmed infection of COVID–19; or three or more residents or staff with new-onset of respiratory symptoms that occur within 72 hours of each other. Also, cumulative

updates to residents, their representatives, and families must be provided at least weekly by 5 p.m. the next calendar day following the subsequent occurrence of either: Each time a confirmed infection of COVID–19 is identified; or whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other. This information must be reported in accordance with existing privacy regulations and statute, and must not include Personally Identifiable Information (PII). Facilities must include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations in the nursing home will be altered such as restrictions or limitations to visitation or group activities. For purposes of this reporting requirement, facilities are not expected to make individual telephone calls. Instead, facilities can utilize communication mechanisms that make this information easily available to all residents, their representatives, and families, such as paper notification, listservs, website postings, and/or recorded telephone messages.

These reporting requirements along with public reporting of the data support our responsibility to protect and ensure the health and safety of residents by enforcing the standards required to help each resident attain or maintain their highest level of well-being. As noted, sections 1819(d)(3)(B) and 1919(d)(3) of the Act requires that a facility must establish an infection control program that is designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. We believe that these reporting requirements are necessary for CMS to monitor whether individual nursing homes are appropriately tracking, responding, and mitigating the spread and impact of COVID–19 on our most vulnerable citizens, personnel who care for them, and the general public. The information provided may be used to inform residents, families, and communities of the status of COVID–19 infections in their area. We believe that this action strengthens CMS' response to the PHE for the COVID–19 pandemic, and reaffirms our commitment to transparency and protecting the health and safety of nursing home residents.

As discussed in section III. of this IFC, ''Waiver of Proposed Rulemaking'', we believe the urgency of this COVID–19 PHE constitutes good cause to waive the normal notice-and-comment process under the Administrative Procedure Act and section 1871(b)(2)(C) of the Act. Waiving notice and comment is in the public interest, because time is of the essence in informing residents, their families, and the general public of the incidence of COVID–19; such information will assist public health officials in detecting outbreaks and saving lives.

The applicability date for § 483.80(g)(1) through (3)(iii) is the date of the publication of this rule (that is, the effective date as noted in the **DATES** section of this notice).

Z. Time Used for Level Selection for Office/Outpatient Evaluation and Management Services Furnished Via Medicare Telehealth

In the March 31st COVID–19 IFC (85 FR 19268 through 19269), for the duration of the PHE for the COVID–19 pandemic, we revised our policy to specify that the office/outpatient E/M level selection for office/outpatient E/M services when furnished via telehealth can be based on MDM or time, with time defined as all of the time associated with the E/M on the day of the encounter. We stated that currently there are typical times associated with the office/outpatient E/M visits, and that those times are what should be met for purposes of level selection. We stated that typical times associated with the office/outpatient E/M visits were available as a public use file at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1715-F.*

Members of the physician community have brought to our attention that the policy announced in the March 31st COVID–19 IFC relies on typical times listed in our public use file even when those times do not align with the typical times included in the office/outpatient E/M code descriptors. We agree that discrepancies between times can be confusing. We believe that, because the times are being used for the purpose of choosing which level of office/outpatient E/M CPT code to bill, the times listed in the codes themselves would be most appropriate for the purpose. Therefore, we are finalizing on an interim basis, for the duration of the PHE for the COVID–19 pandemic, that the typical times for purposes of level selection for an office/outpatient E/M are the times listed in the CPT code descriptor.

AA. Updating the Medicare Telehealth List

In the CY 2002 PFS final rule with comment period (64 FR 80041) we amended regulations at § 410.78(f) to state that PFS annual rulemaking would serve as the process for adding and deleting services from the telehealth list as is required under section 1834(m)(4)(F)(ii) of the Act.

In the March 31st COVID–19 IFC (85 FR 19232–19253), we added a number of services to the Medicare telehealth list on an interim final basis for the duration of the PHE for the COVID–19 pandemic. While we believe that we have already added the vast majority of services that it would appropriate to add to the Medicare telehealth list for purposes of the PHE for the COVID–19 pandemic, it is possible that we might identify other services that would be appropriate additions to the telehealth list, taking into consideration infection control, patient safety, and other public health concerns resulting from the COVID–19 PHE. Due to the urgency of minimizing unnecessary contact between beneficiaries and practitioners, we believe that, for purposes of the PHE for the COVID–19 pandemic, we should modify the process we established for adding or deleting services from the Medicare telehealth services list under our regulation at § 410.78(f) to allow for an expedited process during the PHE that does not involve notice and comment rulemaking. Therefore, for the duration of the PHE for the COVID–19 pandemic, we are revising our regulation at § 410.78(f) to specify that, during a PHE, as defined in § 400.200 of this chapter, we will use a subregulatory process to modify the services included on the Medicare telehealth list.

While we are not codifying a specific process to be in effect during the PHE for the COVID–19 pandemic, we note that we could add services to the Medicare telehealth list on a subregulatory basis by posting new services to the web listing of telehealth services when the agency receives a request to add (or identifies through internal review) a service that can be furnished in full, as described by the relevant code, by a distant site practitioner to a beneficiary in a manner that is similar to the in-person service. We also note that any additional services added using the revised process would remain on the list only during the PHE for the COVID–19 pandemic.

BB. Payment for COVID–19 Specimen Collection to Physicians, Nonphysician Practitioners and Hospitals

In the March 31st COVID–19 IFC (85 FR 19256 through 19258), we changed Medicare payment policies for independent laboratories for specimen collection related to COVID–19 testing under certain circumstances. Specifically, under sections 1833(h)(3) and 1834A(b)(5) of the Act, we established a policy for the duration of

the PHE for the COVID–19 pandemic to pay a nominal specimen collection fee and associated travel allowance to independent laboratories for collection of specimens for COVID–19 clinical diagnostic laboratory testing from beneficiaries who are homebound or inpatients not in a hospital. In that IFC, we stated that Medicare-enrolled independent laboratories can bill Medicare for the specimen collection fee using one of the two new HCPCS codes effective March 1, 2020, HCPCS code G2023 (*specimen collection for severe acute respiratory syndrome coronavirus 2 (SARS-CoV–2*) (*Coronavirus disease [COVID–19]), any specimen source*) and HCPCS code G2024 (*specimen collection for severe acute respiratory syndrome coronavirus 2 (SARS-CoV–2*) (*Coronavirus disease [COVID–19]), from an individual in a SNF or by a laboratory on behalf of a HHA, any specimen source*).

To establish a payment amount for HCPCS code G2023 for the Clinical Laboratory Fee Schedule (CLFS) policy, we looked to similar services in other settings of care as a potential benchmark. In looking at other Medicare payment systems, we concluded that the PFS was the best source for assigning a payment amount since physicians and other practitioners often bill for services that involve specimen collection by trained, non-institutional staff. Additionally, we stated that under the PFS, a Level 1 established patient office visit (CPT code 99211) typically does not require the presence of a physician or other qualified health care professional and the usual presenting problem(s) are minimal and is typically reported by physician practices when the patient only sees clinical office staff for services like acquiring a routine specimen sample. We also explained that we considered establishing a higher payment amount that considered the Level 1 E/M visit plus the payment amount for CPT code 89220, Sputum obtaining specimen aerosol induced technique. However, as noted in the March 31st COVID–19 IFC (85 FR 19257), we believe there are likely overlapping costs in staff time for these two services and the Level 1 office visit payment rate is adequate for HCPCS code G2023. The difference in payment for HCPCS code G2024 in comparison to HCPCS code G2023 represents the statutory payment increase under section 1834A(b)(5) of the Act for specimen collection when a sample is collected from an individual in a SNF or by a laboratory on behalf of an HHA. Under current CLFS policies, when an independent laboratory sends skilled laboratory staff to collect specimens from homebound individuals or non-hospital inpatients, the laboratory can bill Medicare for mileage in addition to specimen collection. The travel codes allow for payment either on a per mileage basis (P9603) or on a flat rate per trip basis (P9604). Payment of the travel allowance is made only if a specimen collection fee is also payable. The travel allowance is intended to cover the estimated travel costs of collecting a specimen including the laboratory technician's salary and travel expenses.

Unchecked spread of the coronavirus COVID–19 threatens to overwhelm healthcare resources in many areas of the country. The coronavirus is very contagious, spreading easily between people through communities largely through droplet transmission. The CDC considers it more contagious than influenza.[55] Widespread diagnostic testing for COVID–19 is a critical component of a public pandemic response to support infection control and proper treatment. Testing ensures individuals with positive diagnoses can be aware of their own condition and treatment they may need, and can isolate themselves to contain spreading. Testing on the scale that will be required to contain COVID–19 entails a tremendous commitment of labor, equipment, and capital resources. Assessment and specimen collection to support widespread COVID–19 testing will require extraordinary and resource-intensive measures for infection control, such as providing masks and protective equipment to staff and, setting up significant physical space to avoid additional spread when specimens are collected, among many other unique requirements. Recognizing the critical importance of expanding COVID–19 testing, in this IFC, we are providing additional payment for assessment and COVID–19 specimen collection to support testing by HOPDs, and physicians and other practitioners, to recognize the significant resources involved in safely collecting specimens from many beneficiaries during a pandemic. The majority of ambulatory care in any community is furnished by physicians and other practitioners in offices and HOPDs, and these are natural locations for COVID–19 testing in addition to laboratories.

When physicians and other practitioners collect specimens as part of their professional services Medicare generally makes payment for the services under the PFS, though often that payment is bundled into the payment rate for other services, including office and outpatient visits. Typically, collection of a specimen via nasal swab or other method during the provision of a service might be reported as part of (bundled with) an office/outpatient E/M visit (CPT codes 99201–99205, 99211–99215). In visits where a patient has face-to-face interaction with a billing professional with whom they have an established relationship, these services are generally reported with a level 2 through a level 5 visit (CPT codes 99212–99215). In cases where the specimen is collected during a visit where the face-to-face interaction only involves clinical staff of the billing professional with whom the patient has an established relationship, these services are generally reported using CPT code 99211. As noted previously, we referred to the PFS payment rate for CPT code 99211 in establishing a payment amount under section 1833(h)(3) of the Act for specimen collection for the COVID–19 tests described by G2023 (specimen collection for severe acute respiratory syndrome coronavirus 2 (SARS-CoV–2) (Coronavirus disease [COVID–19]), any specimen source)).

During this PHE, we understand that some professional practices are collecting specimens for COVID–19 tests. In many cases, we expect that these services are appropriately paid as part of the visit codes described above. Given the critical need for widespread testing as part of the pandemic response, we also expect that COVID–19 specimen collection may occur in circumstances other than the typical interaction between the patients and the professionals or staff of these practices. In our review of available HCPCS codes, we did not identify a code that would specifically describe the services that would be furnished in the context of large-scale dedicated testing operations involving a physician or NPP, specifically, assessment of COVID–19 symptoms and exposure, and specimen collection for new patients. In circumstances outside of the PHE, such a code would not be needed. We would ordinarily expect physicians and NPPs to establish a relationship with a patient before their clinical staff could effectively assist in managing care incident to their services. However, in the context of the widespread testing that is necessary during this COVID–19 PHE, we believe it is important to recognize such a service for new patients in addition to established patients. In considering possible codes for this purpose, we believe that CPT

[55] *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.*

code 99211 for a level 1 E/M visit, appropriately describes the required clinical staff and patient interaction. However, billing for CPT code 99211is currently limited to patients with whom the billing practitioner has an established relationship. As discussed above, CPT code 99211 typically does not involve interaction with physician or other qualified health care professional and the usual presenting problem(s) are minimal. Thus, this CPT code typically is reported by a physician or practitioner when the patient only sees clinical office staff for services like acquiring a routine specimen sample. Additionally, as previously noted, we based our valuation of HCPCS code G2023 for specimen collection by independent laboratories on CPT code 99211. Therefore, for the duration of the PHE, we will recognize physician and NPP use of CPT code 99211 for all patients, not just patients with whom they have an established relationship, to bill for a COVID–19 symptom and exposure assessment and specimen collection provided by clinical staff incident to their services.

For the duration of the COVID–19 PHE, we are therefore finalizing on an interim basis that when the services described by CPT code 99211 for a level 1 E/M visit are furnished for the purpose of a COVID–19 assessment and specimen collection, the code can be billed for both new and established patients. We believe this policy will support expanded access to COVID–19 testing, and provide appropriate payment for COVID–19 testing-related services furnished by physician and other practitioners. This policy will allow physicians and practitioners to bill for services provided by clinical staff to assess symptoms and take specimens for COVID–19 laboratory testing for all patients, not just established patients. We note that a physician or practitioner cannot bill for services provided by auxiliary clinical staff unless those staff meet all the requirements to furnish services ''incident to'' services, as described in 42 CFR 410.26 and further described in section 60 of Chapter 15 Covered Medical and other Health Services in the Medicare Benefit Policy Manual 100–02. We further note that we adopted an interim final policy to permit the direct supervision requirement to be met through virtual presence of the supervising physician or practitioner using interactive audio and video technology for the duration of the PHE (85 FR 19245).

During this COVID–19 PHE, we understand HOPDs also are engaging in significant additional specimen collection and testing for COVID–19 both at temporary expansion locations, as well as original locations of the hospital. As with the physician office clinical staff, hospital clinical staff are reviewing symptoms for patients relative to CDC guidelines and obtaining specimen samples for laboratory testing. As noted above, in our review of available HCPCS and CPT codes, we did not identify a code that explicitly describes the exact services that widespread testing efforts would require, assessment of symptoms and specimen collection. Such a uniquely auxiliary service would not normally be needed. Typically, clinical staff services such as specimen collection are included in a clinic or emergency room visit or in other primary services furnished in the HOPD, such as observation services or critical are services. However, during this COVID–19 PHE, facilitating widespread testing requires recognizing such a service for the standalone work hospitals are undertaking to assess symptoms and collect specimens form a significant number of patients. In light of the tremendous need for testing created by this PHE and the resource needs to provide extensive symptom assessment for specimen collection, we are creating a new E/M code solely to support COVID–19 testing for the PHE, HCPCS code C9803 (*Hospital outpatient clinic visit specimen collection for severe acute respiratory syndrome coronavirus 2 (sars-cov–2*) (*coronavirus disease [covid–19]), any specimen source*). We believe this code is necessary to address the resource requirements hospitals face in establishing broad community diagnostic testing for COVID–19, including the significant specimen collection necessary to conduct that testing.

We will assign HCPCS code C9803 to APC 5731 Level 1 Minor Procedures. In assigning a service to an APC grouping, section 1833(t)(2)(B) of the Act requires that the groupings within the OPPS be comparable clinically and with respect to the use of resources. APC 5731 Level 1 Minor Procedures already contains many similar services to new HCPCS code C9803, including HCPCS code Q0091 (*Obtaining screening pap smear*) and G0117 (*Glaucoma Screening for high risk patients furnished by an optometrist or an ophthalmologist*). Earlier in this section, we established that clinical staff symptoms review and specimen collection is similar to the services described by, a Level 1 established patient office visit (CPT code 99211), which typically does not require the presence of a physician or other qualified health care professional, for which the usual presenting problem(s) are minimal and which is typically reported by physician practices when the patient only sees clinical office staff. We further established the payment for HCPCS code G2023 for specimen collection based on the resources required for CPT code 99211. Currently the PFS pays a national unadjusted rate of $23.46 for CPT code 99211. APC 5731 Level 1 Minor Procedures pays a national unadjusted rate of $22.98. Because these payment amounts for APC 5731 Level 1 Minor Procedures approximates our best estimate of the resource cost for this service, and because HCPCS code C9803 for a clinic visit dedicated to specimen collection is similar to other services in APC 5731, we will assign HCPCS code C9803 to APC 5731 for the duration of the PHE. We established HCPCS code C9803 only to meet the need of the PHE, and we expect to retire this code once the PHE concludes.

Under the OPPS, we pay for HOPD services through separate payment or through packaged payment when the service is integral, ancillary, supportive, dependent, or adjunctive to the primary service or services provided in the hospital outpatient setting during the same outpatient encounter and billed on the same claim to the OPPS. The clinical staff services described by HCPCS code C9803 are services that are integral and ancillary to other primary services, such as emergency room or clinic visits, or even observation or critical care services. We would not expect to make separate payment for a clinic visit dedicated to specimen collection (HCPCS code C9803) when the hospital furnished other more significant services in the same encounter. We are assigning a status indicator of ''Q1'' to HCPCS code C9803 indicating that this services will be conditionally packaged under the OPPS when billed with a separately payable primary service in the same encounter. The OPPS will only make separate payment to a hospital when HCPCS code C9803 is billed without another primary covered hospital outpatient service. The OPPS also will make separate payment for CPT code C9803 when it is billed with a clinical diagnostic laboratory test with a status indicator of ''A'' on Addendum B of the OPPS.

Finally, section 6002(a) of the Families First Coronavirus Response Act (Pub. L. 116–127) amended section 1833 of the Act by adding a new paragraph (DD) to section (a)(1) and a new paragraph (11) to section (b) to provide, respectively, that the payment

amount for a specified COVID–19 testing-related service for which payment may be made under certain outpatient payment provisions will be 100 percent of the payment amount otherwise recognized and that the deductible for such a service will not apply. These amendments mean that there is no beneficiary cost-sharing (coinsurance and deductible amounts) for COVID–19 testing-related services, which is defined in new section 1833(cc) of the Act as, among other requirements, are medical visits in any of several categories of HCPCS E/M service codes, including office and other outpatient services, that results in an order for or administration of a COVID–19 clinical diagnostic laboratory test described in section 1852(a)(1)(B)(iv)(IV) of the Act and relates to the furnishing or administration of such test or to the evaluation of such individual for purposes of determining the need of such individual for such test. Because physicians and other practitioners will be using the level 1 E/M code for established patients, CPT code 99211, to conduct testing related visits, there will not be beneficiary cost sharing when the practitioner's office bills for this service, provided it results in an order for or administration of a COVID–19 test. Similarly, because HOPDs will use HCPCS code C9803 to bill for a clinic visit for specimen collection, which we consider an E/M code in the office and other outpatient services category of HCPCS codes, beneficiary cost sharing will not apply for this service, provided it results in an order for or administration of a COVID–19 test and meets other requirements of the law. We anticipate that a COVID–19 test will always be ordered or administered with HCPCS code C9803 because the descriptor for this code includes specimen collection for COVID–19.

In summary, in the March 31st COVID–19 IFC, which created regulatory flexibilities to address the COVID–19 PHE, we finalized two codes to recognize the unique resource costs of specimen collection in a way that retains the integrity of infection control during a pandemic: CPT codes G2023 and G2024 for specimen collection for COVID–19 laboratory tests (85 FR 19257). In this IFC, to further support widespread community testing for COVID–19, we are finalizing on an interim basis that physicians and NPPs' may use CPT code 99211 to bill for services furnished incident to their professional services, for both new and established patients, when clinical staff assess symptoms and collect specimens for purposes of COVID–19 testing. Cost-sharing for this service will be waived when all other requirements under section 6002(a) of the Families First Coronavirus Response Act are met. We are further creating a new code, CPT code C9803 under the OPPS for HOPDs to bill for a clinic visit dedicated to specimen collection and adopting a policy to conditionally package payment for this code. The OPPS will make separate payment for HCPCS code C9803 under the OPPS when no other primary service is furnished in the same encounter. Cost-sharing for this service will be waived when all other requirements under section 6002(a) of the Families First Coronavirus Response Act are met.

CC. Payment for Remote Physiologic Monitoring (RPM) Services Furnished During the COVID–19 Public Health Emergency

In the March 31st COVID–19 IFC, we changed several policies related to payment for Remote Physiologic Monitoring services under the PFS during the COVID–19 PHE. We had previously finalized payment in the CY 2018 PFS final rule for CPT code 99091 (*Collection and interpretation of physiologic data digitally stored and/or transmitted by the patient and/or caregiver to the physician or other qualified health care professional, qualified by education, training, licensure/regulation requiring a minimum of 30 minutes of time*). In the CY 2019 PFS final rule the following year, we finalized payment for CPT codes 99453 (*Remote monitoring of physiologic parameter(s) (e.g., weight, blood pressure, pulse oximetry, respiratory flow rate), initial; set-up and patient education on use of equipment*), 99454 (*Remote monitoring of physiologic parameter(s) (e.g., weight, blood pressure, pulse oximetry, respiratory flow rate), initial; device(s) supply with daily recording(s) or programmed alert(s) transmission, each 30 days*), and 99457 (*Remote physiologic monitoring treatment management services, clinical staff/physician/other qualified health care professional time in a calendar month requiring interactive communication with the patient/caregiver during the month; first 20 minutes*). Most recently, in the CY 2020 PFS final rule (84 FR 62645 and 62646), we finalized a treatment management add-on code, CPT code 99458 (*Remote physiologic monitoring treatment management services, clinical staff/physician/other qualified health care professional time in a calendar month requiring interactive communication with the patient/caregiver during the month; each additional 20 minutes*) and two self-measured blood pressure monitoring codes, CPT code 99473 (*Self-measured blood pressure using a device validated for clinical accuracy; patient education/training and device calibration*) and CPT code 99474 (*Separate self-measurements of two readings one minute apart, twice daily over a 30-day period (minimum of 12 readings), collection of data reported by the patient and/or caregiver to the physician or other qualified health care professional, with report of average systolic and diastolic pressures and subsequent communication of a treatment plan to the patient*).

As we stated in the March 31st COVID–19 IFC, we believe that RPM services support the CDC's goal of reducing human exposure to the novel coronavirus while also increasing access to care and improving patient outcomes. RPM services could allow a patient with an acute respiratory virus to monitor pulse and oxygen saturation levels using pulse oximetry. Nurses or other auxiliary personnel, working with physicians, can check-in with the patient and then using patient data, determine whether home treatment is safe, all the while reducing exposure risk and eliminating potentially unnecessary emergency department and hospital visits. Based on these considerations, we established interim policies to eliminate as many unnecessary obstacles as possible to delivering these services as part of the response to the pandemic. To that end, a combination of our permanent and interim policies for the duration of the COVID–19 PHE allow RPM services to be furnished to new patients in addition to established patients; with beneficiary consent to be obtained at the time services are furnished and by auxiliary personnel for physiologic monitoring of patients with acute and/or chronic conditions; and under general supervision.

In recent weeks, we have been notified by stakeholders that CPT coding guidance states that the RPM service described by CPT code 99454 cannot be reported for monitoring of fewer than 16 days during a 30-day period. In reviewing other RPM codes, we also observed that CPT codes 99091, 99453, 99457, and 99458, also have 30-day reporting periods. Stakeholders have alerted CMS that while it is possible that remote physiologic monitoring would be used to monitor a patient with COVID–19 for 16 or more days, many patients with COVID–19 who need monitoring do not need to be monitored for as many as 16 days.

Consequently, and for all of the same reasons we articulated for establishing the other policies supporting use of RPM services as part of the pandemic response, for purposes of treating suspected COVID–19 infections, we are establishing a policy on an interim final basis for the duration of the COVID–19 PHE to allow RPM monitoring services to be reported to Medicare for periods of time that are fewer than 16 days of 30 days, but no less than 2 days, as long as the other requirements for billing the code are met. We are not proposing to alter the payment for CPT codes 99454, 99453, 99091, 99457, and 99458 because the overall resource costs for long-term monitoring for chronic conditions assumed under the current valuation would appropriately reflect those for short-term monitoring for acute conditions in the context of COVID–19 disease and exposure risks. Payment for CPT codes 99454, 99453, 99091, 99457, and 99458 when monitoring lasts for fewer than 16 days of 30 days, but no less than 2 days, is limited to patients who have a suspected or confirmed diagnosis of COVID–19.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule before the provisions of the rule take effect, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553, and section 1871 of the Act. Specifically, section 553(b) of the APA requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Section 553(c) further requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of the rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and a period of not less than 60 days for public comment. Section 553(b)(B) and section 1871(b)(2)(C) of the Act authorize the agency to waive these procedures, however, if the agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Section 553(d) ordinarily requires a 30-day delay in the effective date of a final rule from the date of its publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause to support an earlier effective date. Section 1871(e)(1)(B)(i) of the Act also prohibits a substantive rule from taking effect before the end of the 30-day period beginning on the date the rule is issued or published. However, section 1871(e)(1)(B)(ii) of the Act permits a substantive rule to take effect before 30 days if the Secretary finds that a waiver of the 30-day period is necessary to comply with statutory requirements or that the 30-day delay would be contrary to the public interest. Furthermore, section 1871(e)(1)(A)(ii) of the Act permits a substantive change in regulations, manual instructions, interpretive rules, statements of policy, or guidelines of general applicability under Title XVIII of the Act to be applied retroactively to items and services furnished before the effective date of the change if the failure to apply the change retroactively would be contrary to the public interest. Finally, the Congressional Review Act (CRA) requires a delay in the effective date for major rules unless an agency finds good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, in which case the rule shall take effect at such time as the agency determines. 5 U.S.C. 801(a)(3), 808(2).

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the outbreak of the 2019 Novel Coronavirus (2019-nCoV) to be a Public Health Emergency of International Concern.[56] On January 31, 2020, Health and Human Services Secretary Alex M. Azar II determined that a PHE exists retroactive to January 27, 2020[57] under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19), and on April 21, 2020, Secretary Azar renewed, effective April 26, 2020, the determination that a PHE exists.[58] On March 11, 2020, the WHO publicly declared COVID–19 to be a pandemic.[59] On March 13, 2020, the President declared that the COVID–19 pandemic in the United States constitutes a national emergency,[60] beginning March 1, 2020. This declaration, along with the Secretary's January 30, 2020 declaration of a PHE, conferred on the Secretary certain waiver authorities under section 1135 of the Act. On March 13, 2020, the Secretary authorized waivers under section 1135 of the Act, effective March 1, 2020.[61] Ensuring the health and safety of Medicare beneficiaries, Medicaid recipients, BHP enrollees, CHIP enrollees, and healthcare workers is of primary importance. As this IFC directly supports that goal by offering healthcare professionals flexibilities in furnishing services while combatting the COVID–19 pandemic and ensuring that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid, CHIP and BHP programs, it is critically important that we implement this IFC as quickly as possible and for certain provisions, retroactive to either the start of the national emergency for the COVID–19 pandemic, beginning on March 1, 2020, or the start of the PHE for the COVID–19 pandemic on January 27, 2020. Not applying these revisions retroactive to either the start of the national emergency for the COVID–19 pandemic, beginning on March 1, 2020, or the start of the PHE for the COVID–19 pandemic on January 27, 2020 would be contrary to the public interest of supporting necessary flexibilities during the entire PHE. As we are in the midst of a PHE, we find good cause to waive notice and comment rulemaking as we believe it would be impracticable and contrary to the public interest for us to undertake normal notice and comment rulemaking procedures, as that would delay giving healthcare providers the flexibilities to provide critical care. For the same reasons, because we cannot afford any delay in effectuating this IFC, we find good cause to waive the 30-day delay in the effective date and, moreover, to make certain policies in this IFC applicable as of March 1, 2020—the date the President of the United States declared to be the beginning of the national emergency concerning the COVID–19 pandemic, or, if applicable, January 27, 2020, the date on which the PHE for the COVID–19 pandemic started.

In support of the imperative to contain and combat the virus in the United States, this IFC will give health care workers and hospitals additional

[56] *https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).*

[57] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[58] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx.*

[59] *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020.*

[60] *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[61] *https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx.*

flexibility to respond to the virus and continue caring for patients while minimizing exposure to COVID–19. CDC guidelines are clear that public exposure greatly increases the overall risk to public health and they stress the importance of containment and mitigation strategies to minimize public exposure and the spread of COVID–19. As of April 26th 2020, the CDC reports 957,875 cases of COVID–19 in the United States and 53,922 deaths.[62] Individuals such as healthcare workers who come in close contact with those infected with COVID–19 are at an elevated risk of contracting the disease. To minimize these risks, the CDC has urged healthcare professionals to make every effort to distance themselves from those who are potentially sick with COVID–19 by using modalities such as telephonic interviews, text monitoring systems, or video conference.[63] As the healthcare community works to establish and implement infection prevention and control practices, we are also working to revise and implement regulations that function in concert with those healthcare community infection prevention and treatment practices.

This IFC offers flexibilities in certain Medicare, Medicaid, and BHP regulations that support measures to combat the COVID–19 pandemic and safeguard all interests by protecting healthcare providers and vulnerable beneficiaries. The provisions of this IFC better enable and facilitate physicians and other clinicians, to focus on caring for these beneficiaries during this PHE for the COVID–19 pandemic and minimize their own risks to COVID–19 exposure.

Furthermore, we are also adopting an extraordinary circumstances relocation exception policy for on-campus and excepted off-campus PBDs of hospitals that relocate in response to the PHE, as well as describing the hospital outpatient services and CMHC that can to be furnished in temporary expansion locations of a hospital (including the patient's home).

We are also establishing a national coverage policy under Medicare Part B for COVID–19 antibody diagnostic tests in order to ensure patients and practitioners have clinically relevant information to allow for ongoing health monitoring and isolation, as appropriate.

We are allowing Opioid Treatment Programs (OTPs) to furnish periodic assessments via communication technology.

In addition, we are allowing states that operate a BHP to seek certification of temporary BHP Blueprint revisions to make significant changes directly tied to the PHE for the COVID–19 pandemic and that increase access to necessary services without delay or other barriers (such as cost sharing) during the duration of the PHE for the COVID–19 pandemic.

We are modifying the methodology to determine IME payments teaching hospitals so that temporary increases in available beds or bed capacity during the PHE for the COVID–19 pandemic will not lower teaching hospitals' IME payments or impact provider-based RHC payments for those RHCs who are not currently subject to the national payment limit. We are also implementing temporary policies to allow teaching hospitals to claim, in their resident FTE counts, residents that teaching hospitals send to other hospitals to respond to the PHE associated with COVID, which will allow teaching hospitals to maintain GME payments and will not trigger establishment of FTE counts or PRA caps at non-teaching receiving hospitals. Likewise, we are adopting a policy to hold, for the duration of the COVID–19 PHE, IRF and IPF average daily census numbers at their values prior to the COVID–19 PHE, so that IRF and IPF teaching status adjustment payments do not decrease during the pandemic. We are implementing various flexibilities for IRFs in this IFC so that IRFs may utilize their excess bed capacity to care for patients to alleviate capacity issues in acute care hospitals during the COVID–19 pandemic. Specifically, IRFs will still be required to meet requirements for IRF payment for patients who receive regular IRF care. However, for those patients who are cared for in an IRF solely to alleviate acute care hospital bed capacity, IRFs will not have to comply with some regulations governing documentation, therapy requirements, and other policies to maximize time spent on patient care during this pandemic.

We are also making changes to the Medicare regulations to revise payment rates for certain DME and enteral nutrients, supplies, and equipment as part of implementation of section 3712 of the CARES Act. We are also increasing flexibilities for hospitals participating in the Hospital VBP Program by expanding the Extraordinary Circumstances Exceptions (ECE) policy so that we can grant an ECE to hospitals within an entire region or locale, including the entire United States, that have been affected by an extraordinary circumstance, including the COVID–19 PHE, without requiring that each affected hospital individually submit an ECE request form.

Additionally, immediate implementation of section 3712 of the CARES Act is necessary to provide prompt relief, as intended by the CARES Act, in the form of higher Medicare payments to suppliers of DME in certain areas to ensure beneficiary access to necessary medical equipment and supplies during the PHE.

The COVID–19 pandemic PHE has created a lack of predictability for many ACOs participating in the Shared Savings Program regarding the impact of expenditure and utilization changes on financial benchmarks and performance year expenditures, and for those under performance-based risk, the potential liability for shared losses, as well as disrupting population health activities as clinicians, care coordinators and financial and other resources are diverted to address immediate acute care needs. ACOs and other program stakeholders have advocated that there is an urgent need to address these concerns because ACOs need to make participation decisions for PY 2020 and PY 2021 soon and may choose to terminate their participation in the Shared Savings Program on or before the June 30, 2020 deadline, rather than face the potential of pro-rated shared losses for PY 2020 if the PHE does not extend for the entire year and if the existing policies under the Shared Savings Program do not adequately mitigate liability for shared losses. We believe it is vital to the stability of the Shared Savings Program to encourage continued participation by ACOs by adjusting program policies as necessary to address the impact of the COVID–19 pandemic, including by offering certain flexibilities in program participation options to currently participating ACOs and addressing potential distortions in expenditures resulting from the COVID–19 pandemic. The changes included in this IFC will help to ensure a more equitable comparison between ACOs' expenditures for PY 2020 and their updated historical benchmarks and that ACOs are not rewarded or penalized for having higher/lower COVID–19 spread in their assigned beneficiary populations which, in turn, will help to protect ACOs from owing excessive shared losses and the Medicare Trust Funds from paying out windfall shared savings. For these reasons and the reasons set forth in section II.L. of this IFC, we find good cause to waive notice and comment procedures for the

[62] *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[63] *https://www.cdc.gov/coronavirus/2019-ncov/php/guidance-evaluating-pui.html.*

regulatory changes being made to the Shared Savings Program in this IFC.

Furthermore, changes effectuated in this rule to broaden the scope of practitioners who may order home health services and expand the availability of Medicaid coverage for certain laboratory testing during a PHE and subsequent periods of active surveillance are being made to maximize beneficiary access to needed services and minimize the transmission of the disease, which is of critical importance in the current PHE. Additionally, during the PHE for the COVID–19 pandemic, we are adding flexibility for teaching physicians, NPPs, PTs, OTs, SLPs, and others in supervision, documentation, and other requirements of the Medicare program that could impact the availability and efficiency of care to ensure an adequate number of clinicians are able to furnish critical services and tests.

Section 3708 of the CARES Act is applicable to Medicare and Medicaid and allows a home health patient to be under the care of a NP or CNS or a PA and allows such practitioner to: (1) Order home health services; (2) establish and periodically review a plan of care for home health services; and (3) certify and re-certify that the patient is eligible for home health services. Currently, these functions can only be paid for by Medicare when performed by physicians. However, these changes are not effective until CMS implements the changes in regulation, and pursuant to section 3708(f) of the CARES Act, may be implemented by an IFC. Implementing all of the conforming regulations changes in this IFC are needed to implement section 3708 of the CARES Act, and will allow us to meet the statutorily-required 6-month timeframe for implementation, but also allows us to act as expediently as possible to implement this new flexibility during the current PHE for the COVID–19 pandemic.

We are also permitting flexibility with respect to the administration of COVID–19 tests for purposes of Medicaid coverage, both during the COVID–19 PHE and any subsequent periods of active surveillance, to allow for continued surveillance as part of strategies to detect recurrence of the virus in individuals and populations to prevent further spread of the disease. These flexibilities related to Medicaid laboratory coverage, which are urgently needed during the COVID–19 PHE, will also apply during future PHEs resulting from outbreaks of communicable disease and any subsequent period of active surveillance. We are amending Medicare regulations to remove the Medicare requirement for a physician or other practitioner's order for COVID–19 testing and certain related testing, as well as allowing increased flexibilities regarding documentation requirements for such tests, during the COVID–19 PHE.

We are also allowing flexibilities to HHAs in the HHVBP Model by aligning HHVBP Model data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the PHE for the COVID–19 pandemic, as well as a policy for granting exceptions to the New Measures data reporting requirements under the HHVBP Model during the PHE for the COVID–19 pandemic.

In addition, we are delaying the compliance dates for collecting and reporting the TOH Information to Provider-Post-Acute Care and TOH Information to Patient-Post-Acute Care quality measures and certain standardized patient assessment data with respect to six categories by IRFs, LTCHs, and HHAs under, respectively, the IRF QRP, LTCH QRP, and HH QRP.

Additionally, in regard to the Quality Payment Program, due to the PHE, we are amending § 414.1400(b)(3)(v)(C) and (D) to delay the implementation of these policies by 1 year. Both QCDR measure approval criteria necessitate QCDRs collecting data from clinicians in order to assess the measure, and we anticipate that QCDRs may be unable to collect, and clinicians unable to submit, data on QCDR measures due to prioritizing the care of COVID–19 patients.

We are also revising § 156.280(e)(2)(ii) to delay implementation of the separate billing policy for 60 days from the date finalized in the 2019 Program Integrity Rule (84 FR 71674). Under this 60-day extension, QHP issuers must comply with the separate billing policy finalized at § 156.280(e)(2)(ii) beginning on or before the QHP issuer's first billing cycle following August 26, 2020. We believe extending the deadline 60 days for QHP issuers and Exchanges to comply with the separate billing policy is appropriate so that they may adequately respond to the current national PHE and divert resources to address COVID–19 that may otherwise have been used for timely compliance with the separate billing policy. Therefore, the 60-day delayed implementation for QHP issuers subject to the separate billing policy is effective immediately, such that QHP issuers are required to begin complying with the separate billing policy finalized at § 156.280(e)(2)(ii) beginning on or before the first billing cycle following August 26, 2020.

Finally, we are adding a new paragraph (g) to § 483.80, to require facilities to report information on COVID–19 incidence among residents and staff in LTC facilities to the CDC, without a previous opportunity for public comment. We believe we have good cause to waive the normal notice-and-comment process under the Administrative Procedure Act and section 1871(b)(2)(C) of the Act, because acting immediately to provide information to the CDC and the public can help control the spread of the virus. Waiving notice and comment is in the public interest, because time is of the essence in informing residents, their families, and the general public of the incidence of COVID–19 in the LTC facility population; such information will assist public health officials in detecting outbreaks and saving lives.

As noted in this IFC, it is critical in emergencies and disaster situations to respond as efficiently and effectively as possible to address immediate public health needs; as such, we may extend flexibilities in this IFC for future national emergencies, public health emergencies, or disasters. We welcome comments on whether some of these flexibilities should be extended to future situations.

We believe it would be impracticable and contrary to the public interest for us to undertake normal notice and comment procedures and to thereby delay the effective date of this IFC. We find good cause to waive notice of proposed rulemaking under the APA, 5 U.S.C. 553(b)(B), and section 1871(b)(2)(C) of the Act. For those same reasons, as authorized by section 808(2) of the CRA, we find it is impracticable and contrary to the public interest not to waive the delay in effective date of this IFC under section 801 of the CRA. We therefore find there is good cause to waive the CRA's delay in effective date pursuant to section 808(2) of the CRA. Furthermore, as noted above, the President declared that the COVID–19 outbreak in the United States constituted a national emergency beginning March 1, 2020. In addition, the Secretary's declaration of a PHE for the COVID–19 pandemic took effect on January 27, 2020. To ensure the availability of the measures we are taking to address the COVID–19 pandemic, we believe it is vital that many of the Medicare policies in this IFC apply starting either with the first day of the national emergency or the start of the PHE for the COVID–19 pandemic, as applicable. It is also important to ensure that health care providers that acted expeditiously to implement appropriate physical and

operational changes to their practices to adapt to emergency conditions, even in the absence of changes in our policies to address them, are not disadvantaged relative to other health care providers, and will not be discouraged from taking similar appropriate actions in the future. Specifically, in this IFC we have concentrated on increasing providers' ability to furnish services at temporary expansion locations, including the patient's home, that is a PBD of the hospital or an expanded CMHC to limit the need for patients to receive care in the hospital itself, which could unnecessarily expose the patients or providers to the pandemic contagion. For example, hospital staff can now remotely furnish psychotherapy to the beneficiary in their home, as long as the beneficiary is a registered outpatient of the hospital and the patient's home is made provider-based to the hospital. It is critical this provision be retroactive to the first day of the national emergency in order to ensure providers' have the necessary flexibilities to provide services at temporary expansion locations and to ensure beneficiaries continue to receive critical services, while limiting their exposure to the pandemic contagion. Both March 1, 2020, and January 27, 2020, precede the date of publication of this IFC in the **Federal Register**, which means that certain Medicare provisions of this rule have a retroactive effect. However, section 1871(e)(1)(A)(ii) of the Act permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained above, we believe it would be contrary to the public interest not to implement certain Medicare provisions of this IFC as soon as we are authorized to do so under the authority of section 1871(e)(1)(A)(ii) of the Act, that is, retroactively to either the start of the national emergency or the PHE for the COVID–19 pandemic, as applicable. Accordingly, the provisions in this IFC have retroactive applicability to March 1, 2020, or January 27, 2020, unless otherwise noted.

Separately, in light of the urgent need to provide the flexibilities under new paragraph (d) in § 440.30 during the COVID–19 PHE, and because this provision will ease restrictions under existing law and make Medicaid coverage of testing more available, this provision will also be effective on March 1, 2020. Similarly, in light of the urgent need to provide the flexibilities in the amendments to § 440.70 during the COVID–19 PHE, and because they will increase flexibility in the delivery of benefits and make Medicaid coverage of home health services more available, the amendments to § 440.70 will take effect on the same date as the Medicare regulations implementing section 3708 of the CARES Act, March 1, 2020. We are providing a 60-day public comment period for this IFC as specified in the **DATES** section of this document.

In this IFC, we are also delaying the date by which SNFs must start collecting and reporting data on the TOH Information to Provider–Post-Acute Care and TOH Information to Patient–Post-Acute Care quality measures and standardized patient assessment data elements (SPADEs) with respect to six categories for the SNF QRP. We are delaying these requirements because in response to stakeholder concerns, we have delayed the release of an updated version of the Minimum Data Set (MDS) that would have included the data elements that SNFs need to report these two quality measures and SPADEs. In the absence of a vehicle to report these data, SNFs cannot report them beginning with October 1, 2020 admissions and discharges. We have taken the COVID–19 PHE into consideration in selecting a new compliance date, which will be on October 1st of the year that is at least two fiscal years after the PHE ends.

We find the notice-and-comment procedure impracticable because SNFs cannot comply with the reporting requirements for the two quality measures and SPADEs until CMS releases the updated MDS and SNFs have had an opportunity to become familiar with the updated version. Also, this IFC does not impose any additional requirements, but rather delays the compliance date for collecting and reporting the two quality measures and SPADEs. Therefore, we find good cause to waive notice-and-comment procedures and to issue this IFC without a delay of effective date.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-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. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that 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 estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Rules Relating to Separate Billing and Segregation of Funds for Abortion Services (§ 156.280)

This IFC does not impose any additional information collection burden under the PRA, and does not contain any information collection activities beyond the information collection currently awaiting approval by OMB under the control number: 0938–1358 (Billing and Collection of the Separate Payment for Certain Abortion Services (CMS–10681)).

Based on 2020 QHP certification data in the Federally-facilitated Exchanges (FFEs) and State-based Exchanges on the Federal Platform (SBE–FPs), in the 2019 Program Integrity Rule (84 FR 71674), we estimated that 23 QHP issuers will offer a total of 338 plans with coverage of non-Hyde abortion services in 9 FFE and SBE–FP states. We also estimated that in the 12 State Exchanges that will operate their own technology platforms in 2020, 71 QHP issuers will offer a total of approximately 1,129 plans that include coverage for non-Hyde abortions services. Three of those State Exchanges perform premium billing and payment processing, while the other 9 have their issuers perform premium billing and payment processing. In total, we estimated that there will be 94 QHP issuers offering a total of 1,467 plans (representing approximately 32 percent of individual market, on-Exchange plans) covering non-Hyde abortion services across 21 states in plan year 2020. With the 60-day delay, we continue to believe the one-time burden QHP issuers will incur to complete the necessary technical build to implement the changes for the separate billing policy will be incurred primarily in 2020. Therefore, we are unable to quantify any additional cost or savings related to the one-time technical build that would be attributable to this rule.

In the 2019 Program Integrity Rule, we estimated that each issuer and State Exchange performing premium billing and payment processing will incur

ongoing annual costs, such as those related to identifying impacted enrollees, ensuring billing accuracy, reconciliation, quality assurance, printing, recordkeeping, and document retention. The total burden for each issuer and State Exchange performing premium billing and payment processing was estimated to be 24,120 hours with an equivalent cost of $1.07 million. Delaying the implementation of the deadline for the separate billing policies by 60 days will result in a reduction in this burden. We estimate that the burden for each issuer and State Exchange performing premium billing and payment processing will be reduced by 4,020 hours with an equivalent cost reduction of approximately $177,629 in 2020. For all 97 issuers and State Exchanges performing premium billing and payment processing, the total reduction in burden in 2020 will be 389,940 hours with an equivalent cost reduction of approximately $17.4 million.

In addition, we estimated that issuers and State Exchanges performing premium billing and payment processing will need to print and send approximately 1.82 million separate paper bills per month in 2020, incurring monthly costs of approximately $91,200. Delaying the implementation of the deadline for the separate billing policies by 60 days will reduce the cost of printing separate bills in 2020 by approximately $182,400.

The revised burden estimates will be included in the next submission of the information collection to OMB.

B. ICRs Regarding Temporary Extraordinary Circumstances Policy for Relocating Excepted Provider-Based Departments During the COVID–19 PHE

In section II.E. of this IFC, for purposes of enabling greater hospital flexibility, and, in particular, enabling hospitals to rapidly develop temporary expansion sites for patient care, we are temporarily adopting an expanded version of the extraordinary circumstances relocation policy during the COVID–19 PHE to include on-campus PBDs that relocate off-campus during the COVID–19 PHE for the purposes of addressing the COVID–19 pandemic. We note that this temporary extraordinary circumstances policy is time-limited to the PHE for COVID–19 to enable short-term hospital relocation of excepted off-campus and on-campus departments to improve access to care for patients during this time. The temporary extraordinary circumstances relocation policy established here will end following the end of the PHE for the COVID–19 pandemic, and we anticipate that most, if not all, PBDs that relocate during the COVID–19 PHE will relocate back to their original location prior to, or soon after, the COVID–19 PHE concludes.

In place of the process adopted in the CY 2017 OPPS/ASC final rule with comment period (81 FR 79704 through 79705) and included in the existing subregulatory guidance under which off-campus PBDs can apply for an extraordinary circumstance relocation exception, all hospitals that relocate excepted on- or off-campus PBDs to off-campus locations in response to the COVID–19 PHE should notify their CMS Regional Office by email of their hospital's CCN; the address of the current PBD; the address(es) of the relocated PBD(s); the date which they began furnishing services at the new PBD(s); a brief justification for the relocation and the role of the relocation in the hospital's response to COVID–19; and an attestation that the relocation is not inconsistent with their state's emergency preparedness or pandemic plan. We expect hospitals to include in their justification for the relocation why the new PBD location (including instances where the relocation is to the patient's home) is appropriate for furnishing covered outpatient items and services. To the extent that a hospital may relocate to an off-campus PBD that otherwise is the patient's home, only one relocation request during the COVID–19 PHE is necessary.

We estimate that 450 hospitals will request the temporary extraordinary circumstances exception for one or more excepted PBDs during the PHE. There are roughly 500 hospitals as identified by a unique CMS Certification Number (CCN) in the states of New York, New Jersey, Michigan, Washington, Massachusetts, and Louisiana. These states have some of the counties with the highest per-capita incidence of COVID–19, and we estimate that roughly 50 percent of the hospitals in those states will apply for an exception (roughly 250 hospitals) due to their need to relocate an on-campus or excepted off-campus PBD in response to the PHE. In the remaining states, we believe a smaller percent of hospitals in each state may also apply for the exception—resulting in a total of 450 hospitals.

We estimate that it will take each hospital 15 minutes to complete and submit the request to the CMS Regional Office. We believe that all hospitals will submit a maximum of one relocation request email (even though the request may include more than one location) and this request can include some of the same information (for example, the same CCN, original PBD address, and justification) for multiple sites as deemed appropriate by the hospital. We believe a Medical and Health Services Manager will develop and submit the relocation request to the CMS Regional Office. These employees have an average hourly wage rate of $55.35 based on the May 2019 Bureau of Labor and Statistics' Occupation Employment Statistics. (Citation: BLS code 11–9111, website for May 2019 data here: >*https://www.bls.gov/oes/current/oes119111.htm*<).

We estimate 450 total submissions (one per hospital) × 0.25 hours per submission = 113 total burden hours associated with this requirement and a total labor cost of $6,257 (113 hours × $55.37/hr).

The information collection requirements in this section associated with § 419.48 have been submitted to OMB for emergency review and approval in accordance with the implementing regulations of the PRA at 5 CFR 1320.13.

C. ICRs Regarding Changes to § 424.507

As previously explained, under section 3708 of the CARES Act, we are revising § 424.507(b)(1) to allow NPs, CNSs, and PAs to certify the need for home health services. This, in turn, would require these three NPP types to be enrolled in or opted-out of Medicare to certify such services. The following discusses our burden estimates for this requirement.

Based on internal data from our Provider Enrollment, Chain, and Ownership System (PECOS), we generally estimate that approximately:

- 5,000 currently unenrolled or non-opted out NPs, CNSs, and PAs will elect to enroll in or opt-out of Medicare solely for the purpose of certifying home health services. We believe they will do so in the first year following the effective date of this IFC.
- 1,000 new NPs, CNSs, and PAs each year will enroll in or opt-out of Medicare for the same purpose.

Physicians and practitioners complete the Form CMS–855O (Medicare Enrollment Application—Registration for Eligible Ordering and Referring Physicians and Non-Physician Practitioners) if they are enrolling in Medicare not to obtain Medicare billing privileges but strictly to order, refer, or certify certain Medicare items and services. The information collection for Form CMS–855O is currently approved under OMB control number 0938–1135 with an expiration date of December 31, 2021.

According to the most recent wage data provided by the Bureau of Labor

Statistics (BLS) for May 2019 (see *http://www.bls.gov/oes/current/oes_nat.htm#43-0000*), the mean hourly wage for the general category of ''Health Diagnosing and Treating Practitioners, All Others'' is $49.26. With fringe benefits and overhead, the per hour rate are $98.52. We also project that, on average, it takes individuals approximately .5 hours to complete and submit the Form CMS–855O or an opt-out affidavit.

Given the foregoing, we estimate a first-year burden of 3,000 hours (0.5 hr × (5,000 + 1,000)) at a cost of $295,560. The annual burden in Year 2 and in Year 3 is 500 hours (0.5 hr × 1,000) at a cost of $49,260. This results in a total burden of 4,000 hours (3,000 hr + 500 hr + 500 hr) at a cost of $394,080. When averaged over the typical 3-year OMB approval period, we estimate an annual burden of 1,333 hours (4,000 hr/3) at a cost of $131,360 ($394,080/3).

The information collection requirements in this section associated with § 424.507 have been submitted to OMB for emergency review and approval in accordance with the implementing regulations of the PRA at 5 CFR 1320.13.

D. ICRs for Merit-Based Incentive Payment System (MIPS) Qualified Clinical Data Registry (QCDR) Measure Approval Criteria § 414.1400

In section II.R. of this IFC, we are amending § 414.1400(b)(3)(v)(C) and (D) to delay the implementation of these policies by 1 year. Both QCDR measure approval criteria necessitate QCDRs collecting data from clinicians in order to assess the measure, and we anticipate that QCDRs may be unable to collect, and clinicians unable to submit, data on QCDR measures due to prioritizing the care of COVID–19 patients. Because these policies are not modifying the approval criteria for QCDR measures but are instead amending the timeline for implementation of previously finalized policies, we are not making any changes to our previously approved burden estimates.

E. ICRs for the Hospital Value-Based Purchasing (VBP) Program

In section II.U. of this IFC, we are updating the Extraordinary Circumstance Exception (ECE) policy for the Hospital VBP Program to allow us to grant exceptions to hospitals which have not requested them when we determine that an extraordinary circumstance, such as PHE, including the current PHE for COVID–19, affects an entire region or locale. In a situation where we are granting such an exception for an entire region or locale, hospitals are not required to complete any forms or submit any additional information, therefore the program does not anticipate any change in burden associated with this IFC.

F. ICRs for COVID–19 Reporting in Nursing Homes

We are revising the regulations by adding a provision at § 483.80(g) to require LTC facilities to electronically report information related to confirmed or suspected COVID–19 cases in a standardized format and frequency specified by the Secretary, but no less frequent than weekly. This information will be reported to the CDC's National Healthcare Safety Network (NHSN). As of April 14, 2020, there are approximately 15,446 LTC facilities listed in the CMS Nursing Home Compare database. As CMS will require these facilities to participate in data collection and reporting, we estimate that 95% of these facilities will report COVID–19 case data.

We have estimated that the COVID–19 LTC facility forms will take an average of 55 minutes to complete weekly, knowing that the reporting burden includes surveillance and data entry. We further estimate that LTC facility users will report these data on a weekly basis. The Module allows retrospective data collected from previous dates to be entered. Because OMB PRA approval is requested for 180 days, the total number of responses per respondent is 26. This burden will be submitted under the ICR titled National Healthcare Safety Network (NHSN) Patient Impact Module for Coronavirus (COVID–19) Surveillance in Healthcare Facilities (OMB Control Number 0920–1290). Details of this burden can be found in Table 1.

TABLE 1—BURDEN AND RESPONSES

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)	Hourly wage rate	Total respondent costs
LTCF personnel	COVID–19 Module, Long-Term Care Facility: Staff and Personnel Impact form.	9,782	26	15/60	63,583	$50.91	$3,237,011
Business and financial operations occupations.	COVID–19 Module, Long-Term Care Facility: Staff and Personnel Impact form.	2,446	26	15/60	15,899	37.56	597,166
State and local health department occupations.	COVID–19 Module, Long-Term Care Facility: Staff and Personnel Impact form.	2,446	26	15/60	15,899	40.21	639,299
LTCF personnel	COVID–19 Module, Long-Term Care Facility: Resident Impact and Facility Capacity form.	9,782	26	20/60	84,777	50.91	4,315,997
Business and financial operations occupations.	COVID–19 Module, Long-Term Care Facility: Resident Impact and Facility Capacity form.	2,446	26	20/60	21,199	37.56	796,234
State and local health department occupations.	COVID–19 Module, Long-Term Care Facility: Resident Impact and Facility Capacity form.	2,446	26	20/60	21,199	40.21	852,412
LTCF personnel	COVID–19 Module, Long-Term Care Facility: Ventilator Capacity & Supplies form.	9,782	26	5/60	21,194	50.91	1,078,987
Business and financial operations occupations.	COVID–19 Module, Long-Term Care Facility: Ventilator Capacity & Supplies form.	2,446	26	5/60	5,300	37.56	199,068
State and local health department occupations.	COVID–19 Module, Long-Term Care Facility: Ventilator Capacity & Supplies form.	2,446	26	5/60	5,300	40.21	213,113

TABLE 1—BURDEN AND RESPONSES—Continued

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)	Hourly wage rate	Total respondent costs
LTCF personnel	COVID–19 Module, Long-Term Care Facility: Supplies & Personal Protective Equipment form.	9,782	26	15/60	63,583	50.91	3,237,011
Business and financial operations occupations.	COVID–19 Module, Long-Term Care Facility: Supplies & Personal Protective Equipment form.	2,446	26	15/60	15,899	37.56	597,166
State and local health department occupations.	COVID–19 Module, Long-Term Care Facility: Supplies & Personal Protective Equipment form.	2,446	26	15/60	15,899	40.21	639,299
Total	.....	.....	.....	.....	349,731	.....	16,402,763

V. 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 will 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 will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

Throughout this IFC, we discuss several changes to payment and coverage policies intended to allow health care providers maximum flexibility to minimize the spread of COVID–19 among Medicare and Medicaid beneficiaries, health care personnel, and the community at large, and increase capacity to address the needs of their patients. The flexibilities and changes contained within this IFC are responsive to this developing pandemic emergency and to recent legislation that gives us additional authority. Given the potentially catastrophic impact to public health, it is difficult to estimate the economic impact of the spread of COVID–19 under current payment rules compared to the rules issued in this IFC.

We believe that the needs of Medicare and Medicaid beneficiaries suffering from COVID–19 will likely test the capacity of the health care system over the coming months. Our policies implemented in this IFC will provide flexibilities, during the PHE for COVID–19, to physicians and other practitioners, home health and hospice providers, FQHCs, RHCs, hospitals, critical access hospitals, CMHCs, IRFs, IPFs LTCHs, skilled clinical laboratories, providers of the laboratory testing benefit in Medicaid, Opioid Treatment Programs (OTPs), Shared Savings Program ACOs, and DMEPOS suppliers. These policies will likely minimize exposure risks to patients, clinicians and the general public.

The flexibilities available to hospitals and CMHCs to furnish certain outpatient services remotely will allow more of these services to be furnished in a manner that reduces the exposure risk to patients, hospital staff, and physicians. To the extent that hospitals use these flexibilities to care for patients who would have otherwise received care in more traditional hospital settings, they likely would not result in any significant change in aggregate Medicare payments for hospital services.

The policy to exclude temporarily added surge capacity beds when determining a teaching hospital's IME payments, may increase costs relative to those that would otherwise been incurred under current policies during the PHE for COVID–19; however, we estimate that there will not be a significant change in aggregate Medicare IME payments relative to current policies absent the PHE for COVID–19. A similar policy will also allow RHCs that are provider-based to a hospital to maintain their payment amounts levels if the hospital temporarily adds additional beds, which would otherwise disqualify them. Likewise, we are adopting a policy to maintain IRF and IPF average daily census numbers so that IRF and IPF teaching status adjustment payments do not decrease during the pandemic.

The changes to Medicare and Medicaid regulations to expand the scope of the practitioners who may order home health services are anticipated to eliminate some burdens on practitioners and beneficiaries. Similarly, the changes to Medicaid's regulations to expand the circumstances under which certain laboratory tests can be covered during a PHE and subsequent periods of active surveillance are anticipated to eliminate some burdens on providers and beneficiaries. The changes to the BHP regulations to allow states to submit a revised Blueprint retroactive to the start of the PHE for the COVID–19 pandemic will eliminate some burdens on states and will help ensure enrollees' increased access to coverage during the PHE for the COVID–19 pandemic.

The temporary increase to certain DME payment rates, as required by section 3712 of the CARES Act, will increase Medicare expenditures as well as beneficiary cost-sharing. Moreover, it is possible that the other flexibilities and changes contained within this IFC would increase aggregate Medicare or Medicaid services. Improvements in both provider and/or patient health are intended benefits of this IFC. For example, if the protections against exposure risk, such as teaching physicians remotely reviewing visits furnished by residents, are effective, providers may maintain their own health and thus be available to furnish more services overall.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 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 recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12866 and other laws and Executive Orders require economic analysis of the effects of proposed and final (including interim final) rules.[64] The Office of Management and Budget has designated this rulemaking as ''economically significant'' under E.O. 12866 and also major under the Congressional Review Act.

This IFC's designation under Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), which was issued on January 30, 2017, will be informed by public comments received.

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 1 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 an adverse 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 IFC.

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 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This IFC will not have a significant impact on the operations of a substantial number of small rural hospitals.

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 IFC does not have a substantial direct cost impact on state or local governments, preempt state law, or otherwise have federalism implications.

C. Detailed Economic Analysis of the Provisions of the IFC

1. Reporting Under the Home Health Value-Based Purchasing Model for CY 2020 During the COVID–19 Public Health Emergency

Section II.A. of this IFC implements a policy to align HHVBP Model data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the PHE for the COVID–19 pandemic, as well as a policy for granting exceptions to the New Measures data reporting requirements under the HHVBP Model during the PHE for the COVID–19 pandemic. We do not anticipate a change to Medicare expenditures as a result of this policy. However, we expect reduced burden on providers.

2. Scope of Practice

Section II.B. of this IFC implements several policies to temporarily add flexibility for certain nonphysician healthcare professionals in supervision, documentation and other requirements of the Medicare program that could impact the availability and efficiency of care. As discussed in section II.B. of this IFC, several states have sought to increase pharmacist capacity by relaxing supervision requirements during the PHE for COVID–19. We expect that, especially when coupled with policies adopted by states, the temporary flexibility and clarification we provide in this IFC will increase capacity for pharmacists and other healthcare practitioners. We anticipate that these changes could possibly result in higher Medicare expenditures because, although the changes primarily modify supervision requirements, without a corresponding change in payment rate, the added flexibility could result in a higher volume of services. We anticipate that the changes will allow the same services that were occurring before the PHE to continue during the PHE; however, expenditures could increase if additional services are furnished. To the extent that expenditures increased due to increases in service volume, this would represent a cost to the Federal Government.

3. Modified Requirements for Ordering COVID–19 Diagnostic Laboratory Tests

Section II.C. of this IFC implements a policy to allow Medicare beneficiaries to get COVID–19 and other related testing during the COVID–19 PHE without requiring the order of the treating physician or practitioner, and instead allowing the testing to be ordered by any healthcare professional who is authorized to do so under applicable state law. We do not anticipate that this change will affect overall Medicare expenditures over time because we expect that the change would accelerate the timing of COVID–19 testing that would otherwise have occurred over a longer timeframe.

4. Opioid Treatment Programs—Furnishing Periodic Assessments via Communication Technology

Section II.D. of this IFC implements a change to allow periodic assessments furnished by OTPs to be furnished via two-way interactive audio-video communication technology, and in cases where beneficiaries do not have access to two-way audio/video communications technology, to allow periodic assessments to be furnished using audio-only telephone calls rather than via two-way interactive audio-video communication technology, provided all other applicable requirements are met. This change will not result in an increase in Medicare expenditures because the add-on payment for these services was available prior to the PHE for COVID–19 and because this change only provides OTPs additional flexibilities regarding the manner in which they furnish these services during the pandemic.

5. Treatment of Certain Relocating Provider-Based Departments During the PHE

Section II.E. of this IFC adopts a temporary extraordinary circumstances relocation exception policy for on-

[64] Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–04, enacted on March 22, 1995) 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 2020, that amount is approximately $156 million. This IFC does not mandate, on an unfunded basis, any requirements for State, local, or tribal governments, or for the private sector.

campus and excepted off-campus PBDs that relocate off-campus in response to the PHE that permits the PBDs that relocate to continue to be paid under the OPPS. This policy could drive slightly higher spending during the PHE than would otherwise occur, but generally it would maintain current payment rates to on-campus and excepted off-campus PBDs in the event of a temporary relocation due to the PHE for COVID–19. These policies would be time limited and we do not believe they would result in higher use of services; rather they would allow services furnished by these relocated departments to continue to be paid at the higher rate under the OPPS, rather than at the lower PFS-equivalent rate if these excepted PBDs relocated off-campus outside of the PHE and were not granted an extraordinary circumstances relocation exception.

Overall there would be minimal change in the types of patients treated under these policies compared to the absence of these policy changes. To the extent that Medicare expenditures increased, it would represent a transfer from the Federal Government to hospitals paid under the OPPS.

6. Furnishing Hospital Outpatient Services Remotely

Section II.F. of this IFC discusses flexibilities under which certain outpatient services, including PHP services furnished by a hospital or CMHC in the beneficiary's home, can be furnished remotely during the PHE for COVID–19. These changes will not result in higher costs because they only provide flexibility for providers to continue to furnish these services during the pandemic.

7. Medical Education

Section II.G. of this IFC implements a policy that excludes temporarily added surge capacity beds when determining a teaching hospital's IME payments. This policy could increase costs relative to the baseline IME payments that would be established under current payment rules if teaching hospitals temporarily add beds given the COVID–19 PHE, but will mitigate changes in IME payments relative to their levels before the COVID–19 PHE. To the extent that IME payments do change, the changes in payments would represent a transfer between teaching hospitals and the Federal Government (that is, an increase in payments would be a transfer from the Federal Government to teaching hospitals, and vice versa).

This section also implements a policy to hold, for the duration of the COVID–19 PHE, IRF and IPF teaching status adjustment payments at their values prior to the COVID–19 PHE. This will mitigate changes in teaching adjustment payments relative to their levels before the COVID–19 PHE. To the extent that teaching adjustment payments did change, the changes would represent a transfer between IPFs or IRFs and the Federal Government (with an increase in payments being a transfer from the Federal Government to IPFs or IRFs, and vice versa).

This section also implements a policy to allow, for the duration of the COVID–19 PHE, teaching hospitals to claim, towards their resident FTE counts, residents that teaching hospitals send to other hospitals to respond to the PHE associated with COVID. To the extent that hospitals are not sending or accepting residents because of our current regulations, and those residents continue to train at the home teaching hospitals, allowing the residents to train elsewhere is budget neutral. The hospitals would continue to get paid the same GME payments that they would have received if the residents had continued to train at the home hospitals. No other hospitals would receive additional GME payments for that resident training.

8. Rural Health Clinics

Section II.H. of this IFC implements a policy that excludes temporarily added surge capacity beds from a hospital's bed count for the purposes of determining whether a RHC that is provider-based to that hospital is subject to a per-visit national payment limit. We do not anticipate that this policy would increase the number of RHCs that would not be subject to the payment limit; rather, it would ensure those RHCs who were not subject to the limit prior to the PHE maintain that status. This policy could increase costs relative to the baseline of current payment rules and the PHE, but will mitigate changes in costs relative to their levels before the COVID–19 PHE. To the extent payments to RHCs increased, it would represent a transfer from the Federal Government to RHCs.

9. DME Interim Pricing in the CARES Act

Section II.I. of this IFC implements the temporary increase to certain DME payment rates, as required by section 3712 of the CARES Act. Section 3712 of the CARES Act increases Medicare expenditures, as well as beneficiary cost-sharing by increasing Medicare payment rates for certain DMEPOS items furnished in non-rural and contiguous non-competitively bid areas.

The increase is a result of paying a blend of 75 percent of the fully adjusted payment rates and 25 percent of the unadjusted payment rates and is estimated to increase affected rates on average 33%. However, the estimated Medicare gross benefit cost against the FY 2021 President's Budget baseline is $140 million dollars. It would represent a transfer from the Federal Government to DMEPOS suppliers and a transfer from beneficiaries to the Federal Government. This change may also affect the federal financial participation limit for DMEPOS items and services furnished to Medicaid beneficiaries, but we are unable to quantify the effect.

10. Care Planning for Medicare Home Health Services

Section II.J. of this IFC implements conforming regulations text changes required by section 3708 of the CARES Act. We believe that section 3708 of the CARES Act will have a negligible impact on Medicare expenditures. NPPs generally work in collaboration with or under the supervision of a physician; therefore, utilization is unlikely to change substantially as a result of the CARES Act. In areas where NPPs are able to act independently under their state scopes of practice and where physicians are scarce, there may be a slight increase in utilization; however, we are unable to quantify the impact. Although the majority of states require physician collaboration for these NPPs, we note that even in states that allow independent practice authority, many of these practitioners continue to work in a practice environment (inpatient facility or outpatient or physician's office) that includes a physician.

11. CARES Act Waiver of the ''3-Hour Rule'' and Modification of IRF Coverage and Classification Requirements for Freestanding IRF Hospitals for the PHE During the COVID–19 Pandemic

Section II.K. of this IFC amends section § 412.622(a)(3)(ii) (commonly referred to as the ''3-hour rule'') to address the waiver required by section 3711(a) of the CARES Act during the emergency period described in section 1135(g)(1)(B) of the Act and amends § 412.29(d), (e), (h), and (i) and § 412.622(a)(3), (4), and (5) to add an exception for patients admitted solely for care furnished to patients in an IRF solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE. We expect that the waiver required by the CARES Act will increase Medicare expenditures because it will increase the volume of patients admitted to IRFs and paid for under the

IRF PPS. However, we do not expect that the other changes to § 412.29(d), (e), (h), and (i) and § 412.622(a)(3), (4), and (5) for freestanding IRF hospitals will increase the IRF volume of cases beyond the increases that will already be expected to occur as a result of the CARES Act. Moreover, these changes are likely to minimize exposure risks to patients, clinicians, and the general public. To the extent that Medicare expenditures increase, it would represent a transfer from the Federal Government to IRFs.

12. Shared Savings Program

Changes to the Shared Savings Program as described in section II.L. of this IFC are estimated to reduce program spending relative to a status quo baseline by preventing COVID–19-related treatment costs from causing highly variable and uncertain distortions in the calculation of shared savings and shared losses for individual ACOs and by offering flexibilities that are expected to help retain ACO participation in the face of broader uncertainties from the historic disruption caused by the COVID–19 pandemic. In modeling the impacts of these changes, we used ACO performance data from performance year 2018 to simulate 2020 performance, and included assumptions for variation in COVID–19 spending and a decline in elective services and the deferral of other services. In modeling the impact of these changes, we considered the following:

- Based on a typical year, we assumed up to a 20 percent reduction in expenditures for 2020 because of a decline in elective services and the deferral of other services, and we assumed increases in expenditures due to COVID–19 inpatient treatment and related spending. We estimate that this variation in COVID–19 related spending would roughly double the standard deviation in gross measured savings and losses (expressed as a percentage of benchmark) that would have been determined across all ACOs participating in PY 2020.
- Absent flexibilities to encourage continued participation (by allowing a voluntary 1-year extension for ACOs whose agreement periods expire on December 31, 2020, and allowing ACOs to maintain participation at the same level of the BASIC track's glide path for performance year 2021) and an adjustment to certain program calculations to remove payment amounts for episodes of care for treatment of COVID–19, we project that up to 30 percent of all ACOs would elect to discontinue their participation. This would represent a significant increase in the program's attrition rate, which was 16 percent in 2019 and has been 11 percent on average.[65] Further, based on a recent National Association of ACOs (NAACOS) survey, 56 percent of risk-based ACOs may leave the program due to concerns about having to pay shared losses in 2020 because of costs incurred in treating COVID–19.[66]

A key new flexibility is the allowance for ACOs in the last performance year of their current agreement period (mainly Track 1 ACOs and Track 1+ Model ACOs) to elect to extend their agreement period by an additional performance year in 2021. The anticipated resulting increase in retention of existing ACOs that would have otherwise been unlikely to renew in the face of pandemic uncertainty is estimated to lower net program spending (that is, increase federal savings) by $100 million (ranging from $90 to $120 million) despite potential increases in shared savings payments to certain ACOs that will benefit from the additional year under their existing agreement period for which the ACO's historical benchmark is established, adjusted, updated, and reset (as applicable) according to the methodologies specified in §§ 425.602 and 425.603.

Another important new flexibility allows certain ACOs to temporarily freeze their position along the BASIC track's glide path, which will allow some ACOs to avoid transitioning to a higher level of performance-based risk for performance year 2021. This flexibility is also estimated to decrease program spending (increase federal savings) mainly by reducing the chance that risk-averse ACOs would drop out of the Shared Savings Program rather than transition to a higher level of performance-based risk for performance year 2021. For example, ACOs opting to remain in Level B instead of transitioning to Level C or higher risk and reward (such as Level E, which qualifies as an Advanced APM) for performance year 2021 would in effect accept a lower savings sharing rate (and their participating ACO providers/suppliers would forgo potential incentive payments from qualifying as participating in an Advanced APM) in exchange for elimination of performance-based risk in the face of elevated uncertainty. The net effect of offering this flexibility is estimated to be a $60 million reduction in federal spending, with the reduction ranging from $0 to $170 million.

In modeling the impact of forgoing the application cycle for a January 1, 2021 agreement start date, we considered a combination of factors. Not offering an application cycle for a 2021 start date helps to mitigate any complexity arising from the use of 2020 as a benchmark year, when expenditures for 2020 could be extremely unusual given the COVID–19 pandemic and the related disruption to normal health care utilization. In particular, forgoing a January 1, 2021 agreement start date prevents 2020 serving as benchmark year 3, which is most heavily weighted in the case of ACOs entering a first agreement period (§ 425.601(a)(7)).

In addition, maintaining an application cycle for a January 1, 2021 start date could result in a scenario where only a small number of organizations are able to devote resources to applying to participate (or renew their participation) in the Shared Savings Program given the impact of the COVID–19 pandemic on their operations and the challenges facing providers and suppliers. There is a particular risk that the unusual circumstances surrounding the COVID–19 pandemic could result in selective participation by only those ACOs that find their historical benchmark, for whatever reason, would provide for large windfall shared savings payments over a 5-year agreement period. Therefore, forgoing the application cycle for a January 1, 2021 start date is estimated to mitigate such selective participation and therefore reduce program spending by $150 million (with the reduction estimate ranging from $0 to $410 million).

The most significant impact is estimated to result from the new policy to adjust certain Shared Savings Program calculations to remove Parts A and B expenditures for episodes of care for treatment of COVID–19. Failing to remove this spending would likely create highly variable shared savings and shared losses results for individual ACOs that happen to have over-representation or under-representation of COVID–19-related hospitalizations in their assigned beneficiary population. At baseline, such variability would likely produce windfall payments to certain ACOs while causing other ACOs with significant exposure to COVID–19 in their assigned beneficiary populations to potentially leave the Shared Savings Program. Excluding

[65] Verma S. Number of ACOs Taking Downside Risk Doubles Under 'Pathways To Success'. *Health Affairs.* January 10, 2020. Available at *https://www.healthaffairs.org/do/10.1377/hblog20200110.9101/full/.*

[66] NAACOS, Survey Shows ACOs' Concerns About the Effect of COVID–19. Available at *https://www.naacos.com/assets/docs/pdf/2020/SurveyReportACO-EffectsCOVID19-04132020.pdf.*

expenditures for these episodes of care for treatment of COVID–19 from the specified financial calculations under the Shared Savings Program is anticipated to reduce program spending by $1,110 million (reduction estimate ranging from $560 to $1,710 million) mainly by preventing windfall payments of shared savings to ACOs favored by such extreme variation.

By reducing program spending (even at the low-magnitude end of the range of uncertainty), this change to exclude payment amounts for episodes of care for treatment of COVID–19 necessarily satisfies the requirement under section 1899(i)(3)(B) of the Act that program spending not exceed spending that would have occurred under a hypothetical version of the program that would not have utilized flexibilities allowed under section 1899(i)(3) of the Act. The adjustments to expenditure and revenue calculations to mitigate the impact of COVID–19 that require the use of our authority under section 1899(i)(3) of the Act will only lower anticipated program spending further below the hypothetical baseline compared to what we have determined in previous rulemaking to meet the requirements of section 1899(i)(3)(B) of the Act.[67] Therefore, we believe that the adjustments to remove payment amounts for episodes of care for treatment of COVID–19 from the calculation of performance year expenditures, updates to the historical benchmark, and ACO participants' Medicare FFS revenue used to determine the loss sharing limit in the two-sided models of the BASIC track, meet the requirements for use of our authority under section 1899(i)(3) of the Act.

In total, the changes to the Shared Savings Program described in this IFC are estimated to reduce program spending by $1.43 billion over the 2020 to 2025 period (ranging from a reduction of $790 million to $2.12 billion), with most of the reduction ($1.11 billion) attributable to performance year 2020.

Table 2 provides our best estimate, net of shared savings payments to ACOs, of the change in resource use and transfers between the Federal Government and ACOs and ACO providers/suppliers as a result of the changes to the Shared Savings Program included in this IFC. The change in expenditures is classified as a net change in expenditures because it is a mix of transfers between the Federal Government and ACOs and other Medicare-enrolled providers, suppliers, and practitioners as well as real changes in resource use. At this time, we are unable to separately estimate transfers and real changes in resource use.

As shown Table 2, the net change in expenditures to the Federal Government associated with the Shared Savings Program policies in this IFC is estimated at −$1.1 billion for performance year 2020, −$0.13 billion for performance year 2021, −$0.05 billion for performance years 2022 and 2023, and −$0.04 billion for performance years 2024 and 2025. We present the estimates as undiscounted streams over 6 performance years rather than annualized streams because we estimate that more than 75 percent of the total change will accrue to performance year 2020.

TABLE 2—ESTIMATED NET SAVINGS TO MEDICARE PROGRAM FROM SHARED SAVINGS PROGRAM POLICIES

Performance year	Net change in expenditures
2020	−$1.11 billion.
2021	−$0.13 billion.
2022	−$0.05 billion.
2023	−$0.05 billion.
2024	−$0.04 billion.
2025	−$0.04 billion.

Note: Performance years co-occur with calendar years. Negative values reflect a reduction in federal net cost. Net change in expenditures includes both changes in real resource use and transfers between the Federal Government and ACOs and Medicare-enrolled suppliers, providers, and practitioners.

13. Additional Flexibility Under the Teaching Physician Regulations

Section II.M. of this IFC discusses changes to allow teaching physicians to review the services furnished by residents, as required under the primary care exception rules, remotely through virtual means via interactive telecommunications technology during the PHE for COVID–19. This change will give teaching physicians additional flexibilities to direct the care furnished by residents remotely to minimize exposure risks to patients, clinicians, and the general public; and there would be no change in Medicare payment rates or change in the types of patients treated under this policy compared to the absence of this policy change. Aggregate Medicare expenditures could increase if the changes allow residents to furnish more services with remote supervision from teaching physicians. To the extent that Medicare expenditures increase because residents furnish more services, this change will represent a cost to the Federal Government.

14. Payment for Audio-Only Telephone Evaluation and Management Services

Section II.N. of this IFC increases payment rates, for the duration of the PHE for COVID–19, for telephone E/M visits to match payment rates under the PFS for office/outpatient visits with established patients. We expect that these increases in payment rates will not result in higher aggregate Medicare expenditures as long as these telephone E/M visits fully substitute during the pandemic for in-person or telehealth E/M visits that otherwise would have occurred. Absent the increase in payment rates, it is unlikely that telephone E/M visits would have served as an alternative for in-person or telehealth E/M visits to the same extent as could occur with the increase in payment rates. However, it is also possible that this provision would increase aggregate Medicare payments. For example, if the protections against exposure risk are effective, physicians may maintain their own health and thus be available to furnish more services overall. Improvements in the health of patients and physicians are intended benefits of this provision. If additional services are furnished, Medicare expenditures will increase, resulting in a cost to the Federal Government.

15. Flexibility for Medicaid Laboratory Services

Section II.O. of this IFC implements revisions to the Medicaid laboratory benefit at § 440.30 to provide states with flexibility to provide Medicaid coverage for laboratory tests and X-ray services that may not meet certain requirements in § 440.30(a) or (b) (such as the requirement that tests be furnished in an office or similar facility) during periods of a PHE resulting from an outbreak of communicable disease and during any subsequent periods of active surveillance. The purpose of such laboratory and X-ray services must be to diagnose or detect SARS–CoV–2, antibodies to SARS–CoV–2, COVID–19, or the communicable disease named in the PHE or its causes, and the deviation from the requirements in § 440.30 (a) or (b) must be intended to avoid transmission of the communicable disease. This change is not estimated to have a significant impact on federal expenditures for the Medicaid program.

16. Improving Care Planning for Medicaid Home Health Services

Section II.P. of this IFC implements revisions to the Medicaid home health benefit at § 440.70 to expand the scope of practitioners who may order home health services. This change is not

[67] See for example, 81 FR 38011 and 38012, and 83 FR 68060.

estimated to have a significant impact on federal expenditures for the Medicaid program.

17. Basic Health Program (BHP) Blueprint Revisions

Section II.Q. of this IFC provides flexibility to states that operate a BHP to seek certification of temporary revisions that make significant changes to their respective Blueprint that are directly tied to the PHE for the COVID–19 pandemic and increase access to coverage. A state operating a BHP can seek to apply these revisions retroactively to the start of the PHE for the COVID–19 pandemic. Such revisions would expire at the end of the PHE, or a reasonable later date as certified by HHS. This change is not estimated to have a significant impact on federal expenditures for the BHP.

18. Merit-Based Incentive Payment System (MIPS) Qualified Clinical Data Registry (QCDR) Measure Approval Criteria

Section II.R. of this IFC amends § 414.1400(b)(3)(v)(C) and (D) to delay the implementation of these policies by 1 year. Both QCDR measure approval criteria necessitate QCDRs collecting data from clinicians in order to assess the measure, and we anticipate that QCDRs may be unable to collect, and clinicians unable to submit, data on QCDR measures due to prioritizing the care of COVID–19 patients. This delay will not affect reporting burden for QDCRs or clinicians; therefore, there is no expected impact.

19. Application of Certain National Coverage Determination and Local Coverage Determination Requirements During the PHE for the COVID–19 Pandemic

Section II.S.2. of this IFC exercises enforcement discretion for LCDs related to clinical indications for therapeutic continuous glucose monitors. This policy may temporarily allow additional beneficiaries to be covered by Medicare for home use of therapeutic continuous glucose monitors during the PHE for the COVID–19 pandemic including diabetic patients with COVID–19 infections. While this should be a small and temporary increase in the use of therapeutic continuous glucose monitors it is possible that this increase will be offset by a reduction in hospitalizations. Additionally, patients using therapeutic continuous glucose monitors may be able to reduce their use of other diabetic testing supplies which could also contribute to offsetting costs.

20. Delay in the Compliance Date of Policies Adopted for the IRF QRP, LTCH QRP, HH QRP and SNF QRP

Section II.T. of this IFC delays certain reporting requirements for policies adopted for the IRF QRP, LTCH QRP, HH QRP, and SNF QRP. We do not anticipate any economic impact as a result of the delay.

21. Update to the Hospital Value-Based Purchasing (VBP) Program Extraordinary Circumstance Exception Policy

Section II.U. of this IFC updates the Hospital VBP Program's ECE policy to more closely align that policy with the ECE policies of CMS' other hospital QRP and VBP program, and to also provide more flexibility to hospitals confronted with unforeseen extraordinary circumstances beyond their control. Under the current policy, a hospital must submit the Hospital VBP Program ECE request form, including any available evidence of the impact of the extraordinary circumstances on the hospital's quality measure performance, within 90 calendar days of the date on which the natural disaster or other extraordinary circumstance occurred (78 FR 50706). We are retaining this policy as well as introducing a new policy that allows us to grant an ECE to hospitals affected by an extraordinary circumstance, such as the COVID–19 PHE, within an entire region or locale without requiring that each affected hospital individually submit an ECE request form.

The existing individual ECE request form policy is accounted for in the currently approved Hospital Inpatient Reporting PRA package, OMB control #0938–1022. There are no changes to the individual ECE request form policy and therefore no changes to the burden associated with the HVBP program.

The updated policy that allows CMS to grant exceptions for entire regions, including the entire United States, during an extraordinary circumstance, does not require hospitals to submit any documentation: Therefore, we do not anticipate any change in burden or costs for the Hospital VBP Program based on the changes to the ECE policy set forth in this IFC.

22. COVID–19 Serology Testing

Section II.V. of this IFC provides for national coverage of COVID–19 FDA-authorized serology tests for certain Medicare beneficiaries during the PHE for the COVID–19 pandemic. It is unclear to what extent this test will increase Medicare expenditures. The cost to Medicare will be primarily dependent on the availability of testing, the price of the test and the length of the PHE. While the tests are new and have not previously been covered by Medicare it is possible that some of the cost of furnishing the test will be offset. As a result of serology testing there may be patients identified as not having had an immune response to COVID–19. If these patients take preventive measures to reduce their risk of infection as a result of this information then they may avoid COVID–19 infections, related hospitalizations and additional costs to Medicare.

23. Certification of Home Health Services—Revision to § 424.507

In section II.W. of this IFC, we discuss the provision to allow certain NPPs the ability to certify a patient's need for home health services. Previously only physicians were eligible to certify the need for home health under Medicare. The majority of NPPs are likely already enrolled in the Medicare program and will not need to take any additional enrollment actions. However, we estimate that approximately 5,000 currently unenrolled or non-opted out NPs, CNSs, and PAs will elect to enroll in or opt-out of Medicare solely for the purpose of certifying home health services. We believe they will do so in the first year following the effective date of this IFC; moreover, 1,000 new NPs, CNSs, and PAs each year will enroll in or opt-out of Medicare for the same purpose.

24. Separate Billing and Segregation of Funds for Abortion Services

In light of the immediate need for QHP issuers and Exchanges to divert resources to responding to COVID–19, we are delaying implementation of the separate billing policy for 60 days as discussed in section II.X. of this IFC. Under this 60-day extension, QHP issuers must comply with the separate billing policies finalized at § 156.280(e)(2)(ii) beginning on or before their first billing cycle following August 26, 2020. We estimate that delaying the implementation deadline for the separate billing policies by 60 days will not result in substantial changes to the one-time implementation costs as estimated in the 2019 Program Integrity final rule. Some issuers and State Exchanges may have already sent notices to enrollees informing them of the separate billing and payment requirements and may now have to send additional notices to inform them of the change. In such cases, the reduction in ongoing costs will be lower. We request comment that would allow for refinement of the upfront and ongoing

cost savings estimates. Reduction in costs directly related to printing and sending of separate bills for issuers and State Exchanges that perform premium billing and payment processing have been discussed previously in the ''Collection of Requirements'' section of this IFC.

In the 2019 Program Integrity final rule, we estimated that issuers and State Exchanges that perform premium billing and payment processing will each incur ongoing annual costs of approximately $1 million associated with activities such as processing and reconciling separate payments, support for enrollees who enter grace period for non-payments, customer service, outreach and compliance. Delaying the implementation by 60 days will reduce these ongoing costs by approximately $16.2 million for all 94 issuers and 3 State Exchanges that perform premium billing and payment processing. We also estimated that each of the 12 State Exchanges will incur ongoing annual costs associated with increased customer service, outreach, and compliance, estimated to be approximately $200,000 for the 6 months in 2020. The 60-day delay in implementation will reduce these ongoing costs in 2020 by approximately $0.8 million for all 12 Exchanges. In addition, we estimated that the FFEs will incur ongoing costs of approximately $400,000 for the 6 months in 2020. The delay in implementation will reduce the ongoing costs in 2020 by approximately $133,333.

Consumers will also experience a reduction in burden. In the 2019 Program Integrity final rule, we estimated that issuers and State Exchanges performing premium billing and payment processing will be required to send a separate bill to approximately 2 million policy holders and that consumers will incur a burden of 5 minutes per month after the initial month to read and understand the separate bill. Delaying the implementation by 60 days will result in a burden reduction of 10 minutes (at a cost of $12.37 per hour) in 2020 for each consumer. For approximately 2 million policyholders, the total reduction in burden in 2020 will be approximately 337,793 hours with an equivalent cost savings of approximately $4.2 million.

25. Requirement for Facilities To Report Nursing Home Residents and Staff Infections, Potential Infections, and Deaths Related to COVID–19

Section II.Y. of this IFC revises the infection prevention and control requirements for LTC facilities to more effectively respond to the specific challenges posed by the COVID–19 pandemic. Specifically, we are adding provisions to require facilities to electronically report information related to confirmed or suspected COVID–19 cases in a standardized format and frequency specified by the Secretary and requiring facilities to inform residents and their representatives of confirmed or suspected COVID–19 cases in the facility among residents and staff. As discussed in the Collection of Information section, we expect a burden increase of $16,402,763 attributed to the CDC's NHSN collection (OMB Control #0920–1290).

26. Time Used for Level Selection for Office/Outpatient Evaluation and Management Services Furnished Via Medicare Telehealth

Section II.Z. of this IFC implements a policy that for the duration of the PHE for the COVID–19 pandemic, the typical times for purposes of level selection for an office/outpatient E/M service furnished via telehealth are the times listed in the CPT code descriptor. We do not anticipate a change to Medicare expenditures as a result of this policy.

27. Updating the Medicare Telehealth List

Section II.AA. of this IFC revises the process during the PHE for COVID–19 by which CMS could add services to the Medicare telehealth list and that services added through the process would remain on the Medicare telehealth list during the PHE for COVID–19. This section does not add any services to the Medicare telehealth list. Therefore, we do not anticipate a change to Medicare expenditures.

28. Payment for COVID–19 Specimen Collection to Physicians, Nonphysician Practitioners and Hospitals

Section II.BB. of this IFC describes a policy to make assessment and specimen collection for COVID–19 testing payable under the Medicare PFS and conditionally packaged under the OPPS for the duration of the PHE for COVID–19. Because these services were not previously payable under the Medicare PFS or conditionally packaged under the OPPS, Medicare expenditures will increase, representing a cost to the Federal Government. However, on net we estimate that greater testing combined with proper public health practices of physical distancing and isolation for exposed or infected individuals would result in fewer COVID–19 infections and consequently, this policy would reduce expenditures for the treatment of Medicare beneficiaries with COVID–19, which would be a benefit to the Federal Government.

29. Payment for Remote Physiologic Monitoring (RPM) Services Furnished During the COVID–19 PHE

Section II.CC. of this IFC describes a policy, for the duration of the PHE for COVID–19, to allow the RPM monitoring service to be reported to Medicare for periods of time that are fewer than 16 days of 30 days, as long as the other requirements for billing the code are met. To the extent that this increases volume of the RPM monitoring service, this policy would increase Medicare expenditures, resulting in a cost to the Federal Government.

D. Accounting Statement

1. Medicare Program

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in the following Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this IFC as they relate to the Medicare program.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered (CY)
Transfers:				
Annualized Monetized ($million/year)	−269.6	2019	7	2020–2025
	−250.8	2019	3	2020–2025

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS—Continued

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered (CY)
From Whom to Whom	Reduced transfer from Federal Government to ACOs and Medicare-enrolled suppliers, providers, and practitioners.			

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Diseases, Health facilities, Health professions, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Diseases, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 425

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 600

Administration practice and procedure, Health care, Health insurance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interests, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—health, Medicaid, Organization and functions (Government agencies), Prescription drugs, Public assistance programs, Reporting and recordkeeping requirements, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, and the Department of Health and Human Services amends 45 CFR part 156, as set forth below:

Title 42

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

§ 409.41 [Amended]

■ 2. Section 409.41 is amended in paragraph (b) by removing the phrase ''The physician certification'' and adding in its place the phrase ''The certification''.

§ 409.42 [Amended]

■ 3. Section 409.42 is amended—
■ a. In the paragraph (b), subject heading and text, and in paragraph (c) introductory text by removing the phrase ''a physician'' and adding in its place the phrase ''a physician or allowed practitioner, as defined at § 484.2 of this chapter''.
■ b. In paragraph (c) introductory text by removing the phrase ''the physician certification'' and adding in its place the phrase ''the certification''.
■ 4. Section 409.43 is amended—
■ a. By revising paragraphs (a) introductory text and (a)(1);
■ b. In paragraph (b), by removing the phrases ''physician's orders'' and ''physician order'' and adding in its place the phrases ''physician or allowed practitioner's orders'' and ''physician or allowed practitioner order'', respectively;
■ c. In the paragraph (c) subject heading by removing the word ''Physician'' and in paragraph (c)(1) introductory text by removing the term ''physician'' and adding in its place the phrase ''Physician or allowed practitioner'' and ''physician or allowed practitioner'', respectively;
■ d. In paragraph (c)(1)(i) introductory text by removing the phrase ''physician's verbal order'' and adding in its place the phrase ''physician or allowed practitioner's orders''; and
■ e. In paragraphs (d), (e)(1) introductory text, (e)(2), and (f) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

The revisions read as follows:

§ 409.43 Plan of care requirements.

(a) *Contents.* An individualized plan of care must be established and periodically reviewed by the certifying physician or allowed practitioner, as defined at § 484.2 of this chapter.

(1) The HHA must be acting upon a plan of care that meets the requirements of this section for HHA services to be covered.

* * * * *

■ 5. Section 409.44 is amended—
■ a. By revising paragraph (c)(1) introductory text;
■ b. In paragraphs (c)(1)(i), (c)(2)(i)(D)(*1*), and (c)(2)(i)(F)(*3*) by removing the term ''physician'' and adding in its place the term ''physician or allowed practitioner'';
■ c. In paragraphs (c)(2)(iii)(A), by removing the term ''physician's'' and adding in its place the term ''physician's or allowed practitioner's''; and
■ d. In paragraph (c)(2)(iv) introductory text by removing the term ''physician'' and adding in its place the term ''physician or allowed practitioner''.

The revision reads as follows:

§ 409.44 Skilled services requirements.

* * * * *

(c) * * *

(1) Speech-language pathology services and physical or occupational therapy services must relate directly and specifically to a treatment regimen (established by the physician or allowed practitioner) after any needed consultation with the qualified therapist, that is designed to treat the beneficiary's illness or injury. Services related to activities for the general physical welfare of beneficiaries (for example, exercises to promote overall fitness) do not constitute physical therapy, occupational therapy, or speech-language pathology services for Medicare purposes. To be covered by Medicare, all of the requirements apply as follows:

* * * * *

§ 409.45 [Amended]

■ 6. Section 409.45 is amended—

■ a. In paragraph (a) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

■ b. In paragraph (b)(1) introductory text by removing the phrase ''physician's order'' and adding in its place the phrases ''physician or allowed practitioner's orders''; and

■ c. In paragraphs (b)(2)(i), (c)(1), and (g) by removing the term ''physician'' and add in its place the phrase ''physician or allowed practitioner''.

§ 409.46 [Amended]

■ 7. Section 409.46 is amended in paragraph (a) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

§ 409.48 [Amended]

■ 8. Section 409.48 is amended in paragraph (c)(1) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 9. The authority citation for part 410 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395m, 1395hh, 1395rr, and 1395ddd.

■ 10. Section 410.32 is amended—

■ a. In paragraph (a) introductory text by removing the phrase ''All diagnostic x-ray tests, diagnostic laboratory tests'' and adding in its place the phrase ''Except as otherwise provided in this section, all diagnostic x-ray tests, diagnostic laboratory tests'';

■ b. By adding paragraph (a)(3);

■ c. By revising paragraphs (b)(1) and (b)(2)(iii)(B);

■ d. By adding paragraph (b)(2)(viii);

■ e. By revising paragraph (b)(3) introductory text;

■ f. By revising paragraph (d)(2)(i) and paragraph(d)(2)(ii) introductory text; and

■ g. By revising paragraph (d)(3)(i) introductory text.

The revisions and additions read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) * * *

(3) *Public Health Emergency exception.* During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, the order of a physician or NPP is not required for otherwise covered diagnostic laboratory tests for COVID–19 and for otherwise covered diagnostic laboratory tests for influenza virus or similar respiratory condition needed to obtain a final COVID–19 diagnosis when performed in conjunction with COVID–19 diagnostic laboratory test in order to discount influenza virus or related diagnosis. FDA-authorized COVID–19 serology tests are included as covered tests during the Public Health Emergency, as defined in § 400.20 of this chapter, for the COVID–19 pandemic, as they are reasonable and necessary under section 1862(a)(1)(A) of the Act for beneficiaries with known current or known prior COVID–19 infection or suspected current or suspected prior COVID–19 infection.

(b) * * *

(1) *Basic rule.* Except as indicated in paragraph (b)(2) of this section, all diagnostic x-ray and other diagnostic tests covered under section 1861(s)(3) of the Act and payable under the physician fee schedule must be furnished under the appropriate level of supervision by a physician as defined in section 1861(r) of the Act or, during the Public Health Emergency as defined in § 400.200 of this chapter, for the COVID–19 pandemic, by a nurse practitioner, clinical nurse specialist, physician assistant or a certified nurse-midwife to the extent that they are authorized to do so under applicable state law. Services furnished without the required level of supervision are not reasonable and necessary (see § 411.15(k)(1) of this chapter).

(2) * * *

(iii) * * *

(B) Furnished under the general supervision of a physician, clinical psychologist, or during the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, by a nurse practitioner, clinical nurse specialist, physician assistant or a certified nurse-midwife, to the extent that they are authorized to perform the tests under applicable State law.

* * * * *

(viii) During the COVID–19 Public Health Emergency as defined in § 400.200 of this chapter, diagnostic tests performed by a physician assistant authorized to perform the tests under applicable State law.

* * * * *

(3) *Levels of supervision.* Except where otherwise indicated, all diagnostic x-ray and other diagnostic tests subject to this provision and payable under the physician fee schedule must be furnished under at least a general level of supervision as defined in paragraph (b)(3)(i) of this section. In addition, some of these tests also require either direct or personal supervision as defined in paragraph (b)(3)(ii) or (iii) of this section, respectively. When direct or personal supervision is required, supervision at the specified level is required throughout the performance of the test.

* * * * *

(d) * * *

(2) * * *

(i) *Ordering the service.* Except for tests described in paragraph (a)(3) of this section, the physician (or qualified nonphysician practitioner, as defined in paragraph (a)(2) of this section), who orders the service must maintain documentation of medical necessity in the beneficiary's medical record.

(ii) *Submitting the claim.* Except for tests described in paragraph (a)(3) of this section, the entity submitting the claim must maintain the following documentation:

* * * * *

(3) * * *

(i) *Documentation requirements.* Except for tests described in paragraph (a)(3) introductory text, upon request by CMS, the entity submitting the claim must provide the following information:

* * * * *

■ 11. Section 410.67 is amended in paragraph (b)(7) by adding two sentences at the end to read as follows:

§ 410.67 Medicare coverage and payment of Opioid use disorder treatment services furnished by Opioid treatment programs.

* * * * *

(b) * * *

(7) * * * During the Public Health Emergency for the COVID–19 pandemic, as defined in § 400.200 of this chapter, these periodic assessments can be furnished via two-way interactive audio-video communication technology, as clinically appropriate, and in compliance with all other applicable requirements. In cases where a beneficiary does not have access to two-way audio-video communications technology, periodic assessments can be furnished using audio-only telephone calls rather than via two-way interactive audio-video communication technology if all other applicable requirements are met.

* * * * *

■ 12. Section 410.78 is amended by revising paragraph (f) to read as follows:

§ 410.78 Telehealth services.

* * * * *

(f) *Process for adding or deleting services.* Except as otherwise provided in this paragraph, changes to the list of Medicare telehealth services are made through the annual physician fee schedule rulemaking process. During the Public Health Emergency for the COVID–19 pandemic, as defined in § 400.200 of this chapter, we will use a subregulatory process to modify the services included on the Medicare telehealth list during the Public Health Emergency taking into consideration infection control, patient safety, and other public health concerns resulting from the emergency. A list of the services covered as telehealth services under this section is available on the CMS website.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 13. The authority citation for part 412 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 14. Section 412.29 is amended by revising paragraphs (d), (e), (h), and (i) to read as follows:

§ 412.29 Classification criteria for payment under the inpatient rehabilitation facility prospective payment system.

* * * * *

(d) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge, as defined in § 412.622 of this chapter, during the Public Health Emergency, as defined in § 400.200 of this chapter, have in effect a preadmission screening procedure under which each prospective patient's condition and medical history are reviewed to determine whether the patient is likely to benefit significantly from an intensive inpatient hospital program. This procedure must ensure that the preadmission screening for each Medicare Part A fee-for-Service patient is reviewed and approved by a rehabilitation physician prior to the patient's admission to the IRF.

(e) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge, as defined in § 412.622 of this chapter, during the Public Health Emergency, as defined in § 400.200 of this chapter, have in effect a procedure to ensure that patients receive close medical supervision, as evidenced by at least 3 face-to-face visits per week by a licensed physician with specialized training and experience in inpatient rehabilitation to assess the patient both medically and functionally, as well as to modify the course of treatment as needed to maximize the patient's capacity to benefit from the rehabilitation process except that during the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic such visits may be conducted using telehealth services (as defined in section 1834(m)(4)(F) of the Act).

* * * * *

(h) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge, as defined in § 412.622 of this chapter, during the Public Health Emergency, as defined in § 400.200 of this chapter, have a plan of treatment for each inpatient that is established, reviewed, and revised as needed by a physician in consultation with other professional personnel who provide services to the patient.

(i) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge, as defined in § 412.622 of this chapter, during the Public Health Emergency, as defined in § 400.200 of this chapter, use a coordinated interdisciplinary team approach in the rehabilitation of each inpatient, as documented by the periodic clinical entries made in the patient's medical record to note the patient's status in relationship to goal attainment and discharge plans, and that team conferences are held at least once per week to determine the appropriateness of treatment.

* * * * *

■ 15. Section 412.105 is amended by revising paragraphs (d)(1) and (f)(1)(iii)(A) to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(d) * * *

(1) *Step one.* A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent residents to beds, as determined under paragraph (a)(1) of this section, excluding beds temporarily added during the time frame that the Public Health Emergency as defined in § 400.200 of this chapter is in effect, is raised to an exponential power equal to the factor set forth in paragraph (c) of this section.

* * * * *

(f) * * *

(1) * * *

(iii)(A) Full-time equivalent status is based on the total time necessary to fill a residency slot. No individual may be counted as more than one full-time equivalent. If a resident is assigned to more than one hospital, the resident counts as a partial full-time equivalent based on the proportion of time worked in any areas of the hospital listed in paragraph (f)(1)(ii) of this section to the total time worked by the resident. A hospital cannot claim the time spent by residents training at another hospital, unless the exception provided at § 413.78(i) of this chapter applies. A part-time resident or one working in an area of the hospital other than those listed under paragraph (f)(1)(ii) of this section (such as a freestanding family practice center or an excluded hospital unit) would be counted as a partial full-time equivalent based on the proportion of time assigned to an area of the hospital listed in paragraph (f)(1)(ii) of this section, compared to the total time necessary to fill a full-time residency slot.

* * * * *

■ 16. Section 412.165 is amended by adding paragraph (c) to read as follows:

§ 412.165 Performance scoring under the Hospital Value-Based Purchasing (VBP) Program.

* * * * *

(c) *Extraordinary circumstances exception.* (1) A hospital may request and CMS may grant exceptions to the Hospital VBP Program's requirements under this section when there are certain extraordinary circumstances beyond the control of the hospital.

(2) A hospital may request an exception within 90 calendar days of the date that the extraordinary circumstances occurred by submitting a completed Extraordinary Circumstances Request Form (available on the Hospital Value-Based Purchasing (HVBP) Program section of the QualityNet website (*QualityNet.org*)), and any available evidence of the impact of the extraordinary circumstances on the hospital's quality measure performance. The form must be sent via secure file transfer via the *QualityNet Secure portal,* secure fax, email, or conventional mail.

(3) Following receipt of the request form, CMS will provide a written acknowledgement using the contact information provided in the request, to the CEO and any additional designated personnel, notifying them that the hospital's request has been received, and provide a written response to the CEO and any additional designated personnel using the contact information provided in the request.

(4) CMS may grant an exception to one or more hospitals that have not requested an exception if CMS determines that an extraordinary circumstance has affected an entire region or locale, which may include the entire United States. CMS will notify hospitals that it has granted an exception under this paragraph via multiple methods, which may include memos, emails, and notices posted on the public QualityNet website (see *https://www.qualitynet.org*).

■ 17. Section 412.622 is amended—

■ a. By revising paragraphs (a)(3)(i) through (iv), (a)(4) introductory text, and (a)(5) introductory text; and

■ b. In paragraph (c) by adding a definition for ''State (or region, as applicable) that is experiencing a surge'' in alphabetical order.

The revisions and addition read as follows:

§ 412.622 Basis of payment.

(a) * * *

(3) * * *

(i) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the Public Health Emergency, as defined in § 400.200 of this chapter, requires the active and ongoing therapeutic intervention of multiple therapy disciplines (physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy), one of which must be physical or occupational therapy.

(ii) Except during the emergency period described in section 1135(g)(1)(B) of the Act, generally requires and can reasonably be expected to actively participate in, and benefit from, an intensive rehabilitation therapy program. Under current industry standards, this intensive rehabilitation therapy program generally consists of at least 3 hours of therapy (physical therapy, occupational therapy, speech-language pathology, or prosthetics/orthotics therapy) per day at least 5 days per week. In certain well-documented cases, this intensive rehabilitation therapy program might instead consist of at least 15 hours of intensive rehabilitation therapy within a 7-consecutive-day period, beginning with the date of admission to the IRF. Benefit from this intensive rehabilitation therapy program is demonstrated by measurable improvement that will be of practical value to the patient in improving the patient patient's functional capacity or adaptation to impairments. The required therapy treatments must begin within 36 hours from midnight of the day of admission to the IRF.

(iii) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the Public Health Emergency, as defined in § 400.200 of this chapter, is sufficiently stable at the time of admission to the IRF to be able to actively participate in the intensive rehabilitation therapy program that is described in paragraph (a)(3)(ii) of this section.

(iv) Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the Public Health Emergency, as defined in § 400.200 of this chapter, requires physician supervision by a rehabilitation physician. The requirement for medical supervision means that the rehabilitation physician must conduct face-to-face visits with the patient at least 3 days per week throughout the patient 's stay in the IRF to assess the patient both medically and functionally, as well as to modify the course of treatment as needed to maximize the patient's capacity to benefit from the rehabilitation process except that during the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic such visits may be conducted using telehealth services (as defined in section 1834(m)(4)(F) of the Act).The post-admission physician evaluation described in paragraph (a)(4)(ii) of this section may count as one of the face-to-face visits.

(4) *Documentation.* Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the Public Health Emergency, as defined in § 400.200 of this chapter, to document that each patient for whom the IRF seeks payment is reasonably expected to meet all of the requirements in paragraph (a)(3) of this section at the time of admission, the patient's medical record at the IRF must contain the following documentation—

* * * * *

(5) *Interdisciplinary team approach to care.* Except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the Public Health Emergency, as defined in § 400.200 of this chapter, in order for an IRF claim to be considered reasonable and necessary under section 1862(a)(1) of the Act, the patient must require an interdisciplinary team approach to care, as evidenced by documentation in the patients' medical record of weekly interdisciplinary team meetings that meet all of the following requirements—

* * * * *

(c) * * *

State (or region, as applicable) that is experiencing a surge means a state (or region, as applicable) that is in phase 1 of the President's Guidelines for Opening Up America Again (*https://www.whitehouse.gov/openingamerica/*), specifically, a state (or region, as applicable) that satisfies all of the following, as determined by applicable state and local officials:

(i) All vulnerable individuals continue to shelter in place.

(ii) Individuals continue social distancing.

(iii) Individuals avoid socializing in groups of more than 10.

(iv) Non-essential travel is minimized.

(v) Visits to senior living facilities and hospitals are prohibited.

(vi) Schools and organized youth activities remain closed.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES; PAYMENT FOR ACUTE KIDNEY INJURY DIALYSIS

■ 18. The authority citation for part 413 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww.

■ 19. Section 413.78 is amended by revising paragraph (b) and adding paragraph (i) to read as follows:

§ 413.78 Direct GME payments: Determination of the total number of FTE residents.

* * * * *

(b) No individual may be counted as more than one FTE. A hospital cannot claim the time spent by residents training at another hospital, except as provided in paragraph (i) of this section. Except as provided in paragraphs (c), (d), and (e) of this section, if a resident spends time in more than one hospital or in a nonprovider setting, the resident counts as partial FTE based on the proportion of time worked at the hospital to the total time worked. A part-time resident counts as a partial FTE based on the proportion of allowable time worked compared to the total time necessary to fill a full-time internship or residency slot.

* * * * *

(i) For the time frame that the Public Health Emergency (as defined in § 400.200 of this chapter) associated with COVID–19 was in effect, a sending hospital can include FTE residents training at another hospital in its FTE count if all of the following conditions are met.

(1) The sending hospital sends the resident to the other hospital in response to the COVID–19 pandemic.

(2) The time spent by the resident training at the other hospital is in lieu of time that would have been spent in approved training at the sending hospital.

(3) The time that the resident spent training immediately prior to and/or subsequent to the time frame that the Public Health Emergency (as defined in § 400.200 of this chapter) associated with COVID–19 was in effect is included in the FTE count for the sending hospital.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 20. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

■ 21. Section 414.210 is amended by revising paragraph (g)(9)(iii) and (iv) and adding paragraph (g)(9)(v) to read as follows:

§ 414.210 General payment rules.

* * * * *

(g) * * *

(9) * * *

(iii) For items and services furnished in rural areas and non-contiguous areas (Alaska, Hawaii, and U.S. territories) with dates of service from June 1, 2018 through December 31, 2020 or through the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, based on the fee schedule amount for the area is equal to 50 percent of the adjusted payment amount established under this section and 50 percent of the unadjusted fee schedule amount.

(iv) For items and services furnished in areas other than rural or noncontiguous areas with dates of service from June 1, 2018 through March 5, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under this section.

(v) For items and services furnished in areas other than rural or noncontiguous areas with dates of service from March 6, 2020, through the remainder of the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), based on the fee schedule amount for the area is equal to 75 percent of the adjusted payment amount established under this section and 25 percent of the unadjusted fee schedule amount. For items and services furnished in areas other than rural or noncontiguous areas with dates of service from the expiration date of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), through December 31, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under this section.

* * * * *

§ 414.1400 [Amended]

■ 22. Section 414.1400 is amended in paragraphs (b)(3)(v)(C) and (D) by removing the phrase ''Beginning with the 2021 performance period'' and adding in its place the phrase ''Beginning with the 2022 performance period''.

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

■ 23. The authority citation for part 415 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 24. Section 415.172 is amended by revising paragraphs (a) introductory text, (a)(2), and (b) to read as follows:

§ 415.172 Physician fee schedule payment for services of teaching physicians.

(a) *General rule.* If a resident participates in a service furnished in a teaching setting, physician fee schedule payment is made only if a teaching physician is present during the key portion of any service or procedure for which payment is sought. During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, if a resident participates in a service furnished in a teaching setting, physician fee schedule payment is made if a teaching physician is present during the key portion of the service using audio/video real-time communications technology for any service or procedure for which payment is sought.

* * * * *

(2) In the case of evaluation and management services, the teaching physician must be present during the portion of the service that determines the level of service billed. (However, in the case of evaluation and management services furnished in hospital outpatient departments and certain other ambulatory settings, the requirements of § 415.174 apply.) During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, the teaching physician may be present during the portion of the service that determines the level of service billed using audio/video real-time communications technology. (However, in the case of evaluation and management services furnished in hospital outpatient departments and certain other ambulatory settings, the requirements of § 415.174 apply.)

(b) *Documentation.* Except for services furnished as set forth in §§ 415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), 415.176 (concerning renal dialysis

services), and 415.184 (concerning psychiatric services), the medical records must document the teaching physician was present at the time the service is furnished. The presence of the teaching physician during procedures and evaluation and management services may be demonstrated by the notes in the medical records made by the physician or as provided in § 410.20(e) of this chapter. During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, except for services furnished as set forth in §§ 415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), 415.176 (concerning renal dialysis services), and 415.184 (concerning psychiatric services), the medical records must document if the teaching physician was physically present or if the teaching physician was present through audio/video real-time communications technology at the time the service is furnished. The presence of the teaching physician during procedures and evaluation and management services may be demonstrated by the notes in the medical records made by the physician or as provided in § 410.20(e) of this chapter.

* * * * *

■ 25. Section 415.174 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 415.174 Exception: Evaluation and management services furnished in certain centers.

* * * * *

(b) Nothing in paragraph (a) of this section may be construed as providing a basis for the coverage of services not determined to be covered under Medicare, such as routine physical check-ups.

(c) During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, the requirements in paragraph (a)(3) of this section for a teaching physician to direct the care and then to review the services furnished by each resident during or immediately after each visit may be met using audio/video real-time communications technology.

■ 26. Section 415.180 is revised to read as follows:

§ 415.180 Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests.

(a) *General rule.* Physician fee schedule payment is made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed or reviewed by a physician other than a resident. During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, physician fee schedule payment may also be made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed by a resident when the teaching physician is present through audio/video real-time communications technology.

(b) [Reserved]

■ 27. Section 415.184 is revised to read as follows:

§ 415.184 Psychiatric services.

To qualify for physician fee schedule payment for psychiatric services furnished under an approved GME program, the physician must meet the requirements of §§ 415.170 and 415.172, including documentation, except that the requirement for the presence of the teaching physician during the service in which a resident is involved may be met by observation of the service by use of a one-way mirror, video equipment, or similar device. During the Public Health Emergency, as defined in § 400.200 of this chapter, for the COVID–19 pandemic, the requirement for the presence of the teaching physician during the service in which a resident is involved may be met by direct supervision by audio/video real-time communications technology.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 28. The authority citation for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 29. Section 424.22 is amended—
■ a. By revising the introductory text;
■ b. In paragraphs (a)(1) introductory text and (a)(1)(i), by removing the term ''physician'' each time it appears and adding in its place the phrase ''physician or allowed practitioner'';
■ c. In paragraph (a)(1)(i) by removing the phrase ''physician's signature'' each time it appears and adding in its place the phrase ''physician or allowed practitioner's signature'';
■ d. By revising paragraph (a)(1)(iii) and (iv), (a)(1)(v) introductory text, and (a)(1)(v)(A);
■ e. By adding paragraph (a)(1)(v)(C);
■ f. In paragraphs (a)(2), (b)(1) introductory text, (b)(2) introductory text, and (b)(2)(ii) introductory text, by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner'';
■ g. In paragraph (b)(2)(ii)(A) by removing the phrase ''physician's signature'' and adding in its place the phrase ''physician or allowed practitioner's signature'';
■ h. By revising paragraph (b)(2)(ii)(B);
■ i. In paragraphs (c)(1) introductory text by removing the phrase ''physician's medical records'' and adding in its place the phrase ''physician or allowed practitioner's medical record'';
■ j. In paragraph (c)(1)(i) by removing the phrase ''physician's medical record'' and adding in its place the phrase ''physician or allowed practitioner's medical record'';
■ k. In paragraph (c)(1)(ii)(A) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner'';
■ l. In the paragraph (d) subject heading by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner's'';
■ m. In paragraph (d) introductory text by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''; and by removing the term ''physician's'' adding in its place the phrase ''physician or allowed practitioner's''; and
■ n. In paragraph (d)(1) by removing the term ''physician'' each time it appears and adding in its place the phrase ''physician or allowed practitioner''.

The revisions and addition read as follows:

§ 424.22 Requirements for home health services.

Medicare Part A or Part B pays for home health services only if a physician or allowed practitioner as defined at § 484.2 of this chapter certifies and recertifies the content specified in paragraphs (a)(1) and (b)(2) of this section, as appropriate.

(a) * * *

(1) * * *

(iii) A plan for furnishing the services has been established and will be or was periodically reviewed by a physician or allowed practitioner and who is not precluded from performing this function under paragraph (d) of this section.

(iv) The services will be or were furnished while the individual was under the care of a physician or allowed practitioner.

(v) A face-to-face patient encounter, which is related to the primary reason the patient requires home health services, occurred no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care and was performed by physician or non-physician practitioner defined in paragraph (a)(1)(v)(A) of this section. The certifying physician or

certifying allowed practitioner must also document the date of the encounter as part of the certification.

(A) The face-to-face encounter must be performed by one of the following:

(*1*) The certifying physician (as defined at § 484.2 of this chapter) or a physician, with privileges, who cared for the patient in an acute or post-acute care facility from which the patient was directly admitted to home health.

(*2*) The certifying nurse practitioner (as defined at § 484.2 of this chapter), certifying clinical nurse specialist (as defined at § 484.2 of this chapter), or a nurse practitioner or a clinical nurse specialist who is working in accordance with State law and in collaboration with a physician or in collaboration with an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(*3*) A certified nurse midwife (as defined in section 1861(gg) of the Act) as authorized by State law, under the supervision of a physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(*4*) A certifying physician assistant (as defined at § 484.2 of this chapter) or a physician assistant under the supervision of a physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

* * * * *

(C) The face-to-face patient encounter must be performed by the certifying physician or allowed practitioner unless the encounter is performed by:

(*1*) A certified nurse midwife as described in paragraph (a)(1)(v)(A)(*4*) of this section.

(*2*) A physician, physician assistant, nurse practitioner, or clinical nurse specialist with privileges who cared for the patient in the acute or post-acute facility from which the patient was directly admitted to home health and who is different from the certifying practitioner.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Exists as an addendum to the recertification form, in addition to the physician or allowed practitioner's signature on the recertification form, the physician or allowed practitioner must sign immediately following the narrative in the addendum.

* * * * *

■ 30. Section 424.507 is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 424.507 Ordering covered items and services for Medicare beneficiaries.

* * * * *

(b) * * *

(1) The ordering/certifying physician, or the ordering/certifying physician assistant, nurse practitioner, or clinical nurse specialist working in accordance with State law, must meet all of the following requirements:

* * * * *

PART 425—MEDICARE SHARED SAVINGS PROGRAM

■ 31. The authority citation for part 425 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395hh, and 1395jjj.

■ 32. Section 425.200 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 425.200 Participation agreement with CMS.

* * * * *

(b) * * *

(3) * * *

(ii) The term of the participation agreement is 3 years, except as follows:

(A) For an ACO whose first agreement period in Track 1 began in 2014 or 2015, in which case the term of the ACO's initial agreement period under Track 1 (as described under § 425.604) may be extended, at the ACO's option, for an additional year for a total of 4 performance years if the conditions specified in paragraph (e) of this section are met.

(B) For an ACO whose agreement period started on January 1, 2018, the term of the participation agreement is extended by 12 months if both of the following conditions are met:

(*1*) The ACO elects to extend the participation agreement for a fourth performance year until December 31, 2021.

(*2*) The ACO's election to extend its agreement period is made in the form and manner and by a deadline established by CMS.

* * * * *

■ 33. Section 425.400 is amended by adding paragraph (c)(2) to read as follows:

§ 425.400 General.

* * * * *

(c) * * *

(2) For the performance year starting on January 1, 2020, and for any subsequent performance year that starts during the COVID–19 Public Health Emergency defined in § 400.200, in determining beneficiary assignment, we use the primary care service codes identified in paragraph (c)(1) of this section, and additional primary care service codes as follows:

(i) CPT codes:

(A) 99421, 99422, and 99423 (codes for online digital evaluation and management services).

(B) 99441, 99442, and 99443 (codes for telephone evaluation and management services).

(ii) HCPCS codes:

(A) G2010 (code for remote evaluation of patient video/images).

(B) G2012 (code for virtual check-in).

■ 34. Section 425.600 is amended by redesignating paragraph (a)(4)(i)(B)(*2*)(*iii*) as paragraph (a)(4)(i)(B)(*2*)(*iv)* and adding new paragraph (a)(4)(i)(B)(*2*)(*iii*) to read as follows:

§ 425.600 Selection of risk model.

(a) * * *

(4) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*iii*) Exception for ACOs participating in the BASIC track's glide path that elect to maintain their participation level for performance year 2021. Prior to the automatic advancement for performance year 2021, an ACO that is participating in the BASIC track's glide path for performance year 2020 may elect to remain in the same level of the BASIC track's glide path that it entered for the 2020 performance year, for performance year 2021. For performance year 2022, the ACO is automatically advanced to the level of the BASIC track's glide path to which the ACO would have automatically advanced absent the election to maintain its participation level for performance year 2021, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i). A voluntary election by an ACO under this paragraph must be made in the form and manner and by a deadline established by CMS.

* * * * *

■ 35. Section 425.611 is added to read as follows:

§ 425.611 Adjustments to Shared Savings Program calculations to address the COVID–19 pandemic.

(a) *General.* This section describes adjustments CMS makes to Shared

Savings Program calculations to address the impact of the COVID–19 pandemic.

(b) *Episodes of care for treatment of COVID–19.* (1) CMS identifies an episode of care for treatment of COVID–19 based on either of the following:

(i) Discharges for inpatient services eligible for the 20 percent adjustment under section 1886(d)(4)(C) of the Act.

(ii) Discharges for acute care inpatient services for treatment of COVID–19 from facilities that are not paid under the inpatient prospective payment system, such as CAHs, when the date of admission occurs within the Public Health Emergency as defined in § 400.200 of this chapter.

(2) CMS defines the episode of care as starting in the month in which the inpatient stay begins as identified by the admission date, all months during the inpatient stay, and the month following the end of the inpatient stay as indicated by the discharge date.

(c) *Applicability of adjustments.* Notwithstanding any other provision in this part, CMS adjusts the following Shared Savings Program calculations to exclude all Parts A and B fee-for-service payment amounts for a beneficiary's episode of care for treatment of COVID–19 as described in paragraph (b) of this section:

(1) Calculation of Medicare Parts A and B fee-for-service expenditures for an ACO's assigned beneficiaries for all purposes including the following: Establishing, adjusting, updating, and resetting the ACO's historical benchmark and determining performance year expenditures.

(2) Calculation of fee-for-service expenditures for assignable beneficiaries as used in determining county-level fee-for-service expenditures and national Medicare fee-for-service expenditures, including the following calculations:

(i) Determining average county fee-for-service expenditures based on expenditures for the assignable population of beneficiaries in each county in the ACO's regional service area according to §§ 425.601(c) and 425.603(e) for purposes of calculating the ACO's regional fee-for-service expenditures.

(ii) Determining the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries for purposes of the following:

(A) Truncating assigned beneficiary expenditures used in calculating benchmark expenditures under §§ 425.601(a)(4), 425.602(a)(4), and 425.603(c)(4), and performance year expenditures under §§ 425.604(a)(4), 425.605(a)(3), 425.606(a)(4), and 425.610(a)(4).

(B) Truncating expenditures for assignable beneficiaries in each county for purposes of determining county fee-for-service expenditures according to §§ 425.601(c)(3) and 425.603(e)(3).

(iii) Determining 5 percent of national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries for purposes of capping the regional adjustment to the ACO's historical benchmark according to § 425.601(a)(8)(ii)(C).

(iv) Determining the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries, for purposes of updating the ACO's historical benchmark according to § 425.602(b)(2).

(v) Determining national growth rates that are used as part of the blended growth rates used to trend forward BY1 and BY2 expenditures to BY3 according to § 425.601(a)(5)(ii) and as part of the blended growth rates used to trend the benchmark and update the benchmark according to § 425.601(b)(2).

(3) Calculation of Medicare Parts A and B fee-for-service revenue of ACO participants for purposes of calculating the ACO's loss recoupment limit under the BASIC track as specified in § 425.605(d).

(4) Calculation of total Medicare Parts A and B fee-for-service revenue of ACO participants and total Medicare Parts A and B fee-for-service expenditures for the ACO's assigned beneficiaries for purposes of identifying whether an ACO is a high revenue ACO or low revenue ACO, as defined under § 425.20, and determining an ACO's eligibility for participation options according to § 425.600(d).

(5) Calculation or recalculation of the amount of the ACO's repayment mechanism arrangement according to § 425.204(f)(4).

PART 440—SERVICES: GENERAL PROVISIONS

■ 36. The authority citation for part 440 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 37. Section 440.30 is amended by adding paragraph (d) to read as follows:

§ 440.30 Other laboratory and X-ray services.

* * * * *

(d) During the Public Health Emergency defined in 42 CFR 400.200 or any future Public Health Emergency resulting from an outbreak of communicable disease, and during any subsequent period of active surveillance (as defined in this paragraph), Medicaid coverage is available for laboratory tests and X-ray services that do not meet conditions specified in paragraph (a) or (b) of this section, if the purpose of such laboratory and X-ray services is to diagnose or detect SARS–CoV–2, antibodies to SARS–CoV–2, COVID–19, or the communicable disease named in the Public Health Emergency or its causes, and if the deviation from the conditions specified in paragraph (a) or (b) of this section is intended to avoid transmission of the communicable disease. For purposes of this paragraph, a period of active surveillance is defined as an outbreak of communicable disease during which no approved treatment or vaccine is widely available, and it ends on the date the Secretary terminates it, or the date that is two incubation periods after the last known case of the communicable disease, whichever is sooner. Additionally, during the Public Health Emergency defined in 42 CFR 400.200 or any future Public Health Emergency resulting from an outbreak of communicable disease, and during any subsequent period of active surveillance (as defined in this paragraph), Medicaid coverage is available for laboratory processing of self-collected laboratory test systems that are authorized by the FDA for home use, if available to diagnose or detect SARS–CoV–2, antibodies to SARS–CoV–2, COVID–19, or the communicable disease named in the Public Health Emergency or its causes, even if those self-collected tests would not otherwise meet the requirements of paragraph (a) or (b) of this section, provided that the self-collection of the test is intended to avoid transmission of the communicable disease. If, pursuant to this paragraph, a laboratory processes a self-collected test system that is authorized by the FDA for home use, and the test system does not meet the conditions in paragraph (a) of this section, the laboratory must notify the patient and the patient's physician or other licensed non-physician practitioner (if known by the laboratory), of the results.

■ 38. Section 440.70 is amended—

■ a. By revising paragraph (a)(2);

■ b. By adding paragraph (a)(3);

■ c. By revising paragraph (b)(1)(ii);

■ d. In paragraph (b)(3)(iii), by removing the phrase ''for the period of the Public Health Emergency,'';

■ e. In paragraph (b)(3)(iv), by removing the phrase ''for the period of the Public Health Emergency,'';

■ f. By revising paragraphs (f) introductory text and (f)(3)(i);

■ g. In paragraph (f)(3)(ii) by removing the phrase ''working in collaboration

with the physician referenced in paragraph (a) of this section'' and adding in its place the phrase ''in accordance with State law'';

■ h. In paragraph (f)(3)(iv) by removing the phrase ''under the supervision of the physician referenced in paragraph (a) of this section'' and adding in its place the phrase ''in accordance with State law'';

■ i. By adding paragraph (f)(3)(vi);

■ j. By revising paragraphs (f)(4);

■ k. In paragraph (f)(5) introductory text, by removing the phrase ''the physician responsible'' and adding in its place the phrase ''the practitioner responsible''; and

■ l. By revising paragraph (g)(1).

The revisions and addition read as follows:

§ 440.70 Home health services.

* * * * *

(a) * * *

(2) On orders written by a physician, nurse practitioner, clinical nurse specialist or physician assistant, working in accordance with State law, as part of a written plan of care that the ordering practitioner reviews every 60 days for services described in (b)(1), (2), and (4) of this section; and

(3) On his or her physician's orders or orders written by a licensed practitioner of the healing arts acting within the scope of practice authorized under State law, as part of a written plan of care for services described in paragraph (b)(3) of this section. The plan of care must be reviewed by the ordering practitioner as specified in paragraph (b)(3)(iii) of this section.

(b) * * *

(1) * * *

(ii) Receives written orders from the patient's practitioner as defined in (a)(2) of this section;

* * * * *

(f) No payment may be made for services referenced in paragraphs (b)(1) through (4) of this section, unless a practitioner referenced in paragraph (a)(2) of this section or for medical equipment, a practitioner described in paragraph (a)(3) of this section documents that there was a face-to-face encounter with the beneficiary that meets the following requirements.

* * * * *

(3) * * *

(i) A physician;

* * * * *

(vi) For medical equipment, supplies, or appliances, a licensed practitioner of the healing arts acting within the scope of practice authorized under state law.

(4) If State law does not allow the non-physician practitioner, as described in paragraphs (f)(3)(ii) through (vi) of this section, to perform the face-to-face encounter independently, the non-physician practitioner must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical findings must be incorporated into a written or electronic document included in the beneficiary's medical record.

* * * * *

(g)(1) No payment may be made for medical equipment, supplies, or appliances referenced in paragraph (b)(3) of this section to the extent that a face-to-face encounter requirement would apply as durable medical equipment (DME) under the Medicare program, unless a practitioner referenced in paragraph (a)(3) of this section documents a face-to-face encounter with the beneficiary consistent with the requirements of paragraph (f) of this section except as indicated in paragraph (g)(2) of this section.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

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

Authority: 42 U.S.C. 1302, 1320a-7, 1395i, 1395hh and 1396r.

■ 40. Section 483.80 is amended by adding paragraph (g) to read as follows:

§ 483.80 Infection control.

* * * * *

(g) *COVID–19 reporting.* The facility must—

(1) Electronically report information about COVID–19 in a standardized format specified by the Secretary. This report must include but is not limited to—

(i) Suspected and confirmed COVID–19 infections among residents and staff, including residents previously treated for COVID–19;

(ii) Total deaths and COVID–19 deaths among residents and staff;

(iii) Personal protective equipment and hand hygiene supplies in the facility;

(iv) Ventilator capacity and supplies in the facility;

(v) Resident beds and census;

(vi) Access to COVID–19 testing while the resident is in the facility;

(vii) Staffing shortages; and

(viii) Other information specified by the Secretary.

(2) Provide the information specified in paragraph (g)(1) of this section at a frequency specified by the Secretary, but no less than weekly to the Centers for Disease Control and Prevention's National Healthcare Safety Network. This information will be posted publicly by CMS to support protecting the health and safety of residents, personnel, and the general public.

(3) Inform residents, their representatives, and families of those residing in facilities by 5 p.m. the next calendar day following the occurrence of either a single confirmed infection of COVID–19, or three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other. This information must—

(i) Not include personally identifiable information;

(ii) Include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations of the facility will be altered; and

(iii) Include any cumulative updates for residents, their representatives, and families at least weekly or by 5 p.m. the next calendar day following the subsequent occurrence of either: Each time a confirmed infection of COVID–19 is identified, or whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.

PART 484—HOME HEALTH SERVICES

■ 41. The authority citation for part 484 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 42. Section 484.2 is amended by—

■ a. Adding definitions for ''Allowed practitioner'', ''Clinical nurse specialist'', ''Nurse practitioner'', ''Physician'', and ''Physician assistant'' in alphabetical order; and

■ b. Revising the definitions of ''Summary report'' and ''Verbal order''.

The additions and revisions read as follows:

§ 484.2 Definitions.

* * * * *

Allowed practitioner means a physician assistant, nurse practitioner, or clinical nurse specialist as defined at this part.

* * * * *

Clinical nurse specialist means an individual as defined at § 410.76(a) and (b) of this chapter, and who is working in collaboration with the physician as defined at § 410.76(c)(3) of this chapter.

* * * * *

Nurse practitioner means an individual as defined at § 410.75(a) and (b) of this chapter, and who is working in collaboration with the physician as defined at § 410.75(c)(3) of this chapter.

* * * * *

Physician is a doctor of medicine, osteopathy, or podiatric medicine, and who is not precluded from performing this function under paragraph (d) of this section. (A doctor of podiatric medicine may perform only plan of treatment functions that are consistent with the functions he or she is authorized to perform under State law.)

Physician assistant means an individual as defined at § 410.74(a) and (c) of this chapter.

* * * * *

Summary report means the compilation of the pertinent factors of a patient's clinical notes that is submitted to the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist.

* * * * *

Verbal order means a physician, physician assistant, nurse practitioner, or clinical nurse specialist order that is spoken to appropriate personnel and later put in writing for the purposes of documenting as well as establishing or revising the patient's plan of care.

§ 484.50 [Amended]

■ 43. Section 484.50 is amended in paragraphs (d)(1) and (3) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

§ 484.55 [Amended]

■ 44. Section 484.55 is amended in paragraphs (a)(1), (b)(3) and (d)(2) by removing the term ''physician'' and add in its place the phrase ''physician or allowed practitioner''.

■ 45. Section 484.60 is amended—

■ a. By revising paragraphs (a)(1), (a)(2)(xvi), (b), and (c)(1); and

■ b. In paragraphs (c)(3)(i) and (ii) and (d)(1) and (2) by removing the term ''physicians'' and adding in its place the phrase ''physicians or allowed practitioners''.

The revisions read as follows:

§ 484.60 Condition of participation: Care planning, coordination of services, and quality of care.

* * * * *

(a) * * *

(1) Each patient must receive the home health services that are written in an individualized plan of care that identifies patient-specific measurable outcomes and goals, and which is established, periodically reviewed, and signed by a doctor of medicine, osteopathy, or podiatry or allowed practitioner acting within the scope of his or her state license, certification, or registration. If a physician or allowed practitioner refers a patient under a plan of care that cannot be completed until after an evaluation visit, the physician or allowed practitioner is consulted to approve additions or modifications to the original plan.

(2) * * *

(xvi) Any additional items the HHA or physician or allowed practitioner may choose to include.

(b) *Standard: Conformance with physician or allowed practitioner orders.* (1) Drugs, services, and treatments are administered only as ordered by a physician or allowed practitioner.

(2) Influenza and pneumococcal vaccines may be administered per agency policy developed in consultation with a physician, physician assistant, nurse practitioner, or clinical nurse specialist, and after an assessment of the patient to determine for contraindications.

(3) Verbal orders must be accepted only by personnel authorized to do so by applicable state laws and regulations and by the HHA's internal policies.

(4) When services are provided on the basis of a physician or allowed practitioner's verbal orders, a nurse acting in accordance with state licensure requirements, or other qualified practitioner responsible for furnishing or supervising the ordered services, in accordance with state law and the HHA's policies, must document the orders in the patient's clinical record, and sign, date, and time the orders. Verbal orders must be authenticated and dated by the physician or allowed practitioner in accordance with applicable state laws and regulations, as well as the HHA's internal policies.

(c) * * *

(1) The individualized plan of care must be reviewed and revised by the physician or allowed practitioner who is responsible for the home health plan of care and the HHA as frequently as the patient's condition or needs require, but no less frequently than once every 60 days, beginning with the start of care date. The HHA must promptly alert the relevant physician(s) or allowed practitioner(s) to any changes in the patient's condition or needs that suggest that outcomes are not being achieved and/or that the plan of care should be altered.

* * * * *

§ 484.75 [Amended]

■ 46. Section 484.75 is amended in the introductory text and paragraph (b)(3) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

§ 484.80 [Amended]

■ 47. Section 484.80 is amended in paragraph (g)(2)(i) by removing the term ''physician;'' and adding in its place the phrase ''physician or allowed practitioner;''.

§ 484.205 [Amended]

■ 48. Section 484.205 is amended—

■ a. In paragraphs (h)(1)(ii) by removing the term ''physician's'' and adding in its place the phrase ''physician or allowed practitioner's'';

■ b. In paragraphs (h)(1)(iii) and (h)(2) introductory text by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''; and

■ c. In paragraphs (i)(2)(i) and (j)(2)(i) by removing the term ''physician's'' and adding in its place the phrase ''physician or allowed practitioner's''.

§ 484.235 [Amended]

■ 49. Section 484.235 is amended—

■ a. In paragraphs (a)(1) and (3) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner'';

■ b. In paragraph (b)(1) by removing the phrase ''assessment and physician certification'' and adding in its place the phrase ''assessment and certification''; and

■ c. In paragraph (b)(3) by removing the term ''physician'' and adding in its place the phrase ''physician or allowed practitioner''.

■ 50. Section 484.315 is amended by revising paragraph (b) to read as follows:

§ 484.315 Data reporting for measures and evaluation and the public reporting of model data under the Home Health Value-Based Purchasing (HHVBP) Model

* * * * *

(b) Competing home health agencies in selected states will be required to report information on New Measures, as determined appropriate by the Secretary, to CMS in the form, manner, and at a time specified by the Secretary, and subject to any exceptions or extensions CMS may grant to home health agencies for the Public Health Emergency as defined in § 400.200 of this chapter.

* * * * *

PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

■ 51. The authority citation for part 600 continues to read as follows:

Authority: Section 1331 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111—152, 124 State. 1029).

■ 52. Section 600.125 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 600.125 Revisions to a certified BHP Blueprint.

* * * * *

(b) *Continued operations.* The state is responsible for continuing to operate under the terms of the existing certified Blueprint until and unless a revised Blueprint that seeks to make significant change(s) is certified, except as specified in paragraph (c) of this section.

(c) *Public health emergency.* For the Public Health Emergency, as defined in § 400.200 of this chapter, the State may submit to the Secretary for review and certification a revised Blueprint, in the form and manner specified by HHS, that makes temporary significant changes to its BHP that are directly related to the Public Health Emergency and would increase enrollee access to coverage. Such revised Blueprints may have an effective date retroactive to the first day of the Public Health Emergency and through the last day of the Public Health Emergency, or a later date if requested by the state and certified by HHS. Such revised Blueprints are not subject to the public comment requirements under § 600.115(c).

Title 45

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 53. The authority citation for part 156 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701.

■ 54. Section 156.280 is amended by revising paragraph (e)(2)(ii) introductory text to read as follows:

§ 156.280 Separate billing and segregation of funds for abortion services.

* * * * *

(e) * * *

(2) * * *

(ii) Beginning on or before the first billing cycle following August 26, 2020, to satisfy the obligation in paragraph (e)(2)(i) of this section—

* * * * *

Dated: *April 24, 2020.*

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 28, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–09608 Filed 5–1–20; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 90 May 8, 2020

Part III

The President

Proclamation 10026—Missing and Murdered American Indians and Alaska Natives Awareness Day, 2020

Federal Register
Vol. 85, No. 90
Friday, May 8, 2020

Presidential Documents

Title 3—

The President

Proclamation 10026 of May 5, 2020

Missing and Murdered American Indians and Alaska Natives Awareness Day, 2020

By the President of the United States of America

A Proclamation

The American Indian and Alaska Native people have endured generations of injustice. They experience domestic violence, homicide, sexual assault, and abuse far more frequently than other groups. These horrific acts, committed predominantly against women and girls, are egregious and unconscionable. During Missing and Murdered American Indians and Alaska Natives Awareness Day, we reaffirm our commitment to ending the disturbing violence against these Americans and to honoring those whose lives have been shattered and lost.

Resiliency, collaboration, and resourcefulness are all necessary to eradicate the heartbreaking incidents of missing persons and fatal violence experienced by American Indian and Alaska Native communities across our country. My Administration stands squarely behind the tribal governments that are leading the efforts to address this pattern of violence so that their people can live in peace and thrive. The Yakama Nation in southern Washington is using the State's major violent crime database to track the disappearance of tribal members. On the Navajo Reservation, the Missing and Murdered Diné Relatives Work Group is working to end sex trafficking, child abductions, and other challenges within the largest tribal jurisdiction in the Nation. In Montana, the Confederated Salish and Kootenai Tribes are engaged with State officials to prioritize cases of missing and murdered tribal citizens. Beyond these and other efforts, tribal communities are leveraging rich cultural traditions of healing ceremonies and spiritual practices to offer refuge, compassion, and comfort to individuals and families in crisis.

Under my Administration, tribal governments are not alone in fighting the epidemic of violence against American Indian and Alaska Native people. In October of 2019, the Department of Justice (DOJ) awarded more than $270 million in grants to improve public safety, serve victims of crime, combat violence against women, and support youth programs in American Indian and Alaska Native communities. The DOJ's Missing and Murdered Indigenous Persons Initiative is placing coordinators in 11 United States Attorneys' offices to develop comprehensive law enforcement responses to missing persons cases. These responses also include the use of the Federal Bureau of Investigation's advanced capabilities, enhanced data collection, and analysis to support local efforts when required.

The Department of the Interior (DOI) is also taking action to address the critical concerns of American Indian and Alaska Native communities. DOI's Bureau of Indian Affairs has launched a series of ''Reclaiming Our Native Communities'' roundtables focused on domestic violence prevention of missing or murdered American Indian and Alaska Native women, children, and men. The Bureau of Indian Affairs Office of Justice Services (BIA–OJS) is equipping officers to handle long-standing cold cases and child abduction investigations, including positioning Special Agents on cold-case task forces in strategic locations throughout the country. BIA–OJS has partnered with the National Missing and Unidentified Persons System to aid in identifying missing persons cases involving Native Americans.

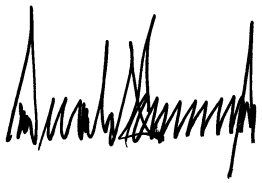
Additionally, the Department of Health and Human Services (HHS) has made the health and safety of American Indian and Alaska Native communities a priority. HHS is developing a comprehensive, whole-person approach for strengthening these vulnerable populations through prevention, health, and education activities. The Administration for Children and Families (ACF) partners with tribes and tribal organizations to strengthen responses to Native American victims of domestic violence. ACF will soon disburse $22 million to increase the public health response and expand shelter and supportive services to victims of family violence, domestic violence, and dating abuse in tribal communities.

To help bolster these efforts to address this terrible crisis, last November, I was proud to sign an Executive Order establishing Operation Lady Justice. This interagency task force is developing an aggressive government-wide strategy for ending the cycle of violence and providing grants to improve public safety in American Indian and Alaska Native communities. The task force is consulting with tribal leaders to develop and strengthen investigative protocols to resolve new and unsolved cases, improve information and data sharing, establish best practices for communicating with families throughout an investigation, and raise public awareness through outreach to affected communities.

Tragically, violence is prevalent in tribal communities, but we are determined to reverse this unacceptable trend. Through partnerships across Federal, State, and tribal governments, we are aggressively working to ensure that members of tribal communities can live lives free from fear of violence. We will not waver in our mission to bring healing, justice, hope, and restoration to our American Indian and Alaska Native communities.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 5, 2020, as Missing and Murdered American Indians and Alaska Natives Awareness Day. I call upon all Americans and all Federal, State, tribal, and local governments to increase awareness of the crisis of missing and murdered American Indians and Alaska Natives through appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–10076
Filed 5–7–20; 11:15 am]
Billing code 3295–F0–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 90 May 8, 2020

Part IV

The President

Federal Register
Vol. 85, No. 90
Friday, May 8, 2020

Presidential Documents

Title 3—

The President

Notice of May 7, 2020

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or reexportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

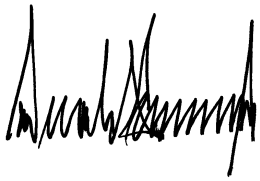
The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.

The regime's brutality and repression of the Syrian people, who have been calling for freedom and a representative government, not only endangers the Syrian people themselves, but also generates instability throughout the region. The Syrian regime's actions and policies, including with respect to chemical weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to foster the rise of extremism and sectarianism and pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures to deal with that emergency adopted on that date in Executive Order 13338; on April 25, 2006, in Executive Order 13399; on February 13, 2008, in Executive Order 13460; on April 29, 2011, in Executive Order 13572; on May 18, 2011, in Executive Order 13573; on August 17, 2011, in Executive Order 13582; on April 22, 2012, in Executive Order 13606; and on May 1, 2012, in Executive Order 13608, must continue in effect beyond May 11, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Assad regime's, and its Russian and Iranian enablers', brutal violence and human rights abuses. The United States calls on the Assad regime and its backers to stop its violent war, enact a nationwide ceasefire, enable the unobstructed delivery of humanitarian assistance to all Syrians in need, and negotiate a political transition in Syria that will forge a credible path along the lines of United Nations Security Council Resolution 2254. The United States will consider changes in the composition, policies, and actions of the Government of Syria in

determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 7, 2020.

[FR Doc. 2020–10092
Filed 5–7–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

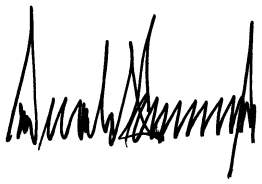
Notice of May 7, 2020

Continuation of the National Emergency With Respect to the Central African Republic

On May 12, 2014, by Executive Order 13667, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to the Central African Republic, which has been marked by a breakdown of law and order, intersectarian tension, widespread violence and atrocities, and the pervasive, often forced recruitment and use of child soldiers, threatens the peace, security, or stability of the Central African Republic and neighboring states.

The situation in and in relation to the Central African Republic continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on May 12, 2014, to deal with that threat must continue in effect beyond May 12, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13667.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 7, 2020.

[FR Doc. 2020–10093
Filed 5–7–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

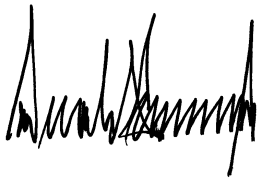
Notice of May 7, 2020

Continuation of the National Emergency With Respect to Yemen

On May 16, 2012, by Executive Order 13611, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain former members of the Government of Yemen and others that threaten Yemen's peace, security, and stability. These actions include obstructing the political process in Yemen and blocking implementation of the agreement of November 23, 2011, between the Government of Yemen and those in opposition to it, which provided for a peaceful transition of power that meets the legitimate demands and aspirations of the Yemeni people.

The actions and policies of certain former members of the Government of Yemen and others in threatening Yemen's peace, security, and stability continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on May 16, 2012, to deal with that threat must continue in effect beyond May 16, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13611.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

May 7, 2020.

[FR Doc. 2020–10094

Filed 5–7–20; 11:15 am]

Billing code 3295–F0–P

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Federal Register

Vol. 85, No. 90

Friday, May 8, 2020

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FEDERAL REGISTER PAGES AND DATE, MAY

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

26 CFR

1 26848
54 26351
Proposed Rules:
1 25376

29 CFR

2560 26351
2590 26351

30 CFR

948 27139
Proposed Rules:
935 26413

31 CFR

208 25285

32 CFR

112 27157
144 27157
199 26355

33 CFR

100 26355
117 26358
165 ..... 26359, 26615
Proposed Rules:
100 ..... 26903, 27341
110 27343

36 CFR

1253 26848
1290 26848

37 CFR

202 27296
Proposed Rules:
360 26906

39 CFR

111 27299
3040 27301

40 CFR

9 ..... 26617, 26617
52 ..... 25291, 25293, 25299, 25301, 25305, 26361
721 26617
Proposed Rules:
50 26634
52 ..... 25377, 25379, 26418, 26635, 26641, 26643, 26647, 26907, 27344
180 27346
258 27348
271 26911
721 26419

42 CFR

406 25508
407 25508
409 27550
410 27550
412 27550
413 27550
414 27550
415 27550
422 25508
423 25508
424 27550
425 27550
431 25508
438 25508
440 27550
457 25508
482 25508
483 27550
484 27550
485 25508
600 27550
Proposed Rules:
Ch. IV 26438

45 CFR

156 ..... 25640, 27550
170 25640
171 25640

46 CFR

30 27308
150 27308
153 27308

47 CFR

64 ..... 26857, 27309
76 26364
96 25309
Proposed Rules:
1 26438
2 26438
18 26438
54 ..... 25380, 26653

48 CFR

Ch. 1 ..... 27086, 27102
1 ..... 27087, 27088, 27098
2 27087
4 27101
5 27088
8 27088
9 27088
12 ..... 27088, 27098
13 27088
15 27088
19 ..... 27088, 27101
22 ..... 27087, 27088
25 ..... 27088, 27098, 27101
29 27098
30 27088
50 27088
52 ..... 27087, 27088, 27098, 27101

49 CFR

1333 ..... 26858, 26866
1570 25313
Proposed Rules:
Ch. X 26915

50 CFR

17 26786
91 27313
219 27028
300 25315
635 26365
648 26874
660 27317
665 26622
679 27158

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 30, 2020

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