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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–SC–22–0058]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Kiwifruit Administrative Committee (Committee) to increase the assessment rate established for the 2022–23 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Gary D. Olson, Chief, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5903, or Email: *Kathie.Notoro@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California. Part 920 (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866 and 13563. 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects 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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the Order are derived from such assessments. The assessment rate established herein will be applicable to all assessable kiwifruit beginning August 1, 2022, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs for goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

This rule increases the assessment rate established for the 2022–23 and subsequent fiscal periods from $0.025 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit handled. The higher rate is the result of the significantly smaller expected 2022 kiwifruit crop. The higher rate will allow the Committee to fund 2022–23 fiscal period budgeted expenditures without depleting its financial reserve.

For the 2018–19 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate that continued in effect from fiscal period to fiscal period unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on July 26, 2022, and unanimously recommended 2022–23 fiscal period expenditures of $132,200 and an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit handled to fund Committee expenses. In comparison, last year's budgeted expenditures were $101,200. The assessment rate of $0.035 is $0.010 more than the rate currently in effect. The Committee recommended increasing the assessment rate due to a much lower

than expected volume of kiwifruit produced as a result of strong north winds and late spring frosts during the growing season. The abnormal weather impacted the crop in varying degrees throughout the state, from an estimated 100-percent crop loss of some blocks in the north to lesser effect in the south. In addition, the Committee's budget increased $31,000 over the previous year to cover increased management costs and the expense of the Committee hosting the International Kiwifruit Organization (IKO) event this year in Sacramento.

The Committee's crop estimate for the 2022–23 fiscal period of 3,181,818 9-kilo volume-fill containers or equivalent, multiplied by the previous assessment rate of $0.025 per container, would not generate sufficient assessment income to fund anticipated expenses. The assessment rate of $0.035 per 9-kilo volume-fill container or equivalent is expected to generate assessment income of approximately $111,364. Assessment income, combined with $20,836 in financial reserve funds and interest income, should provide sufficient funds for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the Order (§ 920.42).

Major expenditures recommended by the Committee for the 2022–23 fiscal period include: $90,000 for management expenses; $25,000 for the IKO membership and hosting, planning, and staffing of the IKO conference to be held in Sacramento; and $9,700 for administrative expenses. Major budgeted expenses for the 2021–22 fiscal period were $80,000 for management expenses, $8,700 for administrative expenses, and $7,500 for financial audits.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of California kiwifruit, and the level of funds in reserve. Kiwifruit shipments for the year are estimated at 3,181,818 9-kilo volume-fill containers, which should provide $111,364 in assessment income at the $0.035 rate. Anticipated income derived from handler assessments, along with $20 in interest income and $20,816 from the Committee's authorized financial reserve, should provide sufficient funding to cover budgeted expenses. The Committee anticipates that $53,749 will remain in the financial reserve at the end of 2022–23 fiscal period on July 31, 2023, which would be within the maximum amount permitted by the Order of approximately one fiscal period's expenses (§ 920.42).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee and AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS evaluates Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2022–23 budget, and those for subsequent fiscal periods, are reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 124 kiwifruit growers in the production area and 20 handlers subject to regulation under the Order. Small kiwifruit growers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $3.5 million, and small agricultural service firms are defined as those whose annual receipts that are less than $34 million (13 CFR 121.201). The SBA threshold for small growers and handlers was changed in between the publication of the proposed rule and this final rule. Thus, AMS has changed the RFA to reflect the new amount in this final rule. However, the change did not impact the number of growers and handlers considered to be small.

According to the National Agricultural Statistics Service (NASS), total California kiwifruit production reported for the 2022 season was 39,940 tons, with an average price of $2,440 per ton, or $1.22 per pound ($2,440 per ton divided by 2,000 pounds per ton). Based on the kiwifruit production and price information from NASS, as well as the total number of California kiwifruit growers, average annual grower revenue is approximately $785,916 (39,940 tons multiplied by $2,440 per ton divided by 124 growers), which is less than the $3,500,000 SBA threshold. Thus, the majority of California kiwifruit growers may be classified as small businesses.

In addition, according to AMS Market News data, the reported average terminal market price for California kiwifruit for 2021 was $24.23 per 9-kilo container. After converting the NASS 2021 California kiwifruit production estimate of 39,940 tons to 9-kilo containers (39,940 tons times 2,000 pounds divided by 19.8 pounds per 9-kilo container yields 4,034,343 containers) and multiplying that quantity by $24.23, the total value of the 2021 California kiwifruit shipments is estimated to be $97,752,141. Dividing this figure by the 20 regulated handlers yields estimated average annual handler receipts of $4,887,607, well below the $34 million SBA threshold for small agricultural service firms. Therefore, using the above data, the majority of handlers of California kiwifruit may be classified as small businesses.

This rule increases the assessment rate collected from handlers for the 2022–23 and subsequent fiscal periods from $0.025 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2022–23 expenditures of $132,200 and an assessment rate of $0.035 per 9-kilo volume-fill container. The assessment rate of $0.035 is $0.010 higher than the 2021–22 fiscal period rate. The quantity of assessable kiwifruit for the 2022–23 fiscal period is estimated at 3,181,818 9-kilo volume-fill containers. Thus, the $0.035 rate should provide $111,364 in assessment income (3,181,818 containers multiplied by $0.035). Income derived from handler assessments, along with the Committee's financial reserve funds and interest income, would be adequate to cover budgeted expenses, while maintaining its financial reserve within the maximum amount permitted by the Order of approximately one fiscal period's expenses (§ 920.42).

Major expenditures recommended by the Committee for the 2022–23 fiscal period include: $90,000 for management expenses; $25,000 for the International Kiwifruit Organization (IKO) membership and hosting, planning, and staffing of the IKO conference to be held

in Sacramento; and $9,700 for administrative expenses. Budgeted expenses for the 2021–22 fiscal period were $80,000 for management expenses, $8,700 for administrative expenses, and $7,500 for financial audits.

Prior to arriving at the recommended assessment rate, the Committee considered alternative levels of assessment, including maintaining the current assessment rate, but ultimately determined that such alternative rates would not generate sufficient revenue to meet budgeted expenses. The recommended assessment rate of $0.035 per 9-kilo container or equivalent of assessable kiwifruit was derived by considering anticipated expenses, the projected volume of assessable kiwifruit, the Committee's financial reserve, and additional pertinent factors.

According to data from NASS, the 2021 season average grower price was $2,440 per ton, or $24.16 per 9-kilo container ($2,440 divided by 2,000 pounds times 19.8 pounds (9 kilograms equals approximately 19.8 pounds)). With an assessment rate of $0.035 per 9-kilo container, assessments as a percentage of revenue will be approximately 0.145 percent ($0.035 divided by $24.16).

This action increases the assessment obligation imposed on handlers. While assessments impose additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the California kiwifruit industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 26, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Additionally, interested persons were invited to submit comments on the proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Fruit Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they will be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on January 3, 2023 (88 FR 16). Copies of the proposed rule were also mailed or sent via email to all California kiwifruit handlers. A copy of the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending February 2, 2023, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 920 as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. § 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2022, an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–07126 Filed 4–7–23; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2019–BT–TP–0024]

RIN 1904–AE51

Energy Conservation Program: Test Procedure for Ceiling Fan Light Kits

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Energy (''DOE'') is amending the test procedure for ceiling fan light kits (''CFLKs'') to update references to industry standards to their latest versions; incorporate by reference additional industry standards necessary for executing the test; allow the use of a goniophotometer; revise definitions regarding CFLKs with solid-state lighting (''SSL'') light sources to clarify the scope and test methods for such products; and remove an obsolete test method for CFLKs.

DATES: The effective date of this rule is May 11, 2023. The amendments will be mandatory for product testing starting October 10, 2023.

The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register on May 11, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket?D=EERE-2019-BT-TP-0024.* The docket web page contains instructions on how to access all documents, including public comments, in the

docket. For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into part 430:

ANSI/IES LM–9–20, Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps, approved February 7, 2020 (''IES LM–9–20'').

ANSI/IES LM–54–20, Approved Method: IES Guide to Lamp Seasoning, approved February 7, 2020 (''IES LM–54–20'').

ANSI/IES LM–75–19, Approved Method: Guide to Goniometer Measurements and Types, and Photometric Coordinate Systems, approved November 22, 2019 (''IES LM 75–19'').

ANSI/IES LM–78–20, Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer, approved February 7, 2020 (''IES LM–78–20'').

ANSI/IES LM–79–19, Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products, approved February 28, 2019 (''IES LM–79–19'').

Copies of IES LM–9–20, IES LM–54–20, IES LM–75–19, IES LM–78–20, and IES LM–79–19 can be obtained by going to *store.ies.org* or *webstore.ansi.org.*

For a further discussion of these standards, see section IV.N of this document.

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I. Authority and Background

DOE's energy conservation standards and test procedures for CFLKs are currently prescribed at 10 CFR part 430 section 32(s); 10 CFR, part 430 section 23(x); 10 CFR part 430, subpart B, appendix V (''appendix V''); and 10 CFR part 430, subpart B, appendix V1 (''appendix V1''), respectively. The following sections discuss DOE's authority to establish test procedures for CFLKs and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include CFLKs, the subject of this document. (42 U.S.C. 6291(50), 6293(b)(16)(A)(ii), 6295(ff)(2)–(5))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)) and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA, as codified, directs DOE to establish test procedures for CFLKs based on the test procedures referenced in the ENERGY STAR® specifications for Residential Light Fixtures and Compact Fluorescent Light Bulbs, as in effect on August 8, 2005. EPCA also specifies that once established, DOE may review and revise the test procedures. (42 U.S.C. 6293(b)(16))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

product, including CFLKs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (*Id.*)

DOE is publishing this final rule in satisfaction of the seven-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE's existing test procedures for CFLKs appear at title 10 of the CFR part 430, subpart B, section 23(x); title 10 of the CFR part 430, subpart B, appendix V (''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits With Pin-Based Sockets for Fluorescent Lamps'') and title 10 of the CFR part 430, subpart B, appendix V1 (''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits Packaged With Other Fluorescent Lamps (not Compact Fluorescent Lamps or General Service Fluorescent Lamps), Packaged With Other SSL Lamps (not Integrated LED [light-emitting diode] Lamps), or With Integrated SSL Circuitry''). Use of appendix V is required for CFLKs with pin-based sockets that are manufactured on or after January 1, 2007, and prior to January 21, 2020. All CFLKs manufactured as of January 21, 2020, must be tested according to current appendix V1. *See* 80 FR 80209, 80220 (December 24, 2015) and 81 FR 580 (January 6, 2016).

On December 24, 2015, DOE published a final rule (''December 2015 Final Rule'') making two key updates to its CFLK test procedure. 80 FR 80209. First, DOE updated the CFLK test procedure to require that representations of efficacy, including certifications of compliance with CFLK standards, be made according to the corresponding DOE lamp test procedures, where they exist (*e.g.,* for a CFLK with medium screw base sockets that is packaged with compact fluorescent lamps (''CFLs''), the CFLK test procedure references the DOE test procedure for CFLs at 10 CFR 430.23(y)). 80 FR 80209, 80211. Second, DOE updated the CFLK test procedure by establishing in a separate appendix (*i.e.,* appendix V1) the test procedure for CFLKs packaged with inseparable light sources that require luminaire efficacy testing (*e.g.,* CFLKs with integrated SSL circuitry) and for CFLKs packaged with lamps for which DOE test procedures did not exist. 80 FR 80209, 80212. With these changes, the December 2015 Final Rule aligned CFLK requirements for measuring efficacy of lamps and/or light sources in CFLKs with current DOE lamp test procedures.

The December 2015 Final Rule also replaced references to superseded ENERGY STAR requirements with the latest versions of industry standards in appendix V, the test procedure for measuring system efficacy of the lamp-and-ballast platform. Additionally, for ease of reference, the final rule replaced references to ENERGY STAR requirements in existing CFLK standards contained in 10 CFR 430.32(s)(3)–(4) with the specific requirements. 80 FR 80209, 80211. Further, in that final rule, DOE determined that it accounts for standby mode energy consumption of CFLKs under the efficiency metric for ceiling fans rather than under the CFLK efficiency metric and, therefore, did not specify a standby mode test procedure for CFLKs. 80 FR 80209, 80212. Representations regarding CFLKs subject to the January 21, 2020, standards must be based on the amended test procedure, including appendix V1. *See* 80 FR 80209, 80220 and 81 FR 580.

As specified in section I.A of this document, EPCA requires DOE to review test procedures for covered products at least once every seven years. 42 U.S.C. 6293(b)(1)(A) DOE initiated the first step in the seven-year review process by publishing a request for information (''RFI'') document on May 4, 2021. 86 FR 23635. On March 10, 2022, DOE published a NOPR (''March 2022 NOPR'') proposing to update referenced industry standards to their latest versions and incorporate industry standards necessary for executing the test; to modify appendix V1 to allow for the use of a goniophotometer; to revise definitions regarding CFLKs with SSL light sources in appendix V1 to clarify the scope and test methods for CFLKs; and to remove appendix V, which is now obsolete, and rename appendix V1 as appendix V. 87 FR 13648, 13651. DOE held a public meeting via webinar related to the March 2022 NOPR on April 11, 2022 (hereafter, the ''NOPR public meeting'').

DOE received one comment in response to the March 2022 NOPR, as indicated in Table I.1.

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video, and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MARCH 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
American Lighting Association	ALA	9	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the NOPR public meeting that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE is amending 10 CFR 430.23(x), appendix V, and appendix V1 as follows: (1) update references to industry standards to their latest versions and incorporate industry standards necessary for executing the test; (2) modify appendix V1 to allow for the use of a goniophotometer; (3) revise definitions in appendix V1 regarding CFLKs with SSL light sources to clarify the scope and test methods for CFLKs; and (4) remove appendix V, which is now obsolete, and rename appendix V1 as appendix V.

DOE's amended actions are summarized and compared to the current test procedure in Table II.1, along with the reason for the amended change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Amended test procedure	Attribution
References the 2009 version of IES LM–9 for taking electrical and photometric measurement of fluorescent lamps in appendix V1.	Adopts the latest version, *i.e.,* 2020, of the referenced industry standard	Harmonizes with updated industry standards.
References the 2008 version of IES LM–79, which provides methods for taking electrical and photometric measurements of SSL products in appendix V1.	Adopts the latest version, *i.e.,* 2019, of the referenced industry standard	Harmonizes with updated industry standards.
Does not incorporate IES LM–54, the industry standard for lamp seasoning, in appendix V1.	Adopts ANSI/IES LM–54–20 which is referenced for lamp seasoning in ANSI/IES LM–9–20.	Industry standard addition in test procedure.
Does not incorporate IES LM–78, the industry standard for measurements in an integrating sphere, in appendix V1.	Adopts ANSI/IES LM–78–20 which is referenced for integrating sphere measurements in ANSI/IES LM–9–20.	Industry standard addition in test procedure.
Defines ''CFLK with integrated SSL circuitry'' and ''other SSL products'' in appendix V1.	Updates the term names and definitions for ''CFLK with integrated SSL circuitry'' and ''other SSL products,'' to ''CFLK with non-consumer-replaceable SSL'' and ''CFLK with consumer-replaceable SSL,'' respectively. Updates the definitions for these terms.	Clarifies the categories CFLK products fall into, and thereby the test methods (*i.e.,* luminaire or lamp efficacy) to which they are subject.
References appendix V and appendix V1	Removes appendix V	Removes a section of the test procedure that is no longer applicable.
Does not allow the use of a goniophotometer	Allows the use of a goniophotometer and adopts ANSI/IES LM–75–19, which this test procedure is referencing for goniophotometer measurements in ANSI/IES LM–79–19.	Allows manufacturers flexibility in testing.

DOE has determined that the amendments described in section III and adopted in this document will not alter the measured efficiency of CFLKs or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope of Applicability

This rulemaking addresses the DOE test procedure for CFLKs. DOE defines CFLKs as equipment designed to provide light from a ceiling fan that can be: (1) integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale, or (2) attachable, such that at the time of retail sale, the equipment is not physically attached to the ceiling fan but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan. 10 CFR 430.2.

ALA recommended that in the second part of the CFLK definition DOE add ''package'' following the phrase ''but may be included inside the ceiling fan'' to read ''but may be included inside the ceiling fan *package*'' [emphasis added]. ALA stated this replacement would eliminate any ambiguity about whether a CFLK needs to be physically inside a ceiling fan. (ALA, No. 9 at p. 1).

DOE notes that EPCA defines CFLK (*see* 42 U.S.C. 6291(50)). Specifically, the phrasing ''not physically attached to the ceiling fan'' in the definition of CFLK indicates that the CFLK does not need to be physically inside of the

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CFLK (Docket No. EERE–2019–BT–TP–0024, maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

ceiling fan (*i.e.,* already attached to the ceiling fan) at the time of retail sale. This is understood within the context of the phrasing that ''at the time of retail sale, the equipment is not physically attached to the ceiling fan but may be included inside the ceiling fan at the time of sale.'' ALA's comment correctly reflects that the term ''ceiling fan'' in the second part of the CFLK definition refers to the entirety of the ceiling fan product as provided to the consumer at the time of sale, *i.e.,* the ''ceiling fan package.'' Given DOE's understanding of the definition of CFLK in that the CFLK does not need to be physically attached to the ceiling fan (*i.e.,* already attached to the ceiling fan) at the time of retail sale, and in deference to the statutorily established definition, DOE has determined that the definition does not require the additional clarity recommended by ALA.

B. Updates to Industry Standards

Appendix V1 specifies instructions for measuring the lamp efficacy or luminaire efficacy, as applicable. Appendix V1 incorporates by reference the 2009 version of Illuminating Engineering Society (''IES'') Lighting Measurement and Testing (''LM'')-9 (''IES LM–9–09'') [6] for testing ''other fluorescent lamps'' (*i.e.,* not compact fluorescent lamps or general service fluorescent lamps (''GSFLs'')) and the 2008 version of IES LM–79 (''IES LM–79–08'') [7] for testing ''other SSL products'' (*i.e.,* not integrated LED lamps) and CFLKs with integrated SSL circuitry. 10 CFR part 430, subpart B, appendix V1. Appendix V1 references these industry standards for test conditions and measurements. In the March 2022 NOPR, DOE identified updated versions of these referenced industry test standards. 87 FR 13648, 13652.

IES LM–9–09, which provides methods for taking electrical and photometric measurements of fluorescent lamps, has been updated with a 2020 version [8] (''ANSI/IES LM–9–20). In the March 2022 NOPR, DOE identified no major changes in ANSI/IES LM–9–20 compared to IES LM–9–09, except for updates to certain relevant references. These updates were: (1) section 6.2 of IES LM–9–20 updates its reference of IES LM–54, the industry standard for lamp seasoning, from the 1999 version [9] (''IESNA LM–54–99'') to the 2020 version [10] (''ANSI/IES LM–54–20''); and (2) section 7.0 of IES LM–9–20 updates its references of IES LM–78, the industry standard for measurements in an integrating sphere, from the 2007 version [11] (''IESNA LM–78–07'') to the 2020 version [12] (''IES LM–78–20''). In the March 2022 NOPR, DOE tentatively concluded that these updates in IES LM–9–20 would not change final measured values and proposed to update references from the 2009 version of IES LM–9 to the 2020 version in appendix V1 of this document. 87 FR 13648, 13652–13653.

In the March 2022 NOPR, DOE also noted that IES LM–79–08, which provides methods for taking electrical and photometric measurements of SSL products, has been updated with a 2019 version [13] (''IES LM–79–19''). DOE's initial review indicated several changes in IES LM–79–19 compared to IES LM–79–08 relating to testing conditions, instrumentation, test circuits, electrical measurements, stabilization, use of spectroradiometer system, and an update to the reference of IES LM–78 from its 2007 to 2017 version.[14] In the March 2022 NOPR, DOE tentatively concluded that updates in IES LM–79–19 would not change final measured values and proposed to update references from the 2008 version of IES LM–79 to the 2019 version in appendix V1 of this document. 87 FR 13648, 13653–13654.

Additionally, in the March 2022 NOPR, DOE noted that sections 2 through 9.2 of IES LM–79–08 were reorganized in IES LM–79–19 into sections 4 through 6 and 7.2. Hence, in the March 2022 NOPR, DOE proposed to update in appendix V1 the references of IES LM–79–08 sections 2 through 9.2 to IES LM–79–19 sections 4 through 6 and 7.2. In addition, in the March 2022 NOPR, DOE proposed to allow the use of the goniophotometer method (*see* section III.C.2 of this document); accordingly, DOE also proposed to reference all of section 7.0 of IES LM–79–19 to include subsections addressing the goniophotometer method. 87 FR 13648, 13654.

Further, in the March 2022 NOPR, DOE proposed to incorporate by reference IES LM–54–20,[15] IES LM–78–20,[16] IES LM–78–17, and IESNA LM–75–01/R12 [17] for appendix V1. 87 FR 13648, 13652. As noted, IES LM–9–20 references IES LM–54–20, the industry standard for lamp seasoning. Because lamp seasoning is a necessary part of testing fluorescent lamps in CFLKs, DOE proposed in the March 2022 NOPR to incorporate by reference IES LM–54–20 for appendix V1 and to reference it when referencing IES LM–9–20 in appendix V1 of this document. 87 FR 13648, 13653. Similarly, IES LM–9–20 references ANSI/IES LM–78–20. Because an integrating sphere is a method used to make necessary photometric measurements of fluorescent lamps in CFLKs, DOE proposed in the March 2022 NOPR to incorporate by reference IES LM–78–20 for appendix V1 and to reference it when referencing IES LM–9–20 directly in appendix V1 of this document. 87 FR 13648, 13653.

IES LM 79–19 references IES LM–78–17. Hence, in the March 2022 NOPR, DOE proposed to incorporate by reference IES LM–78–17 for appendix V1 and to reference it when referencing IES LM–79–19 in appendix V1 of this document. Although IES LM–78–17 has been updated to IES LM–78–20, DOE proposed to incorporate by reference IES LM–78–17 for appendix V1, as it is the version directly referenced in IES LM–79–19. In the March 2022 NOPR, DOE tentatively determined that changes in IES LM–78–20 compared to IES LM–78–17 are minor and do not impact final measured values. 87 FR 13648, 13654. Finally, because IES LM–79–19 references IESNA LM–75–01/R12 for general recommendations and requirements on making measurements with goniophotometers, DOE proposed in the March 2022 NOPR to incorporate

[6] Illuminating Engineering Society, IES LM–9–09, *Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps.* Approved January 31, 2009.

[7] Illuminated Engineering Society, LM–79–08, *Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products.* Approved December 31, 2007.

[8] Illuminating Engineering Society, ANSI/IES LM–9–20, *Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps.* Approved February 7, 2020.

[9] Illuminating Engineering Society of North America, LM–54–99, *IESNA Guide to Lamp Seasoning.* Approved May 10, 1999.

[10] Illuminating Engineering Society, IES LM–54–20, *Approved Method: IES Guide to Lamp Seasoning.* Approved February 7, 2020.

[11] Illuminating Engineering Society of North America, IESNA LM–78–07, *Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.* Approved January 28, 2007.

[12] Illuminating Engineering Society, *IES LM–78–20, Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.* Approved February 7, 2020.

[13] Illuminating Engineering Society, IES LM–79–19, *Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products.* Approved February 28, 2019.

[14] Illuminating Engineering Society of North America, IES LM–78–17, *Approved Method: Total Flux Measurement of Lamps Using an Integrating Sphere.* Approved January 9, 2017.

[15] Illuminating Engineering Society, IES LM–54–20, *Approved Method: IES Guide to Lamp Seasoning.* Approved February 7, 2020.

[16] Illuminating Engineering Society, IES LM–78–20, *Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.* Approved February 7, 2020.

[17] Illuminating Engineering Society of North America, IESNA LM–75–01/R12, *Goniophotometer Types and Photometric Coordinates.* Approved August 4, 2001.

by reference IESNA LM–75–01/R12 for appendix V1 and to reference it when referencing ANSI/IES LM–79–19 in appendix V1. 87 FR 13648, 13654.

As specified in the previous paragraph, in the March 2022 NOPR, DOE proposed incorporating by reference IES LM–78–17 and IESNA LM–75–01/R12 because they are specifically referenced in IES LM–79–19. 87 FR 13648, 13654. However, in this final rule analysis, DOE determined that only the latest versions of these standards,/IES LM–78–20 and IES LM–75–19 [18] are publicly available and IES LM–78–17 and IESNA LM–75–01/R12 cannot be obtained by the public. Therefore, in this final rule, DOE is not incorporating by reference IES LM–78–17 and IESNA LM–75–01/R12. Instead, DOE is incorporating by reference the latest versions of these standards, IES LM–78–20 and IES LM–75–19 and specifying in the DOE test procedure that where IES LM–79–19 references IES LM–78–17 and IESNA LM–75–01/R12 to use respectively, IES LM–78–20 and IES LM–75–19. DOE finds that referencing the latest versions of these standards when using IES LM–79–19 will not impact final measured values or the test procedure as compared to that proposed in the March 2022 NOPR and details its reasoning in the following paragraphs.

Regarding referencing IES LM–78–20 instead of IES LM–78–17, DOE determined, in the March 2022 NOPR, that changes in ANSI/IES LM–78–20 compared to IES LM–78–17 are minor and do not impact final measured values. 87 FR 13648, 13654. DOE received no comments and no new information regarding referencing ANSI/IES LM–78–20 instead of IES LM–78–17. Therefore, in this final rule, DOE finds this conclusion to remain valid.

Regarding referencing IES LM–75–19 instead of IESNA LM–75–01/R12, DOE compared the two versions and identified several additions in the latest version. Specifically, IES LM–75–19 differs from IESNA LM–75–01/R12 by including sections on (1) the type D goniophotometer method, (2) calibration, (3) integrated measurements, and (4) stray light correction. Firstly, compared to IESNA LM–75–01/R12, ANSI/IES LM–75–19 adds a section that describes type D goniophotometer design and operation setup for using the goniophotometer. The type A, B, and C design and operation setups described in IESNA LM–75–01/R12 are maintained in IES LM–75–19 and can be continued to be used for measurements. Secondly, the section on calibration in ANSI/IES LM–75–19 adds instructions on calibrating goniophotometric test data using absolute or relative photometry. Thirdly, the integrated measurements section in ANSI/IES LM–75–19 shows a method of calculating lumens—*i.e.,* by integrating lumens over smaller solid angles, not shown in IESNA LM–75–01/R12. Fourthly, the section in ANSI/IES LM–75–19 on stray light correction adds techniques to correct light that may potentially scatter around walls, floors, and/or the ceiling and back into the goniophotometer. These are all basic methodologies that are known and used by the lighting industry when taking lighting measurements. Further, IES LM–75–19 compared to IESNA LM–75–01/R12, in its foreword, states that it is an update to reflect current use of goniophotometers in industry. Hence, DOE has determined that these additions are codifying industry best practices already being used and therefore, would not change final measured values. Compared to IESNA LM–75–01/R12, ANSI/IES LM–75–19 also adds a section on definitions and adds further information on determining the frame of reference for the measurement setup. DOE has determined that these additions only further clarify the test setup and methodology and therefore, would not change final measured values. Hence, DOE has concluded that referencing IES LM–75–19 instead of IESNA LM–75–01/R12 will not impact final measured values of efficacy using a goniophotometer.

Therefore, in this final rule, DOE is incorporating by reference and specifying the use of IES LM–78–20 and IES LM–75–19 when using IES LM–75–19. This change does not impact final measured values and ensures that all industry standards referenced in the DOE test procedure are accessible to the public.

In the March 2022 NOPR, DOE tentatively concluded that the updates to industry test standard references do not involve substantive changes to the test setup and methodology and therefore would not pose additional test burden and would have no impact on test costs. Further, DOE tentatively determined that incorporation by reference of the latest versions would not change measured values, would better align DOE test procedures with industry practice, and would further increase the clarity of the test methods. 87 FR 13648, 13652.

ALA stated that it supported the adoption of the proposed updated industry standards so long as additional testing is not required or updated industry standards do not exclude existing products. (ALA, No. 9 at p. 2).

DOE has determined that, because these updates to industry standard references do not involve substantive changes to the test setup and methodology, but rather are clarifications that align DOE's test procedures with latest industry best practices, they will not affect measured values and will not exclude existing products or require additional testing. In this final rule, based on the discussion in the preceding paragraphs and in the March 2022 NOPR, DOE incorporates by reference the industry standards IES LM–9–20, IES LM–54–20, IES LM–78–20, IES LM–79–19, and IES LM–75–19.

C. Amendments to Appendix V1

In this final rule, as proposed in the March 2022 NOPR, DOE adopts changes to appendix V1 to clarify definitions regarding CFLKs with SSL technology, as discussed in section III.C.1 of this document. This final rule also arranges all definitions in appendix V1 in alphabetical order and allows for the use of the goniophotometer method to make photometric measurements as discussed in section III.C.2 of this document.

1. Revising Definitions for CFLKs With SSL Light Sources

In appendix V1, CFLKs that use SSL circuitry are differentiated as either ''CFLKs with integrated SSL circuitry'' or ''other SSL products'' and have different methods to measure efficacy. Section 3 of appendix V1 specifies two ways the lumens per watt (*i.e.,* ''efficacy'') of a CFLK with SSL technology can be tested: the light source tested separately (*i.e.,* ''lamp efficacy'') or the light source tested within the CFLK (*i.e.,* ''luminaire efficacy'').

Because the SSL in a CFLK with circuitry integrated in the light kit will require the cutting of wires or similar methods to remove and test the light source, it cannot be restored to the same condition it was prior to testing. Hence, section 3 of appendix V1 identifies these products as ''CFLKs with integrated SSL circuitry'' and directs manufacturers to test their efficacy with the light source in the CFLK, *i.e.,* luminaire efficacy. Accordingly, under section 2.1 of appendix V1, the term ''CFLKs with integrated SSL circuitry'' is defined as a CFLK that has SSL light sources, drivers, heat sinks, or intermediate circuitry (such as wiring

[18] Illuminating Engineering Society of North America, IES LM–75–2019, *Guide to Goniometer Measurements and Types, and Photometric Coordinate Systems,* Approved November 22, 2019.

between a replaceable driver and a replaceable light source) that is not consumer replaceable.

For certain CFLK products, the SSL in the CFLK is one unit that can be removed, tested, and placed back into the CFLK. This is so that the light kit is the same product as it was when it was sold, *i.e.,* consumer replaceable. Section 3 of appendix V1 identifies these light sources in CFLKs as ''other SSL products'' and directs manufacturers to test the efficacy of the light source, *i.e.,* lamp efficacy. Accordingly, under section 2.4 of appendix V1, the term ''other SSL products'' is defined as an integrated unit consisting of a light source, driver, heat sink, and intermediate circuitry that uses SSL technology (such as light-emitting diodes (''LED'') or organic light-emitting diodes (''OLED'')) and is consumer replaceable. The term does not include LED lamps with ANSI-standard bases. Examples of ''other SSL products'' include OLED lamps and LED lamps with non-ANSI-standard bases, such as Zhaga interfaces and LED light engines.

Responses received to an RFI published June 4, 2021, as well as manufacturer interviews conducted as part of the ongoing rulemaking reviewing energy efficiency standards for CFLKs, indicated that these terms and their definitions were not clear and could lead to confusion in classifying products and determining the required efficacy measurement. Particularly, these responses indicated that it is not clear that DOE's CFLK test procedure directs CFLKs with consumer replaceable SSL light sources without ANSI bases to be tested individually using lamp efficacy, similar to the required efficacy measurement for CFLKs with ANSI base lamps.

To address these concerns, in the March 2022 NOPR, DOE proposed to amend the terms ''CFLK with integrated SSL circuitry'' and ''other SSL products'' and to clarify the definitions of these terms. 87 FR 13648, 13655.

Specifically, in the March 2022 NOPR, DOE proposed to change the term ''CFLK with integrated SSL circuitry'' to ''CFLK with non-consumer-replaceable SSL circuitry'' for additional clarity. Further, DOE proposed to modify the definition of this term by specifying that the light sources and all necessary components in these CFLKs cannot be replaced without permanently altering the product and by specifying that the light sources in these CFLKs do not have an ANSI base. 87 FR 13648, 13655.

DOE also proposed to change the term ''other SSL products'' to ''CFLK with consumer-replaceable SSL circuitry'' for additional clarity. Further, DOE proposed to modify the definition by specifying that the light sources and all necessary components in these CFLKs can be replaced without permanently altering the product and by specifying that the light sources in these CFLKs do not have an ANSI base. 87 FR 13648, 13655.

In response to DOE's request for comment on the proposed definitions for ''CFLK with consumer-replaceable SSL circuitry'' and ''CFLK with non-consumer-replaceable SSL circuitry,'' ALA recommended that DOE be flexible with the definition of ''replaceable,'' versus establishing a rigid standard for the definition. ALA stated that the definition of ''replaceable'' should not exclude common assembly practices used by consumers to install the ceiling fan and CFLK (*e.g.,* connecting/disconnecting wire nuts, connecting/disconnecting quick connect fasteners, screwing/unscrewing screws, and using other fasteners). ALA further stated that reversing the processes used by a consumer to assemble the ceiling fan and CFLK should not fall under the definition of ''non-replaceable,'' as DOE indicated in the March 2022 NOPR: ''. . . the SSL light source is an integrated unit that can be removed, tested, and placed back into the CFLK so it is the same product as it was when sold, *i.e.,* consumer replaceable.'' (ALA, No. 9 at p. 2).

During the NOPR public meeting, Hinkley, Inc. (''Hinkley'') stated that regarding the proposed definitions, they would like further clarification on the use of items such as wire nuts—in which the consumer is required to maintain polarity between different wired connections using nuts—or whether manufacturers are required to provide keyed connectors to prevent any consumer involvement with specific wires between the fan harness and the CFLK. (Hinkley, Public Meeting Transcript, No. 8 at p. 11).

DOE's intention with the existing definitions and modifications proposed in the March 2022 NOPR was to ensure that the testing of CFLKs specified in appendix V1 could be replicated and provide reproducible test results. If one tester can remove, test, and replace the light source in the CFLK so the light kit is the same product as it was when sold, then all else being equal, another tester can repeat the same test on that CFLK and obtain the same results. When the removal of the light source from the CFLK requires the cutting of wires or any action that alters any component of the CFLK, there is no guarantee it is the same product as when it was sold and, therefore, the reproducibility of the test and results come into question.

Upon review of the comments received in response to the March 2022 NOPR regarding the proposed definitions, DOE has determined that additional clarification is required for these terms and definitions beyond those that were proposed in the NOPR. Therefore, in this final rule, DOE is modifying the proposed terms and definitions to better clarify the intent and application of the March 2022 NOPR proposals. First, DOE is removing the term ''circuitry'' from the proposed terms ''CFLK with non-consumer-replaceable SSL circuitry'' and ''CFLK with consumer-replaceable SSL circuitry.'' These terms are meant to refer to CFLKs with an SSL product. DOE has determined that inclusion of the word ''circuitry'' is not necessary to distinguish these CFLKs from CFLKs without SSL products and further may cause confusion regarding whether these terms are referring to only circuitry or a complete SSL product. Second, to address comments regarding assembly practices for CFLKs, DOE is specifying that the cutting of wires, use of a soldering iron, or damage to or destruction of the CFLK constitutes permanently altering the product, whereas connecting or disconnecting wire nuts, fasteners, or screws, or preserving the CFLK as it was sold, does not constitute permanently altering the product. Finally, DOE is removing examples from the definition of the proposed term ''CFLKs with consumer-replaceable SSL circuitry,'' as they have the potential to cause confusion and obscure the intent of these definitions, which is to determine whether the SSL light source and associated components necessary for operation can be removed from the light kit without permanently altering the CFLK. DOE has determined that these changes will simplify the terms and definitions and further clarify what actions constitute permanently altering the CFLK.

Additionally, DOE notes that these definitions are for the purposes of executing the DOE test procedure (*i.e.,* whether luminaire efficacy or lamp efficacy must be tested) and not how the installation or replacement of CFLK products is specified or marketed to the consumer. Specifically, these definitions are to identify actions, whether they be common assembly practice or reverse process, that either do or do not result in a permanent alteration of the CFLK such that it is not the exact same as it was when sold. If a permanent alteration per the definitions is required to remove the SSL light source, that product is a CFLK

with non-consumer-replaceable SSL, and the manufacturer must test its luminaire efficacy. If a permanent alteration per the definitions is not required to remove the SSL light source, that product is a CFLK with consumer-replaceable SSL, and the manufacturer must test its lamp efficacy.

Thus, in this final rule, DOE adopts the following modifications to the terms and definitions of ''CFLKs with integrated circuitry'' and ''other SSL products,'' respectively, as follows:

CFLK with non-consumer-replaceable SSL means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and a light source) that are not consumer replaceable, *i.e.,* a consumer cannot replace the light source and all components necessary for the starting and stable operation of the light source without permanently altering the product and must replace the entire CFLK upon failure. Permanently altering the product constitutes the cutting of wires, use of a soldering iron, or damage to or destruction of the CFLK and does not constitute connecting or disconnecting wire nuts, fasteners, or screws, or preserving the CFLK as it was sold.

CFLK with consumer-replaceable SSL means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and light source) that are consumer replaceable, *i.e.,* a consumer can replace the light source and all components necessary for the starting and stable operation of the light source without permanently altering the product. Permanently altering the product constitutes the cutting of wires, use of a soldering iron, or damage to or destruction of the CFLK and does not constitute connecting or disconnecting wire nuts, fasteners, or screws, or preserving the CFLK as it was sold.

In the March 2022 NOPR, DOE proposed changes in appendix V1 that would replace all references of ''CFLK with integrated SSL circuitry'' and ''other SSL products'' with, respectively, ''CFLK with non-consumer-replaceable SSL circuitry'' and ''CFLK with consumer-replaceable SSL circuitry.'' 87 FR 13648, 13655. As noted in the preceding paragraphs, in this final rule, DOE is removing the word ''circuitry'' from these terms. To replace all applicable references, DOE is amending the title and scope section of appendix V1 and the definition of ''cover'' in section 2.2 of appendix V1 to include the updated terms as specified in this final rule.

In the March 2022 NOPR, DOE also proposed to add a row to the table in section 2 of appendix V1 for ''other SSL lamps that have an ANSI-standard base and are not integrated LED lamps'' and specify that their lamp efficacy be tested. 87 FR 13648, 13655. This clarification is needed as the current and adopted definition for lamps that were once labeled as ''other SSL products'' (renamed ''CFLKs with consumer-replaceable SSL'' in this final rule) did not include ANSI-standard base lamps. Accordingly, DOE also proposed to include the category of other SSL lamps that have an ANSI-standard base and are not integrated LED lamps in the title and scope section of appendix V1.

DOE did not receive any comments regarding these specific proposals. In this final rule, DOE adopts these amendments as proposed in the March 2022 NOPR.

2. Photometric Measurements

Industry tests efficacy by either using a goniophotometer or an integrating sphere. Section 3 of appendix V1 specifies that the use of a goniophotometer is not allowed, which subsequently leaves manufacturers with only the option of using an integrating sphere. In the March 2022 NOPR, DOE proposed to allow the use of a goniophotometer, in addition to an integrating sphere, to test the luminaire or lamp efficacy of CFLKs. DOE had tentatively concluded that the difference in measured efficacy using a goniophotometer versus an integrating sphere was not significant. DOE also noted that allowing both test methods would give flexibility to manufacturers and would align with DOE's other lamp test procedures, such as for general service fluorescent lamps. 87 FR 13648, 13656.

DOE requested comment on the allowance of both goniophotometer and integrating sphere methods and any data on the difference in efficacy measurements when testing the same lamp with goniophotometer versus integrating sphere. *Id.*

ALA stated that the use of the integrating sphere method would continue, but that DOE's allowance of using the goniophotometer would provide additional flexibility to manufacturers who elect to use the method. (ALA, No. 9 at p. 2).

Thus, in this final rule, as proposed in the March 2022 NOPR, DOE is amending appendix V1 to allow the use of a goniophotometer to test the lamp efficacy or luminaire efficacy of CFLKs, as applicable.

D. Amendments to Appendix V

All CFLKs manufactured as of January 21, 2020, must be tested according to current appendix V1. *See* 80 FR 80209, 80220 and 81 FR 580. Therefore, appendix V is no longer applicable, and removing this appendix would not result in any change to the current test procedure. In the March 2022 NOPR, DOE proposed to remove appendix V and rename appendix V1 as appendix V. 87 FR 13648, 13656.

DOE did not receive any comments on this proposal. In this final rule, as proposed in the March 2022 NOPR, DOE is removing appendix V as it is obsolete, and subsequently renaming appendix V1 as appendix V.

E. Amendments to 10 CFR 429.33, 10 CFR 430.23, and 10 CFR 430.32

The terms ''other SSL products'' and ''integrated SSL circuitry'' are used in 10 CFR 429.33, which specifies the CFLK sampling plan, represented values, and certification requirements; 10 CFR 430.23(x), which provides references to DOE test procedures for lamps in CFLKs not covered in appendix V1; and 10 CFR 430.32(s)(6), which specifies CFLK energy conservation standards manufactured on or after January 21, 2020. In the March 2022 NOPR, to align with the proposed revised terms for ''other SSL products'' and ''CFLKs with integrated circuitry'' in appendix V1 (*see* section III.C.1), DOE proposed to replace the terms ''other SSL products'' and ''integrated SSL circuitry'' in 10 CFR 429.33, 10 CFR 430.23(x), and 10 CFR 430.32(s)(6) with, respectively, ''consumer-replaceable SSL circuitry'' and ''non-consumer-replaceable SSL circuitry.'' 87 FR 13648, 13656.

DOE received no comments on this proposal. In this final rule, DOE has modified these terms slightly by removing the word ''circuitry'' in accordance with the modifications of the definitions of the related terms (*see* section III.C.1). Accordingly, in this final rule, DOE is replacing the terms ''other SSL products'' and ''integrated SSL circuitry'' with, respectively, ''consumer-replaceable SSL'' and ''non-consumer-replaceable SSL'' in 10 CFR 429.33, 10 CFR 430.23(x), and 10 CFR 430.32(s)(6).

In the March 2022 NOPR, DOE also proposed to explicitly state the term ''other SSL light sources with ANSI bases (not integrated LED lamps)'' in 10 CFR 429.33 and 10 CFR 430.23(x) to clarify instructions for these lamps. 87 FR 13648, 13656.

DOE received no comments on this proposal. Thus, in this final rule, DOE is adopting these terminology updates in 10 CFR 429.33 and 10 CFR 430.23(x) as proposed in the March 2022 NOPR.

F. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this final rule, DOE is amending the existing test procedure for CFLKs by (1) updating references to industry standards to their latest versions and incorporating by reference industry standards necessary for executing tests; (2) modifying appendix V1 to allow for the use of a goniophotometer in testing; (3) revising definitions in appendix V1 regarding CFLKs with SSL light sources to clarify the scope and test methods; and (4) removing appendix V, the obsolete test procedure that was used for CFLKs with pin-based sockets manufactured on or after January 1, 2007, and prior to January 21, 2020, and renaming appendix V1 as appendix V.

In the March 2022 NOPR, DOE stated that the proposed updates and incorporation of industry standards are only minor changes to certain testing specifications and do not change the method of testing CFLKs. DOE explained that these changes do not require the purchase of additional equipment, nor do they increase test burden, and subsequently do not impact testing costs. Regarding the proposed change to allow the use of a goniophotometer in testing, DOE noted that this use is optional and does not require manufacturers to change their current testing methodology, and therefore would not impact testing costs. DOE also notes the proposed revisions to definitions regarding CFLKs with SSL technology would only clarify the existing test methodology, and therefore would not impact testing costs. Finally, DOE stated that removing appendix V because it is obsolete would not impact the current test procedure, and therefore would not impact testing costs. 87 FR 13648, 13656.

In response to DOE's request for comments on the benefits and burdens of the proposed updates in the March 2022 NOPR, ALA stated that it supported DOE updating references to industry standards and making other minor changes to provide clarity for manufacturers without burdening them. (ALA, No. 9 at p. 2).

For the reasons specified in the March 2022 NOPR, DOE has determined that the amendments being adopted in this final rule will not impact test burden or test costs.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA), or estimated operating costs of that product during a representative average use cycle or period of use. *See* section 8(c) of 10 CFR part 430, subpart C, appendix A. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

In this final rule, DOE is updating currently referenced industry standards in appendix V1 to their latest version. For the electrical and photometric measurement of CFLKs, DOE is incorporating by reference IES LM–9–20 and IES LM–79–19. For seasoning instructions for CFLKs, DOE is incorporating IES LM–54–20. For integrating sphere measurements for CFLKs, DOE is incorporating IES LM–78–20. For goniophotometer measurements for CFLKs, DOE is incorporating IES LM–75–19. *See* section III.B for further details.

G. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19,

2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

DOE has recently conducted a focused inquiry into small business manufacturers of the CFLKs covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [19] to create a list of companies that import or otherwise manufacture the CFLKs covered by this proposal as well as the websites of identified companies. DOE relied on the Small Business Administration (''SBA'') size standards for determining the threshold for an entity to be a small business. The SBA size standards are listed by the North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* For NAICS code 335131, described as ''residential electric lighting fixture manufacturing,'' the size threshold is 750 employees for an entity to be a small business. The size threshold is based on enterprise-wide employment, which includes enterprise subsidiaries and branches, as well as unrelated establishments of the parent company. DOE referenced market research tools for employment estimates and identified 30 domestic small businesses manufacturing or importing CFLKs.

DOE has concluded that the updates to DOE's test procedure for CFLKs being adopted in this final rule do not involve substantive changes to the test setup and methodology and will not pose any additional test burden or additional test costs for any CFLK manufacturers, large or small. Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

[19] U.S. Department of Energy Compliance Certification Database, available at *www.regulations.doe.gov/certification-data/products.html.*

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CFLKs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CFLKs. (*See* generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for CFLKs in this final rule.

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.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CFLKs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for CFLKs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards:

(1) IES LM–9–20—*Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps,* approved February 7, 2020;

(2) IES LM–54–20—*Approved Method: IES Guide to Lamp Seasoning,* approved February 7, 2020;

(3) IES LM–75–19—*Approved Method: Guide to Goniometer Measurements and Types, and Photometric Coordinate Systems,* approved November 22, 2019;

(4) IES LM–78–20—*Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,* approved February 7, 2020; and

(5) IES LM–79–19—*Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products,* approved February 28, 2019.

DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether

it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

IES LM–9–20 is an industry-accepted standard that describes methods for taking electrical and photometric measurement of fluorescent lamps. Specifically, the test procedure codified by this final rule references IES LM–9–20 for testing the performance of fluorescent lamps.

IES LM–54–20 is an industry-accepted test standard that specifies a method for seasoning lamps. Specifically, the test procedure codified by this final rule references IES LM–9–20 for testing fluorescent lamps, which in turn references IES LM–54–20 for seasoning lamps.

IES LM–75–19 is an industry-accepted test standard that specifies goniophotometer measurements and types, and photometric coordinates. Specifically, the test procedure codified by this final rule references IES LM–79–19 for testing CFLKs with SSL, which in turn references IESNA LM–75–01/R12 for general recommendations and requirements on making measurement with goniophotometers. The test procedure codified by this final rule requires that when referencing IES LM–79–19, where IESNA LM–75–01/R12 is referenced use IES LM–75–19.

IES LM–78–20 is an industry accepted test standard that specifies a method for measuring lumen output in an integrating sphere. Specifically, the test procedure codified by this final rule references IES LM–9–20 for testing the performance of fluorescent lamps, which in turn references IES LM–78–20 for integrating sphere photometer calibration and measurements. Additionally, the test procedure codified by this final rule requires that when referencing IES LM–79–19, where IES LM–78–17 is referenced use IES LM–78–20.

IES LM–79–19 is an industry-accepted standard that describes methods for taking electrical and photometric measurements of SSL products. Specifically, the test procedure codified by this final rule references IES LM–79–19 for testing of CFLKs with SSL.

These test standards are all reasonably available from ANSI (*webstore.ansi.org*) or IES (*www.store.ies.org*).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on March 30, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 30, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

§ 429.33 [Amended]

■ 2. Amend § 429.33 by:
■ a. Removing ''other SSL lamps (not integrated LED lamps)'' and adding in its place ''consumer-replaceable SSL (not integrated LED lamps) and other SSL lamps that have an ANSI standard base and are not integrated LED lamps'' in paragraph (a)(3)(i)(F);
■ b. Removing ''integrated SSL circuitry'' and adding in its place ''non-consumer-replaceable SSL'' in paragraph (a)(3)(ii);
■ c. In paragraph (b)(2)(ii)(A):
■ i. Removing ''integrated solid-state lighting (SSL) circuitry'' and adding in its place ''non-consumer-replaceable SSL'' in paragraph (b)(2)(ii)(A); and
■ ii. Removing ''integrated SSL circuitry; other SSL products [not integrated LED lamp]'' and adding in its place ''non-consumer-replaceable SSL; consumer-replaceable SSL [not integrated LED lamps] and other SSL lamps that have an ANSI standard base and are not integrated LED lamps'' in paragraph (b)(2)(ii)(A); and
■ d. Removing ''integrated SSL circuitry'' and adding in its place ''non-consumer-replaceable SSL'' in paragraph (b)(3)(ii)(B).

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Amend § 430.3 by:
■ a. In paragraph (r)(2), removing the text ''and appendices V and V1 to subpart B'';
■ b. In paragraph (r)(4), removing the text ''appendix R'' and adding in its place the text ''appendices R and V'';
■ c. In paragraph (r)(12), removing the text ''appendix R'' and adding in its place the text ''appendices R and V'';
■ d. Removing paragraph (r)(15);
■ e. Redesignating paragraph (r)(16) as paragraph (r)(15) and adding new paragraph (r)(16);
■ f. In paragraph (r)(18), removing the text ''appendix R'' and adding in its place the text ''appendices R and V'';

■ g. In paragraph (r)(19), removing the text ''appendices V1 and'' and adding in its place the text ''appendix'';

■ h. Redesignating paragraphs (r)(21) through (23) as paragraphs (r)(22) through (24) and adding new paragraph (r)(21).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(r) * * *

(16) ANSI/IES LM–75–19 (''IES LM–75–19''), Approved Method: Guide to Goniophotometer Measurements and Types, and Photometric Coordinate Systems, ANSI-approved November 22, 2019; IBR approved for appendix V to subpart B.

* * * * *

(21) ANSI/IES LM–79–19 (''IES LM–79–19''), Approved Method: Optical and Electrical Measurements of Solid-State Lighting Products, ANSI-approved May 14, 2019; IBR approved for appendix V to subpart B.

* * * * *

■ 5. Amend § 430.23 by:

■ a. Removing paragraph (x)(1);

■ b. Redesignating paragraph (x)(2) as paragraph (x)(1);

■ c. Revising newly redesignated paragraph (x)(1)(v); and

■ d. Adding reserved paragraph (x)(2).

The revision and addition read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(x) * * *

(1) * * *

(v) For a ceiling fan light kit packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), packaged with consumer-replaceable SSL (not integrated LED lamps), packaged with non-consumer-replaceable SSL, or packaged with other SSL lamps that have an ANSI standard base (not integrated LED lamps), measure efficacy in accordance with section 3 of appendix V of this subpart for each lamp basic model, consumer-replaceable SSL basic model, or non-consumer-replaceable SSL basic model.

(2) [Reserved]

* * * * *

Appendix V to Subpart B of Part 430 [Removed]

■ 6. Remove appendix V to subpart B of part 430.

Appendix V1 to Subpart B of Part 430 [Redesignated as Appendix V to Subpart B of Part 430]

■ 7. Redesignate appendix V1 to subpart B of part 430 as appendix V to subpart B of part 430 and revise it to read as follows:

Appendix V to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits Packaged With Other Fluorescent Lamps (Not Compact Fluorescent Lamps or General Service Fluorescent Lamps), Packaged With Consumer-Replaceable SSL (Not Integrated LED Lamps), Packaged With Non-Consumer-Replaceable SSL, or Packaged With Other SSL Lamps That Have an ANSI Standard Base (Not Integrated LED Lamps)

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standards for ceiling fan light kits as those standards appeared in January 1, 2023 edition of 10 CFR parts 200–499. Specifically, before October 10, 2023 representations must be based upon results generated either under this appendix as codified on May 11, 2023 or under appendix V1 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2023. Any representations made on or after October 10, 2023 must be made based upon results generated using this appendix as codified on May 11, 2023.

0. Incorporation by Reference.

DOE incorporated by reference in § 430.3 the entire standard for: IES LM–9–20, IES LM–54–20, IES LM–75–19, IES LM–78–20, and IES LM–79–19; however, only enumerated provisions of IES LM–9–20 and IES LM–79–19 are applicable to this appendix as follows:

0.1 IES LM–9–20 as referenced by section 3 of this appendix

(a) Section 4.0 ''Ambient and Physical Conditions''.

(b) Section 5.0 ''Electrical Conditions''.

(c) Section 6.0 ''Lamp Test Procedures''.

(d) Section 7.0 ''Photometric Test Procedures''.0.2 IES LM–79–19 as referenced by section 3 of this appendix

(a) Section 4.0 ''Physical and Environmental Test Conditions''.

(b) Section 5.0 ''Electrical Test Conditions''.

(c) Section 6.0 ''Test Preparation''.

(d) Section 7.0 ''Total Luminous Flux and Integrated Optical Measurements''.

1. Scope

This appendix establishes the test requirements to measure the energy efficiency of all ceiling fan light kits (CFLKs) packaged with fluorescent lamps other than compact fluorescent lamps (CFLs) or general service fluorescent lamps (GSFLs), packaged with consumer-replaceable solid-state lighting (SSL) (not integrated light-emitting diode [LED] lamps), packaged with non-consumer-replaceable SSL, or packaged with SSL lamps that have an American National Standards Institute (ANSI) standard base (not integrated LED lamps).

2. Definitions

2.1. *CFLK with non-consumer-replaceable SSL* means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and a light source) that are not consumer replaceable, *i.e.,* a consumer cannot replace the light source and all components necessary for the starting and stable operation of the light source, without permanently altering the product and must replace the entire CFLK upon failure. Permanently altering the product constitutes the cutting of wires, use of a soldering iron, or damage to or destruction of the CFLK and does not constitute connecting or disconnecting wire nuts, fasteners or screws, or preserving the CFLK as it was sold.

2.2. *CFLK with consumer-replaceable SSL* means a CFLK with a non-ANSI-standard base that has an SSL light source, driver, heat sink, and intermediate circuitry (such as wiring between a driver and light source) that are consumer replaceable, *i.e.,* a consumer can replace the light source and all components necessary for the starting and stable operation of the light source, without permanently altering the product. Permanently altering the product constitutes the cutting of wires, use of a soldering iron, or damage to or destruction of the CFLK and does not constitute connecting or disconnecting wire nuts, fasteners or screws, or preserving the CFLK as it was sold.

2.3. *Covers* means materials used to diffuse or redirect light produced by an SSL light source in CFLKs with non-consumer-replaceable SSL.

2.4. *Other (non-CFL and non-GSFL) fluorescent lamp* means a low-pressure mercury electric-discharge lamp in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including but not limited to circline fluorescent lamps, and excluding any compact fluorescent lamp and any general service fluorescent lamp.

2.5. *Solid-State Lighting (SSL)* means technology where light is emitted from a solid object—a block of semiconductor—rather than from a filament or plasma, as in the case of incandescent and fluorescent lighting. This includes inorganic light-emitting diodes (LEDs) and organic light-emitting diodes (OLEDs).

3. Test Conditions and Measurements

For any CFLK that utilizes consumer replaceable lamps or consumer-replaceable SSL, measure the lamp efficacy of each basic model of lamp or SSL light source packaged with the CFLK. For any CFLK only with non-consumer-replaceable SSL, measure the luminaire efficacy of the CFLK. For any CFLK that includes consumer replaceable lamps or consumer-replaceable SSL and non-consumer-replaceable SSL, measure both the lamp efficacy of each basic model of lamp or consumer-replaceable SSL light source packaged with the CFLK and the luminaire efficacy of the CFLK with all consumer

replaceable lamps or consumer-replaceable SSL light sources removed. Take measurements at full light output. For each test, use the test procedures in the table in this section. CFLKs with non-consumer-replaceable SSL and consumer replaceable covers may be measured with their covers removed but must otherwise be measured according to the table in this section.

Lighting technology	Lamp or luminaire efficacy measured	Referenced test procedure
Other (non-CFL and non-GSFL) fluorescent lamps.	Lamp Efficacy	IES LM–9–20, sections 4–7 and corresponding subsections including references to IES LM–54–20 (lamp seasoning); IES–LM–78–20 (integrating sphere measurements).
CFLKs with consumer-replaceable SSL	Lamp Efficacy	IES LM–79–19, sections 4–7 and corresponding subsections. Where IES LM–78–17 and IES LM–75–01/R12 are referenced in these sections and corresponding subsections, use IES LM–78–20 (integrating sphere measurements) and IES LM–75–19 (goniophotometer measurements) instead.
CFLKs with non-consumer-replaceable SSL.	Luminaire Efficacy	IES LM–79–19, sections 4–7 and corresponding subsections. Where IES LM–78–17 and IES LM–75–01/R12 are referenced in these sections and corresponding subsections, use IES LM–78–20 (integrating sphere measurements) and IES LM–75–19 (goniophotometer measurements) instead.
Other SSL lamps that have an ANSI standard base and are not integrated LED lamps.	Lamp Efficacy	IES LM–79–19, sections 4–7 and corresponding subsections. Where IES LM–78–17 and IES LM–75–01/R12 are referenced in these sections and corresponding, use IES LM–78–20 (integrating sphere measurements) and IES LM–75–19 (goniophotometer measurements) instead.

■ 8. Amend § 430.32 by revising paragraph (s)(6) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(s) * * *

(6) Ceiling fan light kits manufactured on or after January 21, 2020 must be packaged with lamps to fill all sockets, and each basic model of lamp packaged with the basic model of CFLK, each basic model of consumer-replaceable SSL packaged with the basic model of CFLK, and each basic model of non-consumer-replaceable SSL in the CFLK basic model shall meet the requirements shown in paragraphs (s)(6)(i) and (ii) of this section:

Lumens [1]	Minimum required efficacy (lm/W)
(i) <120	50.
(ii) ≥120	$(74.0 - 29.42 \times 0.9983^{lumens})$.

[1] Use the lumen output for each basic model of lamp packaged with the basic model of CFLK, each basic model of consumer-replaceable SSL packaged with the basic model of CFLK, or each basic model of non-consumer-replaceable SSL in the CFLK basic model to determine the applicable standard.

* * * * *

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

RIN 3245–AH87

Affiliation and Lending Criteria for the SBA Business Loan Programs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending various regulations governing SBA's 7(a) Loan Program and 504 Loan Program, including regulations on use of proceeds for partial changes of ownership, lending criteria, loan conditions, reconsiderations, and affiliation standards, to expand access to capital to small businesses and drive economic recovery. The amendments to affiliation standards will also apply to the Microloan Program, Intermediary Lending Pilot Program, Surety Bond Guarantee Program, and the Disaster Loan programs (except for the COVID Economic Injury Disaster Loan (EIDL) Disaster Loan Program).

DATES: This rule is effective May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205–3645 or *Dianna.Seaborn@sba.gov.* The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

The mission of SBA is to ''aid, counsel, assist and protect the interests of small business concerns in order to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation.'' 15 U.S.C. 631(a). SBA accomplishes this mission, in part, through Capital Access programs that bridge the financing gap in the private market to help small businesses start and grow; and help businesses of all sizes to recover from disasters. 15 U.S.C. 636(a) and (b). SBA determined that changing conditions in the American economy, technological developments, and a constantly evolving small business community necessitate the need to revise regulations to improve program efficiency and the customer experience for the 7(a) and 504 Loan Programs. Additionally, SBA determined that revisions for similar purposes to SBA regulations on affiliation determinations should also apply to the Microloan Program, the Intermediary Lending Pilot Program (ILP Program), the Surety Bond Guarantee Program (SBG Program), and the Business Disaster Loan Programs, which consist of Physical Disaster Business Loans, Economic Injury Disaster Loans (EIDL), and Military Reservist Economic Injury Disaster Loans (MREIDL) (but do not include COVID EIDL Disaster Loans).

Accordingly, on October 26, 2022, SBA published a notice of proposed rulemaking with a request for comments in the **Federal Register** (87 FR 64724) to streamline and modernize the 7(a) and 504 Loan Program regulations setting forth use of proceeds regarding partial changes of ownership, lending criteria, hazard insurance requirements, and reconsiderations. Specifically, SBA is amending 13 CFR 120.130 on ''Restrictions on uses of proceeds''; 13 CFR 120.150 on ''What are SBA's lending criteria?''; 13 CFR 120.160 on ''Loan conditions''; 13 CFR 120.193 on ''Reconsideration after denial''; 13 CFR

120.202 on ''Restrictions on loans for changes of ownership''.

Regarding 13 CFR 120.130 on ''Restrictions on uses of proceeds'' and 13 CFR 120.202 ''Restrictions on loans for changes of ownership'' except for where an employee stock ownership plan or Qualified Employee Trust (ESOP) purchases a controlling interest (51 percent or more) in the employer small business from the current owner(s), SBA's current regulations do not permit 7(a) loan proceeds to be used for partial changes of ownership. Therefore, SBA is amending restrictions on borrowers using 7(a) loan proceeds to effect partial changes of ownership to assist small businesses and to expand pathways to ownership.

Regarding 13 CFR 120.150 on ''What are SBA's lending criteria?'' SBA stated that streamlining and modernizing regulations on lending criteria and loan conditions for its 7(a) and 504 Loan Programs can better position the Agency and participating lenders to meet the needs of America's small businesses, create jobs, assist with recovery from the COVID–19 pandemic, and grow the economy, fueling American entrepreneurship. SBA is amending this section to provide capital in the form of 7(a) and 504 loans to more small businesses.

Regarding 13 CFR 120.193 on ''Reconsideration after denial'' SBA is amending the process for reconsideration after denial of a loan application or loan modification request in its 7(a) and 504 Loan Programs to provide the Director, Office of Financial Assistance, with the authority to delegate decision making to designees. SBA is also amending the regulation to allow the Administrator, solely within their discretion, to review these matters and make the final agency decision on reconsideration. Such discretionary authority of the Administrator would not create additional rights of appeal on the part of an applicant not otherwise specified in SBA regulations.

Further, SBA is simplifying 13 CFR 121.301, which sets forth the principles for determining affiliation in the 7(a) Loan Program, 504 Loan Program, Microloan Program, ILP Program, SBG Program, and Business Disaster Loan Programs (except for the COVID EIDL Disaster Loan Program). Specifically, SBA is removing the provisions on affiliation arising from management and control, franchise or license agreements, and identity of interest and to streamline affiliation determinations based on ownership. SBA is streamlining the provisions on affiliation to remove paragraph (f)(5), affiliation based on franchise and license agreements. Because SBA is removing the principle of control of one entity over another from its affiliation consideration, this paragraph is no longer needed. Upon the effective date of this rule, SBA will no longer publish the SBA Franchise Directory. This final rule redefines affiliation for all these programs, thereby simplifying affiliation determinations.

II. Summary of Comments

SBA received 146 comments on the proposed rule. Of these, 51 comments were from lenders, 21 were from cooperatives, 19 were from individuals who were making personal comments, 13 were from nonprofit organizations that were not lenders or trade groups, 11 were from trade groups, eight were from individuals supporting a trade group or other entity's comments, and 23 were anonymous or did not indicate an organization type.

SBA received a total of 14 comments from six trade groups, six lenders or employees of lenders, and two comments from individuals or businesses objecting to the confluence of the proposed changes in the notice of proposed rulemaking in the **Federal Register** (87 FR 64724 October 26, 2022) to streamline and modernize the 7(a) and 504 Loan Program regulations, the notice of proposed rulemaking published in the **Federal Register** (87 FR 66964 November 7, 2022) to lift the moratorium on licensing new Small Business Lending Companies (SBLCs), to add a new type of entity called a Mission-Based SBLC, and to remove the requirement for a Loan Authorization (SBLC Proposed Rule), and SBA's announcement of an upcoming revision to the Standard Operating Procedures (SOP) 50 10, Lender and Development Company Loan Programs. The comments stated the confluence of these revisions are problematic as proposed because SBA would immediately invite additional non-federally regulated entities to participate as 7(a) Lenders without first testing whether the streamlining of provisions such as lending criteria and hazard insurance will have an adverse effect on SBA's loan portfolio. One trade group requested the Administrator to temporarily withdraw both proposed rules.

SBA received 54 comments requesting changes to SBA's regulations and procedures for loans to ESOPs and cooperatives. Many of these comments were based on a template letter that stated for loans to cooperatives, SBA should remove SBA's regulation at § 120.160, paragraph (a), which requires personal guarantees from holders of at least 20 percent ownership interest in the small business concern that receives SBA funding. SBA requires a personal guaranty from owners of 20 percent or more of the borrower as a prudent and reasonable risk mitigation measure. SBA applies the requirements for personal guarantees at § 120.160 to all SBA business loans unless otherwise prohibited by law. Because the Internal Revenue Service (IRS) prohibits ESOPs from guarantying a loan, SBA does not require ESOPs to provide guarantees for SBA loans. There is no legal prohibition on requiring a guaranty of repayment from a business organized as a cooperative. Further, eliminating the requirement for a guaranty of repayment for loans to cooperatives would unfairly transfer the burden of the increased risk from these loans to the rest of the SBA portfolio. Comments also requested that SBA eliminate the requirement for sellers to guaranty a loan made to a cooperative that is buying a business from the seller. The only time SBA requires a seller to provide a repayment guaranty is in a change of ownership when the seller will retain an ownership interest in the business after the sale. Under SBA's current rules, it is only possible for a seller to retain ownership in a business after a change of ownership when the purchaser is an ESOP or equivalent trust. SBA requires a personal guaranty from a seller that retains an ownership interest in the business after a change of ownership to prevent unjust enrichment to the selling owner such as when the selling owner personally benefits from the SBA loan proceeds and retains ownership in the business without providing any repayment guaranty on the loan. Changes to the personal guaranty requirements at 120.160 advanced by these comments are outside the scope of the changes in the proposed rule and will not be addressed in this final rule. Comments also requested that SBA reduce equity or equity injection requirements for loans to ESOPs and cooperatives. The proposed revisions to the equity requirements in § 120.150, ''What are SBA's lending criteria?'' are sufficient to provide SBA and lenders with the flexibility to underwrite loans to ESOPs and cooperatives in a reasonable and prudent manner, including determining what equity or equity injection requirements should be placed on a loan for risk mitigation. SBA will provide further guidance in its Loan Program Requirements.

SBA has addressed in detail the comments received on specific proposed regulatory changes within the section-by-section analysis below.

III. Section-by-Section Analysis

Section 120.130—Restrictions on Uses of Proceeds

Current § 120.130 details restrictions on uses of loan proceeds. Paragraph (g) refers to § 120.202 regarding restrictions on borrowers from using loan proceeds to purchase a portion of a business or another owner's interest in a business. Because SBA is revising § 120.202, as described below, to allow 7(a) loan proceeds to fund partial changes of ownership, SBA is also revising § 120.130, paragraph (g), to remove the reference to section 120.202 so that 7(a) loan proceeds may be used for partial changes of ownership. Because the revisions to § 120.130 are being made to support the revisions at § 120.202 that will allow partial changes of ownership, the comments on this section are discussed below in the section-by-section analysis for § 120.202.

Several comments stated that § 120.130(a) currently prohibits payments, distributions, or loans to associates (as defined in § 120.10) of the applicant (except for ordinary compensation for services rendered), and this paragraph would also need to be modified to permit payments, distributions, or loans to associates of the applicant to facilitate partial changes of ownership. SBA had already addressed the prohibition in § 120.130(a) that prohibits payments, distributions, or loans to associates of the applicant by the proposed revision to § 120.202, which, as proposed, would state: ''Notwithstanding § 120.130(a), a borrower may use 7(a) loan proceeds to purchase a portion of or the entirety of an owner's interest in a business, or a partial or full purchase of a business itself.'' However, the comments infer that there would be some confusion in interpreting the proposed revisions to §§ 120.130 and 120.202 regarding restrictions on uses of proceeds for partial changes of ownership. Accordingly, SBA is revising § 120.130, paragraph (a) for clarity to state that payments, distributions, or loans to associates of the applicant are restricted except for ordinary compensation for services rendered or to facilitate changes of ownership in accordance with § 120.202. SBA is revising § 120.202 as stated below. SBA is also revising § 120.130(g) to remove the reference to section 120.202 to permit partial changes of ownership to assist small businesses and provide a path of ownership for employees.

Section 120.150—What are SBA's lending criteria?

Current § 120.150 states that SBA's lending criteria for 7(a) and 504 loans requires that the applicant (including the Operating Company) must be creditworthy; loans must be so sound as to reasonably assure repayment; and SBA will consider nine specific factors in its lending criteria. The factors consist of: (a) Character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its associates, and guarantors; (b) Experience and depth of management; (c) Strength of the business; (d) Past earnings, projected cash flow, and future prospects; (e) Ability to repay the loan with earnings from the business; (f) Sufficient invested equity to operate on a sound financial basis; (g) Potential for long-term success; (h) Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and (i) The effect any affiliates (as defined in part 121 of this chapter) may have on the ultimate repayment ability of the applicant. SBA is revising this regulation as discussed below. In revising § 120.150, SBA retains the requirement that the applicant (including an Operating Company) must be creditworthy and that loans must be so sound as to reasonably assure repayment, consistent with section 7(a)(6) of the Small Business Act.

SBA is streamlining its lending criteria by reducing the number of factors that are required to be applied in determining creditworthiness and reasonable assurance of repayment. SBA is revising this section to state that, as part of considering whether the applicant (including an Operating Company) is creditworthy and the loan is so sound as to reasonably assure repayment, SBA, Lenders (as defined in § 120.10), and Certified Development Companies (CDC) may consider (as applicable) any of the three specific criteria individually or any combination of the three specific criteria when approving loans: (a) The credit score or credit history of the applicant (and the Operating Company, if applicable), its associates and any guarantors; (b) The earnings or cashflow of the applicant; or (c) Where applicable, any equity or collateral of the applicant.

First, SBA is incorporating into the regulation a new requirement that SBA Lenders must use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. In using such appropriate and prudent processes and procedures, SBA Lenders will be required to underwrite SBA loans in the same manner in which the SBA Lenders underwrite their similarly-sized, non-SBA guaranteed commercial loans.

SBA received 48 comments on this amendment. Twenty-seven of the comments supported the proposed changes as-is or that expressed support and requested modifications; twenty comments expressed opposition; and one comment sought clarification on the changes without offering a position of support or opposition. Some comments, including one from a trade group, expressed concern that, where SBA requires SBA Lenders to underwrite SBA loans in the same manner in which they underwrite their similarly-sized, non-SBA guaranteed loans, SBA Supervised Lenders and CDCs will not have processes and procedures for underwriting non-SBA guaranteed commercial loans because they only make SBA guaranteed loans. The trade group expressed concern that, if the SBLC Proposed Rule is adopted, the number of SBA Supervised Lenders could be greatly expanded at the same time SBA's requirements for a consistent underwriting framework are abandoned. The trade group expressed concern that SBA Supervised Lenders will be able to decide individual loan applications based completely on their own credit policies and practices that would result in the deterioration of the 7(a) loan portfolio's credit quality and adverse impacts to borrower and 7(a) Lender fees while possibly creating the need for Congress to provide appropriations to cover the increased costs of 7(a) loans. Other comments argued that allowing SBA Supervised Lenders and CDCs that only make SBA-guaranteed loans to set their own policies would create an unfair playing field for these lenders over federally-regulated lenders that must apply credit policies in accordance with their federal regulator's standards. SBA Supervised Lenders and CDCs (as defined in 13 CFR 120.10) that do not make non-SBA guaranteed commercial loans will continue as they do now, to submit their credit policies, including credit scoring models, for review by SBA prior to approval to participate in the program(s), during lender oversight and review processes, when proposing any changes to their policies or practices, in accordance with Loan Program Requirements as defined in 13 CFR part 120. SBA may at its discretion review the policies of any participating SBA Lender to ensure appropriate use of the policies and procedures.

Some comments argued against the elimination of the review of ''character and reputation'' in lending criteria, fearing past bankruptcies will not be adequately captured in underwriting, or that people with a past background of criminal behavior are likely to lapse back into criminal activities that could place the loan repayment at risk. Some comments expressed concern that an error by a lender or credit reporting agency could unfairly negatively impact an individual's or entity's credit history, and without consideration of character or reputation, the individual or entity may be denied a loan that they would have otherwise received. For SBA, ''character'' is used to determine whether an individual may have past criminal history or activities that may pose a risk to repayment ability. However, the lending industry uses character and credit history interchangeably, which creates confusion as to which factor is more relevant. In order to provide an objective rationale for credit review, the credit history has clearer meaning and relevance in loan underwriting. The use of reputational risk is subject to individual interpretation where an objective measure such as credit history, as a component of loan underwriting and credit review results in less variability. SBA's regulations set a minimum standard, beyond which SBA Lenders may take additional steps in underwriting a loan, including considering mitigating factors for negative credit histories, such as a reporting error by a credit reporting agency. SBA currently has a regulation at § 120.110 that addresses criminal background. Additionally, SBA Lenders may continue to make their own credit decisions based on the criminal background of an applicant and its associates.

Some comments, including one from a trade group, opposed allowing lenders to use their own business credit scoring models for 7(a) loans of all sizes. However, SBA will only permit those business credit scoring models that are predictive of the borrower's ability to repay the loan at the proposed loan sizes, and SBA Lenders may continue to underwrite loans without using credit scoring models. Additionally, SBA will provide guidance in Loan Program Requirements stating the maximum loan sizes that may be underwritten using credit scoring and what other credit factors must be addressed in addition to documenting a satisfactory credit score.

One trade group and several comments expressed concern that SBA may impose a minimum credit score requirement and argued that traditional underwriting can overcome the reasons that an applicant or individual may have a low credit score. Other comments stated that lenders who continue to fully underwrite their loans will be on an uneven playing ground versus those lenders that rely on credit scoring models. These commenters stated that traditional comprehensive credit underwriting is more reliable than credit scoring models. Some of the comments in support of the revisions stated the proposed rule will allow SBA to fully leverage the process, skillset and experience of participating lenders without constraining them with SBA-specific lending criteria and will align lender processes for guaranteed and non-guaranteed loans. SBA did not propose to include a requirement for a minimum credit score in the proposed rule.

SBA has historically provided lenders with an alternative underwriting path that may be used to fully underwrite a loan where the applicant has an unacceptable credit score, see for example, the 7(a) Small Loan delivery method and the Community Advantage Pilot Program. SBA considered the comments regarding traditional credit underwriting being more reliable; however, technological advances and modeling are providing more accurate methods of calculating risk, and lenders employing these measures are better able to provide small businesses access to capital, especially those businesses owned by underserved communities. The revisions provide options to SBA Lenders that incorporate the use of modern underwriting tools currently employed in the lending industry.

Section 120.160—Loan Conditions

Current § 120.160(c) states that for 7(a) and 504 loans SBA requires hazard insurance on all collateral and does not distinguish this requirement by loan size. SBA has determined that the hazard insurance requirement can be burdensome for the smallest businesses borrowing the smallest amount of money. SBA proposed to modify the requirement for hazard insurance for all 7(a) and 504 loans $150,000 and under to create flexibility for SBA Lenders. SBA proposed to include guidance in the Loan Program Requirements for loans of $150,000 or under that SBA Lenders must follow the hazard insurance policies and procedures they have established and implemented for their similarly-sized, non-SBA-guaranteed commercial loans. For all loans greater than $150,000, SBA stated it will continue to require hazard insurance on all collateral. SBA Lenders must continue ensuring that borrowers obtain flood insurance per § 120.170 when required under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Pub. L. 93–234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)).

SBA received 43 comments on the proposed revision. Thirty-eight comments supported the proposed change as-is or supported the change with some modifications, and five comments opposed the proposed change. Some comments stated that regardless of loan amount, hazard insurance should be required to mitigate risk for all loans, or for all loans where real estate or improved real estate is collateral, or for all loans where equipment is being purchased with loan proceeds. Other comments stated that $150,000 as a threshold is too low, and suggested the threshold should be set at $500,000, because even with hazard insurance in place, the lender and/or SBA's recovery on assets in this dollar range is minimal after the costs of liquidation and litigation are considered. SBA agrees with the comments that state the threshold for requiring hazard insurance should be set at a higher level. Therefore, SBA is revising the rule to require hazard insurance for collateral on 7(a) loans greater than $500,000 and 504 projects greater than $500,000. SBA will include guidance in the Loan Program Requirements for loans of $500,000 or under that SBA Lenders must follow the hazard insurance policies and procedures they have established and implemented for their similarly sized, non-SBA-guaranteed commercial loans.

Some comments expressed concern that SBA would not honor a guaranty purchase request if an event such as a fire caused a borrower to default on a loan. SBA would not cite lack of hazard insurance as a reason to deny a guaranty purchase request if the SBA Lender was acting in accordance with Loan Program Requirements. For example, in the scenario where a loan is $500,000 or under and the use of proceeds is for working capital, and the lender's policy for similarly-sized, non-SBA guaranteed loans is that it does not require hazard insurance for working capital loans, if a calamitous event such as a fire occurs and the borrower defaults on the loan because it is unable to resume business due to a lack of hazard insurance, SBA would not cite lack of hazard insurance as a reason to deny the guaranty purchase request. Other comments supported requiring lenders to follow their own hazard insurance policy on similarly-sized, non-SBA guaranteed commercial loans, with one comment stating the revision will align lender processes for guaranteed and non-

guaranteed loans. For the reasons stated above, SBA is moving forward with the rule applying the $500,000 threshold.

Some comments, including one from a trade group representing hazard insurance providers, requested that SBA clarify whether the amendment would apply to loans that are already in existence and whether lenders could apply the amendment to a loan once the outstanding balance is paid down to the $150,000 threshold. SBA will provide further guidance in its Loan Program Requirements. Some of these comments requested that SBA make further changes to its requirements for flood insurance, which is outside the scope of the rule.

Section 120.193—Reconsideration After Denial

Under current § 120.193, the process for reconsideration after denial of a loan application or loan modification request in the 7(a) and 504 Loan Programs states that final reconsideration is made by the Director of the Office of Financial Assistance. To facilitate fair and expeditious reconsiderations, SBA is revising this regulation to state that the Director of the Office of Financial Assistance or the Director's designee(s) may make the final decision on reconsideration. From time to time, SBA may change the designee(s) and would do so in accordance with published Delegations of Authority. Further, SBA is revising this regulation to provide the Administrator with the authority, solely within the Administrator's discretion, to review a reconsideration request and make the final Agency decision. Finally, SBA is revising this regulation to state that the Administrator's discretionary authority does not create any additional appeal rights for the applicant that are not otherwise specified in regulation.

SBA received 34 comments on the proposed rule change. Twenty-one comments supported the proposed rule as-is, and eight comments supported the rule but requested modifications. Most of the comments requesting modification supported allowing the Director to designate a career employee (such as the Chiefs of 7(a) or 504 Loan Policy) to make the final Agency decision but opposed allowing the Administrator to make the final Agency decision for fear that this would politicize decision making. Five comments opposed any delegation because they stated the decision-making authority should stay with the Director. Other comments stated SBA should expand the delegation of authority to include servicing actions. For the reasons stated above, SBA is moving forward with the rule to permit the delegation of Authorities.

Section 120.202—Restrictions on Loans for Changes of Ownership

Current § 120.202 restricts borrowers from using 7(a) loan proceeds to purchase a portion of a business or a portion of another owner's interest. SBA is revising this section to allow borrowers to use 7(a) loan proceeds to fund partial changes of ownership in addition to full changes of ownership. The revision will allow a borrower to purchase a portion of the business or a portion of an owner's interest in a business, or to purchase the entire business or an owner's entire interest. A borrower could also purchase the partial or entire interests of multiple owners. This revision will allow borrowers to use 7(a) loan proceeds to fund partial changes of ownership and will help provide employees a path to ownership.

SBA received 48 comments regarding the proposed changes to §§ 120.130 and 120.202 to permit partial changes of ownership, including 15 comments supporting the proposal as-is and another 17 comments, including one from a trade group, supporting the proposal and requesting that the 504 Loan Program also be permitted to fund partial changes of ownership. The 504 Loan Program only permits loans for a change of ownership when the 504 project finances only the costs associated with eligible long-term fixed assets. As stated in §§ 120.801(c) and 120.934, generally, permanent financing of the Project consists of a loan made with the proceeds of a CDC Debenture for up to 40 percent of the Project costs collateralized by a second lien on the Project Property, and a Third Party Loan with a first lien position. The debentures are then sold to investors that expect the debenture to be secured by a second lien position on collateral. The success of the 504 Loan Program is dependent on investors being willing to purchase these debentures. Loans for partial changes of ownership will generally have collateral and collateral lien positions that are incompatible with the debenture sale process. Amending the 504 Loan Program to permit 504 loans to fund partial changes of ownership is outside the scope of the rule.

One trade group appeared to be neutral as to whether SBA should implement the proposed change, but stated if SBA moves forward with this proposal, SBA should state clearly that 7(a) funds may not be used for investment purposes. It should be noted that SBA already has a regulation at § 120.130(d) that states SBA will not authorize nor may a borrower use loan proceeds for the purpose (including the replacement of funds used for any such purpose) of investments in real or personal property acquired and held primarily for sale, lease, or investment (except for a loan to an Eligible Passive Company or to a small contractor under § 120.310).

The remaining 15 comments opposed the amendment. One trade group stated the principle underlying the current prohibition against distributing proceeds of a 7(a) loan to an associate of the applicant business protects against sham transactions where an individual personally receives 7(a) loan proceeds while continuing to play a key role in the operations of the business. One comment expressed opposition to the rule, stating that a loan for the purpose of a partial change of ownership is by its very nature a personal loan, not a business loan. One of the examples provided in one of the comments was a business with three owners, where one of the owners wishes to retire and only one of the remaining owners wishes to purchase the outgoing owner's portion of the business. The comment stated there is no benefit to the third owner that was remaining on as owner of the business but that was not purchasing the outgoing owner's portion of the business. However, since SBA's Standard Operating Procedure 50 10 6 went into effect on October 1, 2020, SBA has permitted one or more current owners to purchase the entire interest of another current owner, resulting in 100 percent ownership of the business by the remaining owners; in this type of change of ownership, the small business and the individual owner(s) who is acquiring the ownership interest must be co-borrowers while the remaining owner(s) remain unaffected. The same comment expressed the concern that the lien may not be properly perfected. SBA's Loan Program Requirements currently address adequacy of collateral, including loans for changes of ownership between existing owners, working capital, purchase of stock, and intangible assets such as good will. SBA will provide guidance on adequacy of collateral for loans for partial changes of ownership in its Loan Program Requirements and lender outreach activities. The same comment provided alternative solutions for ensuring the success of changes of ownership, including some already under consideration in the proposed rule, such as allowing greater flexibility in equity requirements in § 120.150.

Several comments requested clarifying information that SBA will include in Loan Program Requirements

and in lender outreach, including training events. For example, several comments asked whether sellers would be allowed to remain as employees in a complete or partial change of ownership. Some of these comments stated that allowing the seller to remain in place, either as a part owner or employee, will allow the seller to provide guidance and expertise to ensure the success of the business. For a complete change of ownership, SBA's Loan Program Requirements currently permit the seller to remain as an officer, director, stockholder or Key Employee of the business for a period not to exceed 12 months, and SBA also currently permits a seller to remain as an employee indefinitely in the rare circumstance when the seller will not be an officer, director, stockholder or Key Employee of the business. For partial changes of ownership, SBA intends to allow the selling owner to remain as an owner and involved in the day to day business, including as an officer, director, Key Employee, or employee.

Some comments inquired whether the partial change of ownership would be treated similarly to a stock purchase transaction where both the individual purchasing ownership and the business entity are required to be co-borrowers on the loan. SBA will require the business to be the borrower or co-borrower with any entity purchasing a partial interest. SBA will provide further guidance on these and other questions in its Loan Program Requirements and lender outreach activities.

As described above, SBA received comments on section 120.130(a), which currently prohibits payments, distributions, or loans to associates of the applicant (except for ordinary compensation for services rendered). These comments pointed out that in order to facilitate the use of 7(a) loan proceeds to be used for partial changes of ownership, section 120.130 paragraph (a) would also need to be modified to permit payments, distributions, or loans to associates of the applicant. SBA had already addressed the prohibition in § 120.130(a) that prohibits payments, distributions, or loans to associates of the applicant by the proposed revision to § 120.202, which, as proposed, would state: ''Notwithstanding § 120.130(a), a Borrower may use 7(a) loan proceeds to purchase a portion of or the entirety of an owner's interest in a business, or a partial or full purchase of a business itself.'' However, the comments make it clear that there would be some confusion in interpreting the proposed revisions to §§ 120.130 and 120.202 regarding restrictions on uses of proceeds for partial changes of ownership. Accordingly, SBA is revising § 120.130, paragraph (a) for clarity as stated above, and is revising the proposed revision to § 120.202 to delete the introductory phrase ''Notwithstanding § 120.130(a)''.

Section 121.301—What size standards and affiliation principles are applicable to financial assistance programs?

Section 121.301 states the size standards and affiliation principles that are applicable to SBA's financial assistance programs. Paragraph (f) details how affiliation principles are applied for the 7(a) Loan Program, the 504 Loan Program, the Microloan Program, the ILP Program, the Business Disaster Loan Programs (except for the COVID EIDL Disaster Loan Program),[1] and the SBG Program. This paragraph currently has seven sub-paragraphs, each of which details a separate affiliation principle that must be applied to the applicant and other entities to determine whether the entities are affiliated. The determination of affiliation is necessary to ensure that an applicant is ''small'' for purposes of eligibility for SBA financial assistance and to ensure that the applicant (including affiliates) does not exceed the maximum guaranty amount available. Currently, paragraphs (f)(1) through (f)(7) consider: (1) affiliation based on ownership, including the principle of control of one entity over another; (2) affiliation arising under stock options, convertible securities, and agreements to merge, including the principle of control of one entity over another; (3) affiliation based on management, including the principle of control of one entity over another; (4) affiliation based on identity of interest between close relatives; (5) affiliation based on franchise and license agreements, including the principle of control of one entity over another; (6) determining the concern's size; and (7) exceptions to affiliation.

SBA is revising § 121.301 affiliation provisions to simplify the program requirements, streamline the application process for SBA's programs, and facilitate the review of such applications. SBA is specifically removing the principle of control of one entity over another as a separate basis for finding affiliation because the concept of control as it exists requires understanding and expert consideration of business entity relationships well beyond what is owned by the applicant business or its owners. These considerations are complex and require judgement calls that confuse and unnecessarily burden small business applicants and lenders, and ultimately result in inconsistent application of this concept. For example, determining whether an entity has control over another requires in-depth analyses of the contractual relationships an applicant may have, including relationships established by franchise, license, and management agreements deemed necessary and appropriate by an independent small business owner to operate. The determination of whether one or more managers hired to assist the applicant small business have control over the business, and further requiring review of the business type and business ownership of family members who may be deemed affiliates based on NAICS code and proximity to the applicant increases costs, delays application processing, and/or prevents an otherwise eligible small business from receiving support. SBA instead believes that affiliation based on ownership is the customary basis for considering who is deemed to control a business. Accordingly, SBA has determined that issues of control and familial relationships as separate bases for finding affiliation are not necessary.

SBA is revising § 121.301 to add an introductory paragraph at the beginning to include the Small Business Act definition of a small business concern as one which is independently owned and operated, and which is not dominant in its field of operation. SBA interprets this statutory definition to require, in certain circumstances, the inclusion of other entities (''Affiliates'') owned by the applicant or an owner of the applicant in determining the size of the applicant. SBA is revising § 121.301(f)(1), ''Ownership,'' to remove the principle of control of one entity over another absent ownership over that entity when determining affiliation. SBA is expanding upon the definition of ''ownership'' under paragraph (f)(1) to clarify the thresholds of ownership at which SBA considers an applicant to be affiliated with an individual or another business. SBA is also clarifying that certain instances of affiliation by ownership will only arise if the applicant and another business operate in the same three-digit NAICS subsector to restrict affiliates to businesses in the same field. Paragraph (f)(1)(i) will state that businesses in which the applicant is a majority owner are affiliates of the applicant. Paragraph (f)(1)(ii) describes affiliation with businesses that own a majority of the applicant as well as

[1] The affiliation principles for the COVID EIDL Disaster Loan Program are contained in paragraph (g) of Section 121.301.

businesses in the same three-digit NAICS subsector that are majority-owned by the applicant's owner. Paragraph (f)(1)(iii) describes affiliation with another business when the applicant and the other business are both majority-owned by the same individual and operate in the same three-digit NAICS subsector. Paragraph (f)(1)(iv) describes a 20 percent threshold of ownership for affiliation with the applicant when the applicant does not have a majority owner if a 20 percent owner also operates in the same three-digit NAICS subsector as the applicant. Paragraph (f)(1)(v) will state that if the applicant does not have a majority owner and an individual owns 20 percent or more of the applicant, businesses that are majority-owned by that owner and operate in the same three-digit NAICS subsector will be affiliates of the applicant. Paragraph (f)(1)(vi) will state that ownership interests of spouses and minor children will be combined when determining ownership interest (as interests may be held in trust by parents for minors). Finally, SBA is revising Paragraph (f)(1)(vii) to state that SBA will analyze the pro rata ownership of entities to determine affiliation and provide an example of the combined interest of an individual and an entity that is wholly-owned by the same individual.

Because SBA is revising its regulation generally by removing the principle of control of one entity over another as a separate basis for finding affiliation, SBA is also revising § 121.301(f)(2), ''Stock options, convertible securities, and agreements to merge,'' paragraphs (f)(2)(i) and (iv). Where paragraph (f)(2)(i) currently states that SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern, the revised paragraph (f)(2)(i) will state that, for purposes of that paragraph, the items will have a present effect on ownership of the entity. SBA is revising paragraph (f)(2)(iv) by deleting the first sentence where SBA currently states SBA will consider whether an individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA is removing the first sentence of paragraph (f)(2)(iv) because it is unnecessary; the remaining sentence of the paragraph clearly states that SBA will not give present effect to the ability of an entity to divest in the future to avoid a finding of ownership.

SBA is removing paragraph (f)(3), affiliation based on management, because SBA is revising its regulation generally by removing the principle of control of one entity over another without ownership from consideration of affiliation. SBA believes it should not interfere in a business owner's right to enter into a service agreement with a management company. The decision to hire a management company is the sole responsibility of the independent business owner(s).

SBA is also removing paragraph (f)(4), affiliation based on identity of interest, because SBA believes it is inherently unfair and inappropriate to require close relatives that do not have an ownership interest in the applicant to provide financial statements for review by a lender and by SBA in determining the size of the applicant business. For example, the current rule requires a sole proprietor who is requesting an SBA direct or guaranteed loan to provide their sibling's business's financial statements for review when the sibling is in the same or similar industry in the same geographic area. SBA believes this requirement imposes a chilling effect on applicants that may be forced to consider alternative predatory lending sources because relatives bear no legal responsibility to disclose their business financial statements for transactions in which they have no ownership interest. However, as stated above, SBA is combining the ownership interests of spouses and minor children when determining affiliation by ownership.

SBA is removing paragraph (f)(5), affiliation based on franchise and license agreements. Because SBA is removing the principle of control of one entity over another from its affiliation consideration, this paragraph is no longer needed. Upon the effective date of this rule, SBA will no longer publish the SBA Franchise Directory.

As is the requirement for all loans, SBA Lenders will continue to be required to examine Franchised businesses for affiliation based on ownership. For example, when lending to a Franchised business, the SBA Lender must determine who owns the applicant business and any businesses the applicant owns in accordance with these regulations. However, neither the SBA Lender nor SBA will review the applicant Franchised business for affiliation with other entities beyond ownership; the applicant business will not be considered affiliated with the Franchisor or other Franchised businesses except by ownership.

SBA received 54 comments on the proposed revisions of § 121.301, paragraph (f). Twelve comments expressed overall support for the proposed rule. Thirty-four comments requested modifications to the proposed rule, with the most frequent comment expressing opposition to no longer publishing an SBA Franchise Directory. The remaining eight comments expressed general opposition.

One comment expressed support of all proposed affiliation changes, but asked how lenders would determine if a business is dominant in its field of operation. This comment is referencing the introductory paragraph that SBA is adding to § 121.301 that includes the Small Business Act definition of a small business concern as one which is independently owned and operated, and not dominant in its field of operation. This introductory paragraph was added to help frame the requirements at § 121.301(f). SBA interprets the statutory definition of a small business concern as requiring, in certain circumstances, the inclusion of other entities known as Affiliates that are owned by the applicant or an owner of the applicant in determining the size of the applicant.

Several comments stated support of the overall revisions to § 121.301 but objected to the inclusion of NAICS codes in the proposed rule for § 121.301(f)(1)(ii) through (v). One comment stated that SBA Lenders use affiliation as a guide to determine which entities to analyze for credit purposes and that removing industries outside of an applicant's NAICs code will skew the SBA Lender's analysis. However, SBA provides the criteria for lenders to underwrite loans in § 120.150. SBA Lenders have historically and will continue to be required to follow the regulation at § 120.150 when analyzing a loan for credit purposes.

A trade group expressed concerns that the proposed amendments may result in larger, more complex, and more sophisticated business structures qualifying for multiple SBA-guaranteed loans. The trade group stated that it does not oppose the proposed change regarding ownership thresholds. However, the trade group also stated it does not concur with removing control as part of the consideration of whether two entities are affiliated. The comment stated the existing regulatory requirements for control should continue because they believe both common ownership and common control are essential factors in determining whether a small business operates on an independent basis.

Regarding the proposed change to paragraph (f)(1)(vii), one comment stated that when multiple business entities own an applicant business, and

when the entity owners are owned by entity owners, it can be difficult to trace back to the natural person to determine percentage of ownership. Currently, SBA requires this disclosure of the applicant owners to identify which owners are required under the 20 percent ownership rule to guarantee a loan. The inclusion of this information in the Final Rule merely codifies what is currently a program requirement. The vast majority of SBA loans are made to businesses with a simple ownership structure, and the existence of a very small percentage of applicants with a complex ownership structure as compared to SBA's overall business loan portfolio is not a compelling reason to remove the requirement from this final rule.

One comment stated that the revisions will cause all Eligible Passive Companies (EPCs) and Operating Companies (OCs) to be unaffiliated. While the ownership of an EPC may be different from the OC, the EPC's sole purpose is to hold assets for the benefit of an eligible OC that is the qualifying entity on which cash flow and repayment of the loan is based. The OC is required to be a co-borrower or guarantor on any loan to an EPC.

Regarding the proposed change to paragraph (f)(3), affiliation based on management, SBA received ten comments, with six comments supporting the change as-is, three comments opposing the change, and one comment requesting clarification. Those that opposed the change, including a trade group, stated that this would allow SBA loan proceeds to fund investors that would passively manage businesses. However, as stated above, SBA already has a regulatory prohibition on funding investors at § 120.130, which states SBA will not authorize nor may a borrower use loan proceeds for the purposes (including the replacement of funds used for any such purpose) of investments in real or personal property acquired and held primarily for sale, lease, or investment.

Regarding the proposed change at § 121.301(f)(4), affiliation based on identity of interest, there was nearly universal support for this change, except for one comment that opposed the proposed revision, stating repeal of the identity of interest rule is an overcompensation by SBA that will open the program to abuse by unscrupulous borrowers and unwitting lenders. SBA does not agree with this concern.

Most of the comments that opposed the revisions to § 121.301 were focused on the removal of paragraph(f)(5), affiliation based on franchise and license agreements and specifically opposed SBA's intention to no longer publish an SBA Franchise Directory while requiring SBA Lenders to retain the responsibility for ensuring that the applicant meets all Loan Program Requirements, including but not limited to obtaining proper lien position on collateral and ensuring the applicant does not have discriminatory hiring practices. Of the 53 comments that directly addressed the proposed changes to § 121.301(f)(5), only four comments supported the proposal as-is with the remainder expressing opposition to the proposed change mainly on the grounds that they opposed discontinuance of an SBA Franchise Directory.

The general concern was that lenders would be required to determine franchise eligibility. If SBA were to discontinue publishing a franchise directory without modifying the current affiliation rules, SBA agrees that SBA would be transferring the responsibility for determining affiliation based on control to lenders. However, the comments did not take into consideration the fact that SBA is removing as part of this rule the concept of affiliation based on control, including control by a Franchisor of a franchisee's business. In point of fact, as a result of this rule, SBA will update Standard Operating Procedure 50 10, Lender and Development Company Loan Programs, by deleting Part 2, Section A, Chapter 1, Paragraph D. 6, Affiliation Based on Franchise, License, Dealer, Jobber, and Similar Agreements, and eliminate SBA's Addendum to Franchise Agreement and its process identified therein. SBA has determined that franchise business models would not be made ineligible for SBA business loans based on § 120.110, which states the businesses that are ineligible for SBA business loans. For example, ineligible businesses include, among others, non-profit organizations, life insurance companies, government entities, speculative businesses (such as wildcatting), use of proceeds for stock and real estate speculation, passive businesses, and prurient businesses.

SBA Lenders must evaluate all applicants for eligibility and must ensure proper lien position on all loans, regardless of whether the applicant is a franchise or non-franchise business. Under the current rules, if SBA determines the franchisor exercises excess control over the franchisee, SBA will consider the franchisor and franchisee to be affiliated, which in most cases would mean the applicant would not be eligible for an SBA loan because it would not meet SBA's size standards. The purpose for publishing an SBA Franchise Directory was to prevent SBA Lenders and SBA from repeatedly reviewing the same franchise documents for the issue of excessive control. Because SBA was already reviewing the franchise documents for the issue of excessive control, SBA also reviewed the franchise documents for other business model eligibility requirements that apply to all applicants, including non-franchisee applicants, such as non-discriminatory hiring practices and providing the applicant purchaser the right to encumber the applicant's property with liens. These revisions remove the principle of control of one entity over another from consideration of affiliation; therefore, the mere fact that an applicant may be a franchisee is not in itself a reason that would render the applicant ineligible for an SBA loan, and thus there is no longer a compelling reason to maintain the SBA Franchise Directory. Additionally, the mere fact that a franchise is listed on the SBA Franchise Directory does not, under current policies nor under the proposed policies, relieve the SBA Lender from determining whether the applicant meets all eligibility and other Loan Program Requirements, including but not limited to; certifying that the applicant does not have the ability to obtain some or all of the requested loan funds on reasonable terms from non-Federal, non-State, or non-local government sources, ensuring that applicants are U.S. citizens or Legal Permanent Residents and that the applicant business is located in the United States, obtaining personal and corporate guaranties, confirming that the applicant business has the ability to repay the loan through cash flow of the business, has eligible uses of proceeds, verifying financial information, obtaining proper collateral and lien position, determining whether there is a direct or indirect impact on historic properties, compliance with environmental policies and procedures, and closing the loan in accordance with SBA program requirements.

One comment stated that SBA's review of franchise documents for excess control by the franchisor has led to indirect benefits for franchisees, which ''resulted in significant improvements in franchise lending'' providing greater assurance that the franchisee has the right to profit from their efforts and that the franchisor would not impose objectionable terms such as approvals on changes of ownership, forced sale of assets, restrictive covenants on real estate, and control of employees. While SBA

appreciates this perceived indirect benefit, SBA maintains that it is solely an applicant's business decision whether it wishes to operate as a franchise or non-franchise business. All purchase agreements, even purchase agreements of non-franchise businesses, may potentially include these terms that the comment describes as objectionable, and it is incumbent on all parties to fully understand the terms of any contract they sign. Further, SBA does not have the statutory authority to act as a regulator of franchises, only guarantees a small percentage of loans to franchisees relative to the number of franchise businesses that are started and operate in the U.S., and only uses the Federal Trade Commission definition of franchise in SBA's policies and procedures. For the reasons stated above, SBA is moving forward with the rule as proposed.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C., Ch. 35), the Congressional Review Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is a ''significant regulatory action'' under Executive Order 12866. SBA performed a comprehensive Regulatory Impact Analysis in the proposed rule for the public's information. Because SBA is not substantially changing any of the proposed amendments, the final analysis is unchanged and is synopsized below. Each section begins with a core question.

A. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

SBA performed a comprehensive cost benefit analysis in the proposed rule. SBA is moving forward with only minor adjustments that will not have a significant impact on the cost benefit analysis that was published in the proposed rule; therefore, the cost benefit analysis is updated where appropriate or synopsized below.

The Agency believes it needs to streamline and reduce regulatory burdens to facilitate robust participation in the business loan programs that assist small and underserved U.S. businesses and the disaster loan programs that assist businesses of all sizes with recovery from disasters.

Regarding modernization of lending criteria, as a result of the emergency lending programs mandated to address economic impacts of the pandemic, SBA significantly leveraged the use of technology in loan delivery to capture efficiencies that can be applied across programs to increase access and lower costs for both participating lenders and the public. SBA also understands that lenders are currently leveraging data analytics tools and machine learning modelling in their conventional lending criteria models, particularly for small dollar loans, and that by modernizing SBA's lending criteria to match lending practices already being implemented by its participating lenders, SBA will encourage more lender participation in its programs. For these reasons, among others, SBA is moving forward with the changes to SBA's lending criteria rules at 13 CFR 120.150.

By dispensing with the requirement for hazard insurance for all 7(a) and 504 loans of $500,000 or less, SBA will eliminate a burdensome regulatory requirement for small loans while providing SBA Lenders with the flexibility to use their own policies for similarly-sized non-SBA guaranteed loans regarding hazard insurance on these loans.

By permitting the Director, Office of Financial Assistance, to delegate reconsideration requests to a designee, SBA will facilitate fair and expeditious review of reconsideration requests and provide finality to applicants that are in the process of making important financial decisions.

SBA is revising its affiliation regulations in response to continuing requests by SBA's participating lenders and the public. SBA believes that revising its affiliation regulations will result in expansion of credit to those who cannot obtain credit elsewhere and increased understanding of and compliance with program rules while decreasing time spent reviewing an applicant for eligibility.

There is also a need for SBA to address financing for changes of ownership. Orderly transitions of business ownership are beneficial both to the small business and its employees. Employees acquiring partial ownership interest in small businesses assists with transitions of ownership, especially when there is more than one current owner and one of the current owners intends to sell their equity stake in the small business to one or more employees who may not have an equity ownership interest at that time. The small business benefits by remaining in operation when it might otherwise be forced to close, and the employees benefit by having a path to ownership in a small business that remains in operation. Partial changes of ownership among existing owners of a small business permit such businesses to attract new employees as partial owners. Financing for changes of ownership also allows family members to purchase partial ownership in a family-run small business to ensure continuation of the small business after the retirement or death of an owner. Currently, SBA does not fully meet the financing needs of small businesses regarding partial changes of ownership due to current restrictions, necessitating this rule.

Historically, SBA has permitted loan proceeds for use only in three situations involving a change of ownership: (1) A complete change of ownership; (2) a Partner Buyout; and (3) where an ESOP purchases a controlling interest (51 percent or more) in the employer small business from the current owner(s). Outside of loans to ESOPs, SBA's current regulations do not permit 7(a) loan proceeds to be used for partial changes of ownership.

Over the past 4 completed fiscal years (FY 2018 through FY 2021), SBA approved 31,940 7(a) loans where loan proceeds were used to affect a change of ownership. ESOP loans (loans to assist an ESOP trust in acquiring 51 percent or more of the equity ownership in the small business concern) accounted for only 17 of the 31,940 loans used for a change of ownership in the four years between FY 2018 and FY 2021, or fewer than five loans per year. Therefore, ESOP loans have not made the anticipated impact in transitioning small businesses to employee ownership as originally intended by the Agency. For these reasons, SBA is moving forward with lifting the prohibition on partial changes of ownership. SBA will include detailed guidance in the Loan Program Requirements to accomplish partial changes of ownership.

The changes will reduce regulatory burdens, modernize program delivery using data analytics tools and machine learning modelling, reduce the number of hours spent processing an application to deliver a loan for both SBA and lenders and increase access to capital.

B. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the 7(a), 504, Microloan, ILP, SBG and Business Disaster Loan Programs under these revisions to the regulations.

SBA anticipates a minor impact to the subsidy as a result of approximately 800 new loans per year in 7(a) loan activity for loans involving a partial change of ownership. In revising SBA's lending

criteria at 13 CFR 120.150, SBA anticipates that modernizing SBA's lending criteria to include credit scoring will not compromise the credit quality of the overall 7(a) and 504 portfolios. When using a credit scoring model other than the FICO® Small Business Scoring Service℠ (SBSS) model, SBA Lenders must be able to validate the credit scoring model and must document that their credit analysis procedures are predictive of loan performance; therefore, no reduction in credit quality is anticipated as a result of using credit scoring models. Streamlining the number of criteria lenders consider when approving loans, and for regulated lenders, using the same commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans will not negatively impact the credit quality of the 7(a) and 504 Loan Program portfolios and will provide a time saving ranging from zero to several hours per loan depending on the size and complexity of the loan. SBA anticipates that modernizing SBA's lending criteria and allowing SBA Lenders to use their own processes and procedures will result in an increase in the number of participating lenders and loans in both programs, which would mean increased access to capital for small businesses.

The primary goal driving the revisions to 13 CFR 120.150 is to encourage and facilitate more lenders to make more small dollar loans. SBA believes these streamlined rules will result in increased lender participation, particularly for community banks, credit unions and other mission-based lenders that generally serve more rural communities and underserved populations with smaller dollar loans.

By revising 13 CFR 120.160 to state that SBA requires hazard insurance only for loans greater than $500,000, SBA anticipates a de minimis impact on annual subsidy calculation for the 7(a) and 504 Loan Programs. The primary benefit to removing the requirement for hazard insurance on these small loans is to increase the speed with which lenders can disburse loan proceeds after loan approval. Hazard insurance is only impactful when it is protecting collateral. Currently, SBA does not require collateral for loans $25,000 or less, so these loans are not impacted by the revision to hazard insurance requirements. Further, lenders will continue to require hazard insurance for loans of $500,000 and under when tangible assets such as real estate or equipment are financed with the loan in accordance with their non-SBA guaranteed policies and federal regulators. As such, although lenders will continue to require hazard insurance in accordance with their similarly-sized non-SBA guaranteed policies, they will experience a time savings by no longer providing SBA with documentation of proof of hazard insurance as part of SBA's loan origination and monitoring requirements. Further, even with hazard insurance in place, the lender and/or SBA's recovery on assets in this dollar range is minimal after the costs of liquidation and litigation are considered. The benefit to SBA for requiring hazard insurance at this amount is minimal, while lenders will save time and be able to disburse loan proceeds more quickly after loan approval by using their own procedures and not having to provide additional documentation evidencing insurance to SBA.

Revising 13 CFR 120.193 will allow the Director of the Office of Financial Assistance to delegate to a designee the authority to make final decisions on reconsideration after denial of a loan application or loan modification request in the 7(a) and 504 Loan Programs. SBA does not anticipate any additional costs or impact on the subsidy to operate the 7(a) and 504 Loan Programs under this final rule. Additionally, the number of loans impacted by this change is very low in comparison to the number of loans processed in both loan programs. On average, the 7(a) Loan Program accounts for 10 to 12 reconsideration requests per year, and the 504 Loan Program accounts for 28 to 41 requests per year. For comparison, in fiscal year 2021, the 7(a) Loan Program approved 51,856 loans, and the 504 Loan Program approved 9,676 loans. SBA Lenders and applicants will benefit in a faster turn time for decision-making.

SBA does not anticipate significant additional costs or impact on the subsidy to operate the 7(a), 504, Microloan, ILP, SBG and Business Disaster Loan Programs under the revised regulations at 13 CFR 121.301 regarding affiliation. Complex affiliation rules limit accessibility to SBA's business loan programs, with an outsized impact on underserved borrowers who may struggle to access traditional capital or other resources such as attorneys and certified public accountants. SBA anticipates that providing clear and streamlined regulatory guidance for its affiliation rules will result in an increase in the number of participating lenders and loans and will encourage more businesses to apply. SBA anticipates that participating lenders will spend less time screening applicants for eligibility under SBA Size Standards because lenders and applicants will readily be able to determine which entities they are affiliated with, and lenders will have fewer documents to examine.

C. Alternatives

What alternatives have been considered?

SBA considered eliminating even more regulatory burdens and determined the final rule strikes the right balance in responsibly streamlining regulations without substantially increasing the risk of waste, fraud, or abuse of the programs or otherwise threatening the integrity of the business loan programs or taxpayer dollars. Regarding affiliation, SBA has implemented several variations of its affiliation rules as discussed above, and SBA has determined the simplest affiliation rules were the least burdensome.

SBA also considered limiting partial changes of ownership to employees of the business; however, the Agency believes this may restrict small businesses in need of additional expertise from providing a percentage of ownership as an incentive to recruit and retain new highly skilled employees. For example, an existing dental practice may recruit a new dentist by offering the dentist an equity ownership in the business as a hiring incentive. For this reason, SBA determined that partial changes of ownership should not be exclusive to existing employees of the business.

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 preemptive effect or retroactive 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.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs

associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

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

SBA has determined that this rule will require that the following forms be revised: SBA Form 1919, ''Borrower Information Form,'' SBA Form 1920, ''Lender's Application for Loan Guaranty for all 7(a) Loan Programs,'' SBA Form 1244, ''Application for Section 504 Loans,'' SBA Form 5—Disaster Business Loan Application, and SBA Form 5C—Disaster Home/Sole Proprietor Loan Application.

SBA Forms 1919 and 1920 are approved under OMB Control number 3245–0348. SBA Form 1244 is approved under OMB Control number 3245–0071. SBA Form 5 is approved under OMB Control number 3245–0017 and SBA Form 5C is approved under OMB Control number 3245–0018.

SBA will revise SBA Form 1919, SBA Form 1920, and SBA Form 1244 to conform to the lending criteria changes at 13 CFR 120.150. When lenders choose to use a credit scoring model in accordance with 13 CFR 120.150, the estimated hour burden for lenders will decrease when the credit score incorporates consideration of certain lending criteria (*e.g.,* the earnings and cashflow of an applicant), in which case those factors would not necessarily be separately considered by a lender unless otherwise specified by Loan Program Requirements. However, SBA expects that SBA Lenders will make more small dollar loans due to the ability to use credit scoring models, which increase the estimated overall burden hours due to the increase in number of loans. This reporting requirement will be included in the OMB information collection submissions for the affected forms. The other revisions to 120.150 (*i.e.,* requirement that SBA Lenders use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans, and criteria that may be considered in lending criteria), will have a de minimis impact on the estimated hour burden because regulated lenders must comply with more rigorous lending criteria requirements from their federal regulators, and SBA-Supervised Lenders and CDCs must continue to comply with the credit policies submitted to OCRM.

SBA will revise SBA Form 1920 to conform to revisions at 13 CFR 120.130 and 13 CFR 120.202 to permit partial changes of ownership.

SBA will revise SBA Form 1919, SBA Form 1920, SBA Form 1244, and SBA Form 5 to conform to the affiliation rule changes at 13 CFR 121.301, which will reduce the estimated hour burden for applicants and lenders because SBA anticipates fewer entities will fall under the definition of ''affiliate.''

SBA will submit these revisions to OMB and provide public notice of such revisions at a later date.

Congressional Review Act, 5 U.S.C. Ch. 8

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule is not subject to the 60-day restriction.

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

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment a final regulatory analysis'' which will ''describe the impact of the final rule on small entities.'' SBA published a complete regulatory analysis in the proposed rule. The regulatory analysis is synopsized here. For the reasons stated below, SBA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Although the rulemaking will impact all of the 2,897 7(a) Lenders, all of the 216 CDCs, all of the 150 Microloan Intermediaries, all of the 35 ILP Intermediaries, and all of the 44 Sureties that participate in the SBG Program, SBA does not believe the impact will be significant because this final rule modifies and streamlines existing regulations and procedures. However, there may be impacts due to increased 7(a) loans for partial changes of ownership.

The estimated burden for completing the SBA Form 1919, including time for reviewing instructions, gathering data needed, and completing and reviewing the form remains unchanged at 15 minutes per response. SBA anticipates the revised rules will result in an increase to loan volume by a potential 800 loans per year [2] representing 800 unique small business applicants.

An applicant completing the SBA Form 1919 will spend approximately fifteen minutes per response in completing the form, at a cost of $23.55 per loan application.[3] The final rules will not change the time costs of completing the revised SBA Form 1919 as the rule changes will not require the applicant small business to provide any additional responses in completing SBA Form 1919 other than those already required.

In revising 13 CFR 120.130 and 120.202 to permit partial change of ownership, SBA will update the SBA Form 1920, ''Lender's Application for Loan Guaranty for all 7(a) Loan Programs'', in Section ''O'', to add a question for the 7(a) Lender to indicate that the change of ownership is a partial change of ownership, and to revise or combine the second bulleted question in Section O with the new partial ownership question. The current estimated burden for the 7(a) Lender in completing SBA Form 1920, including time for reviewing instructions, gathering data needed, and completing and reviewing the form is 25 minutes per response. Section ''O'' of SBA Form 1920 is required to be completed in cases involving a change of ownership using the loan proceeds. SBA Form 1920 currently requires the 7(a) Lender to check an ''N/A'' box if the loan does not finance a change of ownership and answer an additional six ''Yes'' or ''No'' questions about the circumstances for the change of ownership. It is anticipated the additional language will be similar in length to the existing questions of approximately 30 words per question, which should add approximately 10 seconds per application to read and respond to the question by checking the yes or no box,[4]

[2] The 800 additional loans are due to the revisions allowing for partial changes of ownership.

[3] This estimate was derived from using the median hourly rate for General and Operations Managers from the May 2021 Occupational Employment and Wage Statistics for the United States of $47.10 per hour, adding 100 percent for overhead and benefits, for a total hourly cost to complete SBA Form 1919 per applicant of $94.20 per hour. Data available at *https://www.bls.gov/oes/current/oes_nat.htm#11-0000.*

[4] The average silent reading rate for adults in English is 238 words per minute, based on an analysis of 190 studies with 18,573 participants by

which represents a cost increase to lenders of approximately 11 cents per application.[5]

13 CFR 120.150, ''What are SBA's lending criteria?''

Based on industry feedback, SBA estimates SBA Lenders will save anywhere from zero to 2 hours per loan under the revision of 13 CFR 120.150 to require that SBA Lenders must use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. The range in time saving is due to the size and complexity of the loan and federally regulated lenders continuing to underwrite loans in accordance with their own procedures. Based on the average of the most recent 3 fiscal years, each year the 7(a) Loan Program approves 48,687 loans and the 504 Loan Program approves 7,631 loans, for a total of 56,318 loans approved per year. The mean hourly wage of a loan officer is $36.99 according to the May 2020 U.S. Bureau of Labor Statistics. SBA estimates a cost saving ranging from $0 to $2,083,215 per year for SBA Lenders, calculated by multiplying 56,318 (total loans approved per year) by $36.99 (mean hourly wage of a loan officer). This revision will have no direct impact on applicants and possibly an indirect impact due to faster processing times that could lead to faster loan approval.

SBA anticipates the final rule will allow SBA Lenders to use a credit scoring model will increase the number of small loans approved while generally decreasing the length of time required to process a loan. Not all lenders will use credit scoring, and those that do will limit credit scoring to small loans. SBA estimates lenders will save from 2 to 4 hours per loan when they elect to use a credit scoring model.

13 CFR 120.160, ''Loan Conditions''

SBA estimates SBA Lenders will save anywhere from 0.25 to 6 hours per loan over the life of the loan under the revision of 13 CFR 120.160 to eliminate the requirement for hazard insurance on loans $500,000 or less. The range in time saving is due to whether lenders require hazard insurance on similarly-sized non-SBA guaranteed loans in accordance with their own procedures. Lenders that do not require hazard insurance may save up to 6 hours over the life of the loan when including the time required to monitor whether the policy remains in place each year. Lenders that continue requiring insurance will experience a time savings by no longer documenting proof of insurance for SBA.

13 CFR 120.193, ''Reconsideration After Denial''

The Director of the Office of Financial Assistance processes an average of 10 to 12 reconsideration requests for the 7(a) Loan Program and 28 to 41 reconsideration requests for the 504 Loan Program each year. Revising this rule will have a minimal impact on the overall portfolio; however, to the individual applicants that are impacted by reconsideration requests, a faster decision will allow the applicants to quickly move forward with financing with a positive decision or pursue other financing options with a negative decision.

Section 121.301, ''What size standards and affiliation principles are applicable to financial assistance programs?''

The revisions to 13 CFR 121.301 will impact all of the approximately 1,738 7(a) Lenders and 186 CDCs that make an SBA loan annually (based on FY 2021 data), all of the approximately 150 Microloan Intermediaries, all of the approximately 44 Sureties that participate in the SBG Program, and all of the applicants for each of these programs and SBA's Disaster programs. SBA's revisions to streamline its affiliation rules will increase the overall number of loans made while simultaneously reducing the time required to process each loan.

List of Subjects

13 CFR Part 120

Loan programs—business, Community development, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA is amending 13 CFR parts 120 and 121 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, and 697, 697a and e, and note; Public Law 116–260, 134 Stat. 1182.

■ 2. Amend § 120.130 by revising paragraphs (a) and (g) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(a) Payments, distributions, or loans to Associates of the applicant (except for ordinary compensation for services rendered or to facilitate changes of ownership in accordance with § 120.202);

* * * * *

(g) Any use restricted by §§ 120.201 and 120.884 (specific to 7(a) loans and 504 loans respectively).

■ 3. Revise § 120.150 to read as follows:

§ 120.150 What are SBA's lending criteria?

The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. Lenders and CDCs must use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. Lenders, CDCs, and SBA may use a business credit scoring model. When approving direct or guaranteed loans, Lenders, CDCs, and SBA may consider (as applicable) the following criteria: credit score or credit history of the applicant (and the Operating Company, if applicable), its Associates and any guarantors; the earnings or cashflow of applicant; or where applicable any equity or collateral of the applicant.

§ 120.160 [Amended]

■ 4. In § 120.160 amend paragraph (c) by adding the phrase ''for 7(a) loans greater than $500,000 and for 504 projects greater than $500,000,'' after the words ''SBA requires hazard insurance.''

■ 5. Amend § 120.193 by adding the words ''or designee(s),'' after the words ''Director, Office of Financial Assistance (D/FA)'' and by adding two sentences at the end of the section to read as follows:

§ 120.193 Reconsideration after denial.

* * * If the reconsideration is denied, a second and final reconsideration may be considered by the Director, Office of Financial Assistance (D/FA) or designee(s), whose decision is final. The SBA Administrator, solely within the Administrator's discretion, may choose to review the matter and make the final decision. Such discretionary authority of the Administrator does not create additional rights of appeal on the part

Brysbaert, Marc (April 12, 2019) How many words do we read per minute? A review and meta-analysis of reading rate, page 2, at *https://psyarxiv.com/xynwg/*.

[5] Based on the mean hourly wage of $38.74 per hour for Loan Officers as of May 2021 U.S. Bureau of Labor Statistics at *https://www.bls.gov/oes/current/oes_nat.htm#13-0000*.

of an applicant not otherwise specified in SBA regulations.

■ 6. Revise § 120.202 to read as follows:

§ 120.202 Loans for changes of ownership.

A Borrower may use 7(a) loan proceeds to purchase a portion of or the entirety of an owner's interest in a business, or a portion of or the entirety of a business itself.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 7. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, 694a(9), and 9012.

■ 8. Amend § 121.301 by adding introductory text and by revising paragraph (f) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

The Small Business Act defines a small business concern as one which is independently owned and operated, and which is not dominant in its field of operation. SBA interprets this statutory definition to require, in certain circumstances, the inclusion of other entities (''Affiliates'') owned by the applicant or an owner of the applicant in determining the size of the applicant.

* * * * *

(f) *Affiliation.* Any of the circumstances described below establishes affiliation for applicants of SBA's Business Loan, Disaster Loan, and Surety Bond Programs. For this rule, the Business Loan Programs consist of the 7(a) Loan Program (Direct and Guaranteed Loans), the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (''504 Loan Program''). The Disaster Loan Programs consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans. The following principles apply for the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs:

(1) *Ownership.* (i) When the Applicant owns more than 50 percent of another business, the Applicant and the other business are affiliated.

(ii) When a business owns more than 50 percent of an Applicant, the business that owns the Applicant is affiliated with the Applicant. Additionally, if the business entity owner that owns more than 50 percent of the Applicant also owns more than 50 percent of another business that operates in the same 3-digit NAICS subsector as the Applicant, then the business entity owner, the other business and the Applicant are all affiliated.

(iii) When an individual owns more than 50 percent of the Applicant and the individual also owns more than 50 percent of another business entity that operates in the same 3-digit NAICS subsector as the Applicant, the Applicant and the individual owner's other business entity are affiliated.

(iv) When the Applicant does not have an owner that owns more than 50 percent of the Applicant, if an owner of 20 percent or more of the Applicant is a business that operates in the same 3-digit NAICS subsector as the Applicant, the Applicant and the owner are affiliated.

(v) When the Applicant does not have an owner that owns more than 50 percent of the Applicant, if an owner of 20 percent or more of the Applicant also owns more than 50 percent of another business entity that operates in the same 3-digit NAICS subsector as the Applicant, the Applicant and the owner's other business entity are affiliated.

(vi) Ownership interests of spouses and minor children must be combined when determining amount of ownership interest.

(vii) When determining the percentage of ownership that an individual owns in a business, SBA considers the pro rata ownership of entities. For example, John Smith, Jane Doe, and Jane Doe, Inc., each own an interest in the Applicant. Jane Doe owns 15 percent of the Applicant, and she also owns 100 percent of Jane Doe, Inc. Jane Doe, Inc. owns 50 percent of the Applicant. SBA considers Jane Doe to own 65 percent of the Applicant.

(2) *Stock options, convertible securities, and agreements to merge.* (i) For purposes of this subparagraph, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the ownership of the entity. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(ii) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at a later date are not considered ''agreements in principle'' and are thus not given present effect.

(iii) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(iv) SBA will not give present effect to individuals', concerns', or other entities' ability to divest all or part of their ownership interest to avoid a finding of affiliation.

(3) *Determining the concern's size.* In determining the concern's size, SBA counts the receipts, employees (see § 121.201), or the alternate size standard (if applicable) of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(4) *Exceptions to affiliation.* For exceptions to affiliation, see § 121.103(b).

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–07173 Filed 4–7–23; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 126 and 134

RIN 3245–AH88

HUBZone Appeal Process

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to implement a provision of the National Defense Authorization Act for Fiscal Year 2022. This final rule provides procedures for SBA's Office of Hearings and Appeals to hear appeals from protest determinations regarding the status of a concern as a certified HUBZone small business concern.

DATES: This rule is effective on May 10, 2023. It applies to all appeals filed on or after that date.

FOR FURTHER INFORMATION CONTACT: Laura Maas, HUBZone Program, *laura.maas@sba.gov,* 202–205–7341. This phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION: Section 864 of the National Defense Authorization Act for Fiscal Year 2022 (NDAA 2022) authorized the U.S. Small Business Administration's (SBA) Office of Hearings and Appeals (OHA) to decide all appeals from HUBZone status

protest determinations, which are currently decided by SBA's Associate Administrator of Government Contracting and Business Development. Section 864 also required SBA to publish a rule implementing this authority. SBA published a proposed rule on December 15, 2022. 87 FR 76585. SBA did not receive any comments on the proposed rule. Accordingly, this final rule implements the changes as proposed.

The final rule revises the HUBZone regulations at 13 CFR 126.805 to specify that HUBZone appeals are processed by OHA in accordance with the procedures in part 134. The final rule also amends the regulations pertaining to OHA's jurisdiction at subparts A and B of 13 CFR part 134 to include appeals from HUBZone status protest determinations. Finally, the final rule creates a new subpart M in 13 CFR part 134 to set out the rules of practice for appeals from HUBZone status protest determinations.

Section-by-Section Analysis

A. Section 126.103

This final rule amends the HUBZone regulations at § 126.103 by deleting the definition for ''AA/GC&BD'' which is the Associate Administrator for Government Contracting and Business Development. The only references to this role in the HUBZone regulations are in relation to deciding appeals of HUBZone status protest determinations, and the Associate Administrator for Government Contracting and Business Development will no longer have this responsibility. SBA notes that ''AA/GCBD'' also appears several times in the regulations, and this final rule removes all references to both ''AA/GC&BD'' and ''AA/GCBD'' in Part 126. This final rule also deletes the definition for ''DAA/GC&BD'' because this term does not appear anywhere else in Part 126.

B. Sections 126.309, 126.803(e)

This final rule amends the §§ 126.309 and 126.803(e) to reference appeal decisions made by OHA rather than appeal decisions made by the AA/GCBD.

C. Section 126.805

The final rule revises § 126.805, which addresses the procedures for appeals of HUBZone status protest determinations, to provide that such appeals may be filed in accordance with part 134 of title 13 of the Code of Federal Regulations.

D. Sections 134.102, 134.201(b)

The final rule amends § 134.102 by adding a new paragraph (x), to add appeals from HUBZone status protest determinations, as a new type of proceeding over which OHA has jurisdiction.

The final rule amends § 134.201(b) by adding a new paragraph (10) to include appeals from HUBZone status protest determinations. As a result of this new paragraph, existing § 134.201(b)(10) has been redesignated as § 134.201(b)(11).

E. Part 134 Subpart M

The final rule creates a new subpart M to cover the procedures for filing appeals of HUBZone status protest determinations.

Section 134.1301 provides that appeals under this new subpart include any of the grounds for a HUBZone status protest specified in § 126.801 of this chapter, as well as appeals from dismissals of HUBZone status protests by the D/HUB based on a finding that the protest was premature, untimely, nonspecific, not based upon protestable allegations, moot, or not filed by an interested party. This section also provides that the provisions of subparts A and B of part 134 apply to appeals of HUBZone status protest determinations. Finally, this section provides that appeals from HUBZone status protest determinations are separate from appeals from size determinations.

Section 134.1302 establishes standing to file an appeal from a HUBZone status protest determination.

Section 134.1303 provides that an appeal from a HUBZone status protest determination must be filed within ten (10) business days after the appellant receives the protest determination.

Section 134.1304 provides that if a timely appeal of a HUBZone status protest determination is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered. This section also provides that where an appeal is filed before contract award, the contracting officer must withhold award until the appellate decision is rendered, unless the contracting officer has determined that award and performance of the contract is in the best interests of the government.

Section 134.1305 provides that an appeal petition must include the following: a copy of the protest determination; the date the appellant received the protest determination; a statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB; a full and specific statement as to why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with argument supporting such allegation; the solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer; and the name, address, telephone number, facsimile number, and signature of the appellant or its attorney. This section also provides that the appellant must serve copies of the appeal upon the D/HUB, the contracting officer, protested concern or the protester, and SBA's Associate General Counsel for Procurement Law, and that all appeal petitions must include a certificate of service. OHA may dismiss appeal petitions that do not meet all the requirements of § 134.1305.

Section 134.1306 states that the provisions in § 134.204, regarding the service and filing requirements of all pleadings and submissions, apply to appeals from HUBZone status protest determinations unless otherwise indicated.

Section 134.1307 requires the D/HUB to send OHA the entire case file relating to the protest decision upon receipt of an appeal petition.

Section 134.1308 provides that the standard of review for an appeal of a HUBZone status protest determination is whether the D/HUB's determination was based on clear error of fact or law. This section also provides that the appellant bears the burden of proof by a preponderance of the evidence.

Section 134.1309 provides that an appeal from a HUBZone status protest determination will be dismissed if the appeal is untimely under § 134.1303, or if the matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters.

Section 134.1310 states that responses to an appeal are to be filed within fifteen (15) business days after service of the appeal petition.

Section 134.1311 states that there will not be discovery or oral hearings in appeals from HUBZone status protest determinations.

Section 134.1312 prohibits new evidence in appeals from HUBZone status protest determinations.

Section 134.1313 provides that the record for a HUBZone status protest appeal will close when the time to file a response to an appeal petition expires.

Section 134.1314 provides that OHA will decide an appeal within forty-five (45) calendar days after the close of record.

Section 134.1315 provides that OHA's decision in an appeal from a HUBZone status protest determination is the final agency decision and provides that the effects of the decision on the

procurement at issue are explained in 13 CFR 126.803(e).

Section 134.1316 provides that OHA may reconsider an appeal decision within twenty (20) calendar days after the decision is issued, or OHA may remand a proceeding to the D/HUB for a new HUBZone status protest determination.

Compliance With Executive Orders 12866, 12988, 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act (5 U.S.C. 801–808)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order No. 12866. This rule amends the rules of practice for the SBA's OHA to implement procedures for appeals from HUBZone status protest determinations. As such, the rule has no effect on the amount or dollar value of any federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise 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 12988

This action meets applicable standards set forth in section 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 does 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

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, requires federal agencies to prepare an initial regulatory flexibility analysis (IRFA) to consider the potential impact of the regulations on small entities. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule revises the regulations governing cases before SBA's OHA, SBA's administrative tribunal. These regulations are procedural by nature. Specifically, the rule establishes rules of practice for the SBA's OHA to hear appeals from HUBZone status protest determinations. While did not receive any comments from any small business indicating that they would be affected by it economically. Therefore, the Administrator of SBA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act, 5 U.S.C. Ch. 8

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until sixty (60) days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule is not subject to the 60-day restriction.

List of Subjects

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and function (Government agencies).

For the reasons set forth in the preamble, SBA amends parts 126 and 134 of title 13 of the Code of Federal Regulations as follows:

PART 126—HUBZONE PROGRAM

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

§ 126.103 [Amended]

■ 2. Amend § 126.103 by removing the definitions of ''AA/GC&BD'' and ''DAA/GC&BD''.

§ 126.309 [Amended]

■ 3. Amend § 126.309 by removing ''(the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD)'' and adding in its place ''(*i.e.,* the D/HUB's decision if the protest determination is not appealed, or OHA's decision if the protest determination is appealed)''.

■ 4. Amend § 126.803 by:

■ a. Revising paragraph (e) introductory text;

■ b. Removing ''the AA/GCBD'' and adding in its place ''OHA'' in paragraph (e)(1)(ii)(B);

■ c. Removing ''(*i.e.,* the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed)'' and adding in its place ''(*i.e.,* the D/HUB's decision if the protest determination is not appealed, or OHA's decision if the protest determination is appealed)'' in paragraph (e)(1)(iii);

■ d. Removing ''the AA/GCBD'' and adding in its place ''OHA'' In paragraph (e)(2)(ii); and

■ e. Removing ''(the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed)'' and adding in its place ''(*i.e.,* the D/HUB's decision if the protest determination is not appealed, or OHA's decision if the protest determination is appealed)'' in paragraph (e)(3).

The revision reads as follows:

§ 126.803 How will SBA process a HUBZone status protest and what are the possible outcomes?

* * * * *

(e) *Effective of determination.* The determination is effective immediately and is final, unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to part 134 of this chapter.

* * * * *

■ 5. Revise § 126.805 to read as follows:

§ 126.805 What are the procedures for appeals of HUBZone status protest determinations?

The protested concern, the protester, or the contracting officer may file an appeal of a HUBZone status protest determination with SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 6. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657a, 657t and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Subpart L issued under 15 U.S.C. 636(a)(36); Pub. L. 116–136; Pub. L. 116–139; 116–142; 116–147.

Subpart M issued under 15 U.S.C. 657a; Pub. L. 117–81.

■ 7. Amend § 134.102 by:

■ a. Removing the word ''and'' at the end of paragraph (v);

■ b. Removing the period at the end of paragraph (w) and adding ''; and'' in its place; and

■ c. Adding paragraph (x).

The addition to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(x) Appeals from HUBZone status protest determinations under part 126 of this chapter.

■ 8. Amend § 134.201 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(9);

■ b. Redesignating paragraph (b)(10) as paragraph (b)(11); and

■ c. Adding a new paragraph (b)(10).

The addition reads as follows:

§ 134.201 Scope of the rules in this subpart.

* * * * *

(b) * * *

(10) For appeals of protest determinations regarding the status of a concern as a certified HUBZone small business concern, in subpart M of this part; and

* * * * *

■ 9. Add subpart M to read as follows:

Subpart M—Rules of Practice for Appeals of Protest Determinations Regarding the Status of a Concern as a Certified HUBZone Small Business Concern

Sec.

Subpart M—Rules of Practice for Appeals of Protest Determinations Regarding the Status of a Concern as a Certified HUBZone Small Business Concern

§ 134.1301 What is the scope of the rules in this subpart?

(a) The rules of practice in this subpart apply to all appeals to OHA from formal protest determinations made by the Director of SBA's Office of HUBZone (D/HUB) in connection with a HUBZone status protest. Appeals under this subpart include any of the grounds for a HUBZone status protest specified in § 126.801 of this chapter, as well as appeals from dismissals of HUBZone status protests by the D/HUB based on a finding that the protest was premature, untimely, nonspecific, not based upon protestable allegations, moot, or not filed by an interested party.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by subpart C of this part.

§ 134.1302 Who may appeal a HUBZone status protest determination?

Appeals from HUBZone status protest determinations may be filed with OHA by the protested concern, the protester, or the contracting officer responsible for the procurement affected by the protest determination.

§ 134.1303 What time limits apply to filing an appeal from a HUBZone status protest determination?

Appeals from a HUBZone status protest determination must be commenced by filing and serving an appeal petition within ten (10) business days after the appellant receives the HUBZone status protest determination (*see* § 134.204 for filing and service requirements). OHA shall dismiss any untimely appeal.

§ 134.1304 What are the effects of the filing of an appeal on the procurement at issue?

(a) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(b) If a timely appeal is filed before contract award, the contracting officer must withhold award until the appellate decision is rendered, unless the contracting officer has determined that award and performance of the contract is in the best interests of the government.

§ 134.1305 What are the requirements for an appeal petition?

(a) *Format.* An appeal from a HUBZone status protest determination must be in writing. There is no required format for an appeal petition. However, it must include the following information:

(1) A copy of the protest determination;

(2) The date the appellant received the protest determination;

(3) A statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB;

(4) A full and specific statement as to why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with argument supporting such allegation;

(5) The solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer; and

(6) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* Concurrent with filing the appeal with OHA

(*OHAFilings@sba.gov*), the appellant must serve copies of the entire appeal petition upon each of the following:

(1) The D/HUB at *hzappeals@sba.gov;*

(2) The contracting officer responsible for the procurement affected by a HUBZone determination;

(3) The protested concern (the business concern whose HUBZone status is at issue) or the protester; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law at *OPLservice@sba.gov.*

(c) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(d) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge on the Judge's own initiative or upon motion of a respondent.

§ 134.1306 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart, unless otherwise indicated in this subpart.

§ 134.1307 What are the requirements for transmitting the protest file?

Upon receipt of an appeal petition, the D/HUB will send to OHA a copy of the protest file relating to that determination. The D/HUB will certify and authenticate that the protest file, to the best of the D/HUB's knowledge, is a true and correct copy of the protest file.

§ 134.1308 What is the standard of review?

The standard of review for an appeal of a HUBZone status protest determination is whether the D/HUB's determination was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

§ 134.1309 When will a Judge dismiss an appeal?

The presiding Judge must dismiss the appeal if:

(a) The appeal is untimely filed under § 134.1303;

(b) The appeal does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination; or

(c) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters; however, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.1310 Who can file a response to an appeal petition and when must such a response be filed?

(a) *Who may respond.* Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. The response should present arguments related to the issues presented on appeal.

(b) *Time limits.* If a person decides to file a response, the response must be filed within fifteen (15) business days after service of the appeal petition.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.1305.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.1311 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted, and oral hearings will not be held.

§ 134.1312 What are the limitations on the introduction of new evidence?

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition, and response(s) filed thereto.

§ 134.1313 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to § 134.1310.

§ 134.1314 When must the Judge issue the decision?

The Judge shall issue a decision, insofar as practicable, within forty-five (45) calendar days after close of the record.

§ 134.1315 What are the effects of the Judge's decision on the procurement at issue?

The Judge's decision is the final agency decision and becomes effective upon issuance. For the effects of the decision on the procurement at issue, *see* § 126.803(e) of this chapter.

§ 134.1316 Can a Judge reconsider an appeal decision?

(a) Any party who has appeared in the proceeding, or SBA, may request reconsideration of the OHA appeal decision by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on the Judge's own initiative, within twenty (20) calendar days after issuance of the written decision.

(b) The Judge may remand a proceeding to the D/HUB for a new HUBZone status protest determination if the D/HUB fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new HUBZone status protest determination.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–07460 Filed 4–7–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0037; Airspace Docket No. 23–ASW–1]

RIN 2120–AA66

Amendment of Class E Airspace; Sulphur Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Sulphur Springs, TX. This action is due to an airspace review conducted as part of the decommissioning of the Sulphur Springs very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are

available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 Sulphur Springs Municipal Airport, Sulphur Springs, TX, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0037 in the **Federal Register** (88 FR 3936; January 23, 2023) amending the Class E airspace at Sulphur Springs, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface at Sulphur Springs Municipal Airport, Sulphur Springs, TX, by removing the Brashear radio beacon (RBN) and associated airspace extension as they are no longer needed; and adds an extension 2 miles each side of the 190° bearing from the airport extending from the 6.5-mile radius of the airport to 9.4 miles south of the airport.

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. 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 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW TX E5 Sulphur Springs, TX [Amended]

Sulphur Springs Municipal Airport, TX
(Lat. 33°09′35″ N, long. 95°37′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sulphur Springs Municipal Airport; and within 2 miles each side of the 190° bearing from the airport extending from the 6.5-mile radius to 9.4 miles south of the airport.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07216 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0039; Airspace Docket No. 23–AEA–1]

RIN 2120–AA66

Amendment of Class E Airspace; Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Altoona, PA. This action is the result of an airspace review caused by the decommissioning of the Revloc very high frequency omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operating Network (MON) Program. The name of the airport is also being

updated to coincide with the FAA's aeronautical database.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 surface airspace and the Class E airspace extending upward from 700 feet above the surface at Altoona/Blair County Airport, Altoona, PA, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA 2023–0039 in the **Federal Register** (88 FR 8378; February 9, 2023), amending the Class E airspace at Altoona, PA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by:

Modifying the Class E surface airspace to within a 9.3-mile (increased from a 4.7-mile) radius of Altoona/Blair County Airport, Altoona, PA; removing the extension northeast of the airport as it is no longer required; and updating the name (previously Altoona-Blair County Airport) of the airport to coincide with the FAA's aeronautical database;

And modifying the Class E airspace extending upward from 700 feet above the surface to within an 11.8-mile (increased from an 11.2-mile) radius of Altoona/Blair County Airport; adding an extension 2 miles each side of the 196° bearing from the airport extending from the 11.8-mile radius to 12 miles south of the airport; and updating the name (previously Altoona-Blair County Airport) 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 Revloc VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program, and will support instrument flight rule operations at this airport.

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. 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).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AEA PA E2 Altoona, PA [Amended]

Altoona/Blair County Airport, PA
(Lat. 40°17′47″ N, long. 78°19′12″ W)

Within a 9.3-mile radius of Altoona/Blair County Airport.

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

* * * * *

AEA PA E5 Altoona, PA [Amended]

Altoona/Blair County Airport, PA
(Lat. 40°17′47″ N, long. 78°19′12″ W)

That airspace extending upward from 700 feet above the surface within an 11.8-mile radius of Altoona/Blair County Airport; and within 2 miles each side of the 196° bearing from the airport extending from the 11.8-mile radius to 12 miles south of the airport.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07212 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0035; Airspace Docket No. 23–AGL–4]

RIN 2120–AA66

Amendment of Class D and E Airspace; Bloomington/Normal, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace at Bloomington/Normal, IL. This action is due to an airspace review conducted as part of the decommissioning of the Bloomington very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 D airspace and the Class E airspace extending upward from 700 feet above the surface at Central Illinois Regional/Bloomington-Normal Airport, Bloomington/Normal, IL, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0035 in the **Federal Register** (88 FR 3935; January 23, 2023) amending the Class D and Class E airspace at Bloomington/Normal, IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in paragraphs 5000 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order Jo 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71:

Modifies the Class D airspace to within a 4.4-mile (decreased from a 7-mile) radius of Central Illinois Regional/Bloomington-Normal Airport, Bloomington/Normal, IL; updates the header of the airspace legal description from ''Bloomington, IL'' to ''Bloomington/Normal, IL'' to coincide with the FAA's aeronautical database; updates the name (previously Bloomington/Normal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and updates the outdated terms ''Notice to Airmen'' to ''Notice to Air Missions'' and ''Airport/Facility Directory'' to ''Chart Supplement'';

And modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.9-mile (decreased from a 7.3-mile) radius of Central Illinois Regional/Bloomington-Normal Airport; updates the header of the airspace legal description from ''Bloomington, IL'' to ''Bloomington/Normal, IL'' to coincide with the FAA's aeronautical database; and updates the name (previously Central Illinois Regional Airport at Bloomington-Normal) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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. 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 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL IL D Bloomington/Normal, IL [Amended]

Central Illinois Regional/Bloomington-Normal Airport, IL
(Lat. 40°28′38″ N, long. 88°54′57″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.4-mile radius of Central Illinois Regional/Bloomington-Normal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL IL E5 Bloomington/Normal, IL [Amended]

Central Illinois Regional/Bloomington-Normal Airport, IL
(Lat. 40°28′38″ N, long. 88°54′57″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Central Illinois Regional/Bloomington-Normal Airport.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07211 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0034; Airspace Docket No. 23–AGL–3]

RIN 2120–AA66

Amendment of Class E Airspace; Watertown, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Watertown, SD. This action is due to an airspace review conducted as part of the decommissioning of the Watertown very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 surface airspace and the Class E airspace extending upward from 700 feet above the surface at Watertown Regional Airport, Watertown, SD, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0034 in the **Federal Register** (88 FR 3932; January 23, 2023) amending the Class E airspace at Watertown, SD. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order Jo 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71:

Modifies the Class E surface airspace at Watertown Regional Airport, Watertown, SD, by updating the name (previously Watertown Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And modifies the Class E airspace extending upward from 700 feet above the surface at Watertown Regional Airport by removing the Watertown VOR/tactical air navigation (VORTAC) and the associated extension to the north of the airport; removing the extension south of the airport as it is no

longer required; removing the airspace extending 1,200 feet above the surface from the airspace legal description as it is redundant with the airspace extending 1,200 feet above the surface over the State of South Dakota and State of Minnesota; and updating the name (previously Watertown Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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. 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 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Area Designated as Surface Areas.

* * * * *

AGL SD E2 Watertown, SD [Amended]

Watertown Regional Airport, SD
(Lat. 44°54′50″ N, long. 97°09′17″ W)

Within a 4.3-mile radius of Watertown Regional Airport.

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

* * * * *

AGL SD E5 Watertown, SD [Amended]

Watertown Regional Airport, SD
(Lat. 44°54′50″ N, long. 97°09′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Watertown Regional Airport.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07210 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0038; Airspace Docket No. 23–ASW–2]

RIN 2120–AA66

Amendment of Class E Airspace; Antlers, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Antlers, OK. This action is due to an airspace review conducted as part of the decommissioning of the Paris very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 Antlers Municipal Airport, Antlers, OK, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2023–0038 in the **Federal Register** (88 FR 2869; January 18, 2023) amending the Class E airspace at Antlers, 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.

Differences From the NPRM

Subsequent to publication, the FAA discovered that the geographic

coordinates had been incorrectly published. This update is administrative and does not impact the airspace as proposed.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order Jo 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace by extending upward from 700 feet above the surface to within a 6.4-mile (increased from a 6.3-mile) radius of Antlers Municipal Airport, Antlers, OK; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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. 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 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, 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 Antlers, OK [Amended]

Antlers Municipal Airport, OK
(Lat. 34°11′37″ N, long. 95°39′00″ W)

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

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07208 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0036; Airspace Docket No. 23–AGL–5]

RIN 2120–AA66

Amendment of Class E Airspace; Rantoul, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Rantoul, IL. This action is due to an airspace review conducted as part of the decommissioning of the Danville very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 Rantoul National Aviation Center-Frank Elliot Field, Rantoul, IL, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2023–0036 in the **Federal Register** (88 FR 2870; January 18, 2023) amending the Class E airspace at Rantoul, IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to publication, the FAA discovered that the geographic coordinates required updating. This update is administrative and does not impact the airspace as proposed.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order Jo 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.8-mile (increased from a 6.7-mile) radius of Rantoul National Aviation Center-Frank Elliot Field, Rantoul, IL; removes the exclusion areas from the airspace legal description as they are not required; and updates the name (previously Rantoul National Aviation Center Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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. 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 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL IL E5 Rantoul, IL [Amended]

Rantoul National Aviation Center-Frank Elliott Field, IL
(Lat. 40°17′37″ N, long. 88°08′33″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Rantoul National Aviation Center-Frank Elliott Field.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07202 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0077; Airspace Docket No. 23–AGL–6]

RIN 2120–AA66

Amendment of Class E Airspace; St. James, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at St. James, MI. This action is due to an airspace review conducted as part of the decommissioning of the Pellston very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 Beaver Island Airport, Beaver Island, MI (currently St. James, MI), to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0077 in the **Federal Register** (88 FR 2867; January 18, 2023) amending the Class E airspace at St. James, 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.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order Jo 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace by extending upward from 700 feet above the surface to within a 7-mile (increased from a 6.2-mile) radius of Beaver Island Airport, Beaver Island, MI; removes the extension to the east as it is no longer required; updates the header from ''St. James, MI'' to ''Beaver Island, MI'' to coincide with the FAA's aeronautical database; and updates the geographic coordinates to coincide with the FAA's aeronautical database.

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. 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 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, 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 Beaver Island, MI [Amended]

Beaver Island Airport, MI
(Lat. 45°41′32″ N, long. 85°34′00″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Beaver Island Airport.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07196 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1424; Airspace Docket No. 22–AEA–11]

RIN 2120–AA66

Amendment of VOR Federal Airways V–268 and V–474, Revocation of Jet Route J–518 and VOR Federal Airway V–119, and Establishment of Area Navigation Route Q–178 in the Vicinity of Indian Head, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on March 27, 2023, that amended Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–268 and V–474, revoked Jet Route J–518 and VOR Federal airway V–119, and established Area Navigation (RNAV) route Q–178. In the final rule, one of the two categorical exclusion references listed in the Environmental Review section of the preamble was incorrect. The final rule Environmental Review section referenced categorical exclusions pursuant to FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraphs 5–6.5a and 5–6.5k, in error. The correct categorical exclusion references are FAA Order 1050.1F, paragraphs 5–6.5a and 5–6.5i. This action corrects that error.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, the final rule, this final rule correction, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help

and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule for Docket No. FAA–2022–1424 in the **Federal Register** (88 FR 18026; March 27, 2023), amending VOR Federal airways V–268 and V–474, revoking Jet Route J–518 and VOR Federal airway V–119, and establishing RNAV route Q–178 due to the planned decommissioning of the VOR portion of the Indian Head, PA, VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). Subsequent to publication, the FAA determined that the environmental review categorical exclusion references listed in the preamble were incorrect. The final rule Environmental Review section in the preamble listed FAA Order 1050.1F, paragraphs 5–6.5a and 5–6.5k as the supporting categorical exclusion references; however, upon further review, the FAA determined the references should be FAA Order 1050.1F, paragraphs 5–6.5a and 5–6.5i. This rule corrects the preamble discussion of the categorical exclusion references listed in the Environmental Review section of the final rule.

This action does not alter the alignment of the amended, revoked, or established Air Traffic Service (ATS) routes listed in the final rule.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the first sentence in the Environmental Review section contained in the preamble in Docket No. FAA–2022–1424, as published in the **Federal Register** of March 27, 2023 (88 FR 18026), FR Doc. 2023–06101, is corrected as follows:

1. In FR Doc. 2023–06101, appearing on page 18027, in the second and third columns, replace the first sentence in the Environmental Review section to read,

''The FAA has determined that this action of amending VOR Federal airways V–268 and V–474, revoking Jet Route J–518 and VOR Federal airway V–119, and establishing RNAV route Q–178, due to the planned decommissioning of the VOR portion of the Indian Head, PA, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5i, which categorically excludes from further environment impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. For modifications to air traffic procedures at or above 3,000 feet AGL, the Noise Screening Tool (NST) or other FAA-approved environmental screening methodology should be applied.''

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07240 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0049; Airspace Docket No. 22–ASO–17]

RIN 2120–AA66

Amendment of High Altitude Area Navigation (RNAV) Route Q–101; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends high altitude area navigation (RNAV) route Q–101 in the eastern United States. This action supports the Northeast Corridor Atlantic Coast Route Project to improve the efficiency of the National Airspace System (NAS) and reduce the dependency on ground-based navigational systems.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a NPRM for Docket No. FAA–2023–0049, in the **Federal Register** (88 FR 7901; February 7, 2023), amending RNAV route Q–101 in the eastern United States.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received. The commenter expressed support for the proposal.

Incorporation by Reference

RNAV routes are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by expanding RNAV route Q–101 in the eastern United States. This action supports the Northeast Corridor Atlantic Coast Route Project by linking Q–101 to other east coast Air Traffic Service routes to enhance air traffic flows.

The route amendment is as follows:

Q–101: Q–101 currently extends between the SKARP, NC, waypoint (WP), and the TUGGR, VA, WP. The FAA is extending Q–101 approximately 10 nautical miles to the north of the TUGGR WP, to the KALDA, VA, Fix. This provides additional routing options for northbound and southbound air traffic.

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. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 of extending RNAV route Q–101 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–101 SKARP, NC to KALDA, VA [AMENDED]

SKARP, NC	WP	(Lat. 34°29′10.30″ N, long. 077°24′37.54″ W)
PRANK, NC	WP	(Lat. 35°14′27.41″ N, long. 076°56′28.54″ W)
BGBRD, NC	WP	(Lat. 35°53′45.11″ N, long. 076°32′23.15″ W)
HYPAL,VA	WP	(Lat. 37°03′27.23″ N, long. 075°44′43.09″ W)
TUGGR, VA	WP	(Lat. 37°41′08.72″ N, long. 075°36′36.92″ W)
KALDA, VA	FIX	(Lat. 37°50′31.06″ N, long. 075°37′35.34″ W)

* * * * *

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07297 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1003]

Specific Listing for Eutylone, a Currently Controlled Schedule I Substance

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is establishing a specific listing and DEA Controlled Substances Code Number (drug code) for 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one (also known as eutylone or bk-EBDB) in schedule I of the Controlled Substances Act (CSA). Although eutylone is not specifically listed in schedule I of the CSA with its own unique drug code, it has been controlled in the United States since March 7, 2014, as a positional isomer of pentylone, a schedule I hallucinogen. Therefore, DEA is simply amending the schedule I hallucinogenic substances list in its regulations to separately include eutylone.

DATES: Effective April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Eutylone Control

Eutylone (also known as 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one or bk-EBDB) is a chemical substance which is structurally related to pentylone (also known as 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one or bk-MBDP). Pentylone is listed as a hallucinogenic substance in schedule I at 21 CFR 1308.11(d)(64). The introductory text to paragraph (d) provides: (1) A listed substance includes ''any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation,'' and (2) the term ''isomer'' includes the optical, position[al], and geometric isomers.

When compared to the chemical structure of pentylone, eutylone meets the definition of a positional isomer in 21 CFR 1300.01(b), which cross-references the term ''positional isomer'' in 21 CFR 1308.11(d). Both pentylone and eutylone possess the same molecular formula and core structure, and they have the same functional groups. They only differ from one another by a rearrangement of an alkyl moiety between functional groups. Accordingly, under 21 CFR 1308.11(d), eutylone, as a positional isomer of pentylone, has been and continues to be a schedule I controlled substance.[1]

The Drug Enforcement Administration (DEA)'s Authority To Control Eutylone

This rule is prompted by a letter dated May 27, 2022, in which the United States government was informed by the Secretariat of the United Nations that eutylone has been added to Schedule II of the Convention on Psychotropic Substances of 1971 (1971 Convention). This letter was prompted by a decision at the 65th Session of the Commission on Narcotic Drugs (CND) in March 2022 to schedule eutylone under Schedule II of the 1971 Convention (CND Dec/65/3). Preceding this decision, the Food and Drug Administration (FDA), on behalf of the Secretary of Health and Human Services and pursuant to 21 U.S.C. 811(d)(2), published two notices in the **Federal Register** with an opportunity to submit domestic information and opportunity to comment on this action, July 23, 2021, 86 FR 39038 and February 15, 2022, 87 FR 8586. In every instance, FDA noted that eutylone was already controlled in schedule I of the Controlled Substances Act (CSA) as a positional isomer of pentylone, and the February 2022 notice stated that no additional permanent controls for eutylone under the CSA would be necessary to fulfill United States' obligations as a party to the 1971 Convention.

As discussed above in this final rule, eutylone—by virtue of being a positional isomer of pentylone—has been controlled in schedule I of the CSA temporarily since March 7, 2014 (79 FR 12938), and permanently since March 1, 2017 (82 FR 12171). Therefore, all regulations and criminal sanctions applicable to schedule I substances have been and remain applicable to eutylone. Drugs controlled in schedule I of the CSA satisfy and exceed the required domestic controls of Schedule II under Article 2 of the 1971 Convention.

Effect of Action

As discussed above, this rule does not affect the continuing status of eutylone as a schedule I controlled substance in any way. This action, as an administrative matter, merely establishes a separate, specific listing for eutylone in schedule I of the CSA and assigns a DEA controlled substances code number (drug code) for the substance. This action will allow DEA to establish an aggregate production quota and grant individual manufacturing and procurement quotas to DEA-registered manufacturers of eutylone, who had previously been granted individual quotas for such purposes under the drug code for pentylone.

Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. Eutylone is currently controlled in schedule I as a positional isomer of pentylone, and eutylone has no currently accepted medical use in treatment to qualify for placement in a schedule other than schedule I (*see* 21 U.S.C. 812(b)(2)–(5)).

Pursuant to 5 U.S.C. 553(b)(3)(B), DEA finds that notice and comment rulemaking is unnecessary and that good cause exists to dispense with these procedures. The addition of a separate listing for eutylone and its DEA controlled substances code number in the list of schedule I substances in 21 CFR 1308.11(d) makes no substantive difference in the status of this drug as a schedule I controlled substance, but instead is ''a minor or merely technical amendment in which the public is not particularly interested.'' *National Nutritional Foods Ass'n* v. *Kennedy,* 572 F.2d 377, 385 (2d Cir. 1978) (quoting S. Rep. No. 79–752, at 200 (1945)). *See also Utility Solid Waste Activities Group* v. *E.P.A.,* 236 F.3d 749, 755 (D.C. Cir. 2001) (the ''unnecessary'' prong ''is confined to those situations in which the administrative rule is a routine determination, insignificant in nature

[1] Pentylone (and its isomers) has been subject to temporary schedule I controls since March 7, 2014, first pursuant to a final order (March 7, 2014, 79 FR 12938) and the subsequent one-year extension of that order (March 4, 2016, 81 FR 11429), and then permanently pursuant to a final rule which continued the imposition of those controls (March 1, 2017, 82 FR 12171).

and impact, and inconsequential to the industry and public'') (internal quotations and citation omitted). This rule is a ''technical amendment'' to 21 CFR 1308.11(d) as it is ''insignificant in nature and impact, and inconsequential to the industry and public.'' Therefore, publishing a notice of proposed rulemaking and soliciting public comment are unnecessary.

In addition, because eutylone is already subject to domestic control under schedule I as a positional isomer of pentylone and no additional requirements are being imposed through this action, DEA finds good cause exists to make this rule effective immediately upon publication in accordance with 5 U.S.C. 553(d)(3). DEA is concerned that delaying the effective date of this rule potentially could cause confusion regarding the regulatory status of eutylone. Eutylone is currently controlled as a schedule I controlled substance, and this level of control does not change with this rulemaking.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This regulation has been drafted and reviewed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. This rule is not a significant regulatory action under E.O. 12866. Eutylone already is a controlled substance in the United States under schedule I, as it is a positional isomer of a schedule I hallucinogen, pentylone. In this final rule, DEA is merely making an administrative change by amending its regulations to separately list eutylone in schedule I and to assign the DEA controlled substances code number 7549 to the substance. A separate listing for eutylone and its DEA controlled substances code number will not alter the status of eutylone as a schedule I controlled substance. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or other laws. As noted in the above section regarding the applicability of the APA, DEA determined that there was good cause to exempt this final rule from notice and comment. Consequently, the RFA does not apply.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1532, DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by adding new paragraph (d)(101) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(101) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one (other names: eutylone; bk-EBDB)	7549

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on April 3, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07335 Filed 4–7–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0271]

Safety Zone; Menominee River, Marinette, WI

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone on the Menominee River in Marinette, WI, on April 15, 2023, from 7:30 a.m. to 2:00 p.m. This action is necessary and intended to protect the safety of life and property on navigable waterways before, during and after the launch of a naval vessel from Marinette Marine on the Menominee River in Marinette, WI. During the enforcement period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in the safety zone. No person or vessel may enter, transit, or anchor within the safety zone while it is being enforced unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in row (3) of Table 4 to 33 CFR 165.929 will be enforced from 7:30 a.m. through 2:00 p.m. on April 15, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone listed in 33 CFR 165.929, Table 4, row (3) for the operations at Marinette Marine on April 15, 2023, from 7:30 a.m. to 2:00 p.m. This action is being taken to protect the safety of life and property on navigable waterways of the Menominee River, WI, for the launching of a naval vessel. The safety zone will encompass all waters of the Menominee River in the vicinity of Marinette Marine Corporation, from the U.S. HWY 41 Bridge to the Ogden Street Bridge.

Pursuant to 33 CFR 165.23 and 165.929, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Lake Michigan via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Lake Michigan or a designated representative.

This notification of enforcement is issued under authority of 33 CFR 165.929 and 5 U.S.C. 552(a). In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Lake Michigan determines that the safety zone need not be enforced for the full duration stated in this notification, permission to enter the safety zone may be granted using a Broadcast Notice to Mariners.

The Captain of the Port Lake Michigan or a designated representative will inform the public through a Broadcast Notice to Mariners of any changes in the planned schedule. The Captain of the Port Lake Michigan or a representative may be contacted via Channel 16, VHF–FM or at (414) 747–7182.

Dated: March 31, 2023.

Doreen Mccarthy,

Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.

[FR Doc. 2023–07444 Filed 4–7–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0274; FRL–10822–01–OCSPP]

Acetophenone; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acetophenone when used as an inert ingredient (solvent or co-solvent) in pesticide formulations applied to growing crops. ADAMA Makhteshim Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of this exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acetophenone, when used in accordance with the terms of that exemption.

DATES: This regulation is effective April 10, 2023. Objections and requests for hearings must be received on or before June 9, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0274, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0274 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 9, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0274, by one of the following methods:

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Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of June 1, 2021 (86 FR 29229) (FRL–10023–95), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11493) by ADAMA Makhteshim Ltd., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that the existing exemption in 40 CFR 180.920 for residues of acetophenone (CAS Reg. No. 98–86–2) be amended to include additional uses for acetophenone as a solvent or co-solvent inert ingredient in pesticide formulations applied to growing crops. That document referenced a summary of the petition prepared by ADAMA Makhteshim Ltd., the petitioner, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .'' Section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by acetophenone as well as the no-observed-adverse-effect-level (NOAEL)

and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Available acute studies on acetophenone show moderate oral and low dermal toxicity. An inhalation toxicity study showed moderate inhalation toxicity. Acetophenone was shown to be a mild irritant to the skin and a severe eye irritant but was not reported to be a dermal sensitizer.

Several repeat dose oral studies (*i.e.,* a 17-week dietary toxicity study in rats, a 90-day gavage study in rats, two developmental toxicity studies in rats and rabbits and a repeat dose toxicity test combined with a reproductive/developmental screening test in rats) have been conducted with acetophenone. The most sensitive effect in the acetophenone database is decreased body weight, which was observed starting at 300 mg/kg/day in a developmental gavage study in rats and at 500 mg/kg/day in the 90-day gavage study in rats.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

No effects attributed to a single exposure were seen in the studies provided and therefore, a point of departure (POD) for acute dietary risk was not determined. The most sensitive effect in the acetophenone database is decreased body weight, which was observed starting at 300 mg/kg/day in a developmental gavage study in rats and at 500 mg/kg/day in the 90-day gavage study in rats. Therefore, both studies are considered co-critical. The chronic dietary, incidental oral, dermal and inhalation endpoints are selected from the NOAEL of 250 mg/kg/day based on body weight changes observed starting at 300 mg/kg/day in rats.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acetophenone, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from acetophenone in food as follows:

Because no acute endpoint of concern was identified, a quantitative acute dietary exposure assessment is unnecessary. In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model DEEM–FCID™, Version 4.02, EPA used food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What we eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2005 to 2010. The Inert Dietary Exposure Evaluation Model (I–DEEM) is a highly conservative model with the assumption that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has tolerance-level residues. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Update to D361707: Dietary Exposure and Risk Assessments for the Inerts.'' (12/21/2021) and can be found at *https://www.regulations.gov* in docket ID number EPA–HQ–OPP–2018–0090–0002.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for acetophenone, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Based on the pesticide product labels reviewed, in a conservative effort to assess exposure, the EPA has conducted a screening level assessment using high-end exposure scenarios for pesticidal use on lawns/turf and antimicrobial cleaning products.

Risks were calculated using the Margin of Exposure (MOE) approach. This is a ratio of the body burden to the toxicological Point of Departure (POD). A MOE greater than 100 indicates that the exposure scenario does not demonstrate a risk of concern for acetophenone. For all residential handler and post-application scenarios, for both adults and children, for application of pesticides containing this inert ingredient to lawns and turf and use in cleaning produces, the MOEs were greater than 100 and therefore, there is no risk of concern.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found acetophenone to share a common mechanism of toxicity with any other substances, and acetophenone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acetophenone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of offspring susceptibility was observed in the available developmental studies in rats and rabbits or the reproductive/developmental toxicity study in rats. The offspring effects observed in all three studies occurred only in the presence of maternal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced from 10X to 1X. That decision is based on the following findings:

i. The toxicity database for acetophenone is complete.

ii. Acetophenone is a known hypnotic. Clinical signs of neurotoxicity were observed in the available studies. However, these effects were seen at the same or higher doses than the body weight changes. Therefore, the POD is protective of any potential neurotoxicity effects.

iii. There is no evidence that acetophenone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acetophenone in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by acetophenone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, acetophenone is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acetophenone from food and water will utilize 41.2% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in this unit, regarding residential use patterns, chronic residential exposure to residues of acetophenone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetophenone is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to acetophenone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 120 for adults and 110 for children 1 to 2 years old. These MOEs are not of concern because EPA's level of concern for acetophenone is a MOE of 100 or below.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, acetophenone is not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for acetophenone.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of structural alerts for carcinogenicity coupled with the result from the studies indicating low concern for mutagenicity, there is low concern for carcinogenicity with acetophenone. Therefore, acetophenone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acetophenone residues.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance established under 40 CFR 180.920 for acetophenone (CAS Reg. No. 98–86–2) can be amended to include the use as an inert ingredient (solvent or co-solvent) in pesticide formulations applied pre-harvest to growing crops only.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 31, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.920, amend table 1 to 180.920, by revising the entry for ''Acetophenone'' to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.920

Inert ingredients	Limits	Uses
* * * * * * *		
Acetophenone (CAS Reg. No. 98–86–2)		Attractant, solvent, co-solvent.
* * * * * * *		

[FR Doc. 2023–07459 Filed 4–7–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0130 and EPA–HQ–OPP–2021–0555; FRL–10449–01–OCSPP]

Ethalfluralin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of ethalfluralin in or on multiple crops that are referenced later in this document. The Interregional Research Project Number 4 (IR–4) and Gowan Company LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 10, 2023. Objections and requests for hearings must be received on or before June 9, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2021–0130 and EPA–HQ–OPP–2021–0555, are available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Acting Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-180?toc=1.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0130 and/or EPA–HQ–OPP–2021–0555 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 9, 2023. At this time, the Office of Administrative Law Judges, in which the Hearing Clerk is located, encourages people to utilize the electronic system for filing. *See* Order Urging Electronic Service and Filing, *https://www.epa.gov/sites/default/files2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* The system for filing electronically can be found at this website, *https://www.epa.gov/alj.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0130 and/or EPA–HQ–OPP–2021–0555, by one of the following methods:

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Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 21, 2021 (86 FR 58239) (FRL–8792–04–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8876) in docket EPA–HQ–OPP–2021–0130, by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.416 be amended by adding tolerances for ethalfluralin, N-ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine in or on the raw agricultural commodities: Hemp, seed at 0.05 ppm; stevia, dried leaves at 0.05 ppm; vegetable, tuberous and corm, subgroup 1C at 0.01 ppm; individual crops of Proposed Crop Subgroup 6–XXE: Dried shelled bean, except soybean, subgroup at 0.05 ppm; and individual crops of Proposed Crop Subgroup 6–XXF: Dried shelled pea subgroup at 0.05 ppm. Due to the length of the list of commodities, please refer to the document EPA issued in the **Federal Register** on October 21, 2021, for a complete list of commodities to be established. The petition also requested to remove established tolerances for residues of ethalfluralin in or on the raw agricultural commodities: Bean, dry, seed at 0.05 ppm; pea, dry, seed at 0.05 ppm; and potato at 0.05 ppm. That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* No comments were received in response to the notice of filing.

In the **Federal Register** of March 22, 2022 (87 FR 16133) (FRL–9410–11–OCSPP) EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F8929) in docket EPA–HQ–OPP–2021–0555 by Gowan Company LLC, 370 S Main Street, Yuma, AZ 85366. The petition requested that 40 CFR 180.416 be amended by adding a tolerance for residues of ethalfluralin in or on the onion, bulb crop subgroup 3–07A at 0.01 ppm. There was one comment received in response to the notice of filing. EPA's response to this comment is addressed in section IV.C.

In the **Federal Register** of April 28, 2022 (87 FR 25178) (FRL–9410–12–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8876) in docket EPA–HQ–OPP–2021–0130 by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.416 be amended by establishing a tolerance for residues of ethalfluralin in or on the raw agricultural commodity stevia, fresh leaves at 0.05 ppm. There was one comment received in response to the notice of filing. EPA's response to this comment is addressed in section IV.C.

Some of the commodity definitions have been modified to be consistent with Agency nomenclature and one requested tolerance is not being established, as explained in section IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemaking of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemaking, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a tolerance rulemaking for ethalfluralin in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to ethalfluralin and established tolerances for residues of that chemical. EPA is incorporating previously published sections from that rulemaking as described further in this rulemaking, as they remain unchanged.

Toxicological profile. For a discussion of the Toxicological Profile of ethalfluralin, see Unit III.A. of the ethalfluralin tolerance rulemaking published in the **Federal Register** of July 28, 2020 (85 FR 45336) (FRL–10008–20).

Toxicological points of departure/Levels of concern. For a summary of the Toxicological Points of Departure/Levels of Concern for ethalfluralin used for human risk assessment, please reference Unit III.B. of the July 28, 2020, rulemaking.

Exposure assessment from residues in or on food. EPA's dietary exposure assessments have been updated to include the additional exposure from the petitioned-for tolerances as well as existing ethalfluralin tolerances in 40 CFR 180.416. The acute and chronic dietary (food and drinking water) assessments used tolerance-level residues and assumed 100 percent crop treated (PCT). The cancer dietary (food and drinking water) analysis was refined and used half the field trial limit of detection value for all potato commodities; data from the United States Department of Agriculture (USDA's) Pesticide Data Program (PDP) for dried bean/pea, soybean grain, soy infant formula, cucurbit vegetables, and peanut butter; tolerance-level residues for the remaining commodities, as well as average PCT data for canola/rapeseed, cantaloupe, cucumber, peanut, pumpkin, summer/winter squash, sunflower, and watermelon and 100 PCT for the remaining commodities.

Anticipated residue and PCT information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The cancer assessment incorporated average PCT data for the following commodities: canola/rapeseed (2.5%); cantaloupe (5%); cucumber (55%); peanut (25%); pumpkin (20%); summer/winter squash (35%); sunflower (5%); and watermelon (25%).

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that Conditions a, b, and c discussed above have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which ethalfluralin may be applied in a particular area.

Drinking water and non-occupational exposures. An updated drinking water assessment for all proposed and registered uses was conducted. The acute, chronic, and cancer assessments incorporated modeled surface water

estimated drinking water concentrations of 26.1 ppb, 0.57 ppb, and 0.41 ppb, respectively.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has determined that although ethalfluralin shares some chemical and/or toxicological characteristics (*e.g.,* chemical structure or apical endpoint) with other pesticides, the toxicological database does not support a testable hypothesis for a common mechanism of action. See: Dinitroanilines: Screening Analysis of Toxicological Profiles to Consider Whether a Candidate Common Mechanism Group Can Be Established. Consequently, no further review of cumulative effects is required for ethalfluralin at this time.

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the July 28, 2020, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate risks and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are less than 1% of the aPAD for females 13 to 49 years old, the only population group of concern. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are less than 1% of the cPAD for children 1 to 2 years old, the group with the highest exposure. Because there are no proposed or previously registered residential uses of ethalfluralin, short- and intermediate-term residential exposure is not expected; therefore, aggregate risk is equal to the chronic dietary risk, which is below the Agency's level of concern. A refined cancer dietary assessment was conducted, using the Q_1* for ethalfluralin of 0.089 $(mg/kg/day)^{-1}$, resulting in a cancer risk estimate for adults of 1×10^{-6}, which the Agency considers to be a negligible cancer risk.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to ethalfluralin residues. More detailed information on this action can be found in the document titled ''Ethalfluralin. Human Health Risk Assessment for Proposed Section 3 Registration for the New Uses on Hemp, Bulb Onion, and Stevia plus Crop Group Expansions'' in docket ID EPA–HQ–OPP–2021–0130.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the July 28, 2020, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

Codex has not established ethalfluralin MRLs in/on any of the commodities for which tolerances were requested. Therefore, harmonization is not an issue.

C. Response to Comments

One comment was received in response to the March 22, 2022, Notice of Filing. The comment reads in part ''deny application for fluoride use on onions by gowan profiteering co. the detriment to healthy life on earth [sic].'' It is unclear whether the commenter intended to submit a comment on the present action, which includes a request for a tolerance for residues of ethalfluralin, not fluoride, on onions, among many other commodities. To the extent the comment is about fluoride residues, this comment is irrelevant to the present action. To the extent the comment is about ethalfluralin, the commenter has provided no information to support a conclusion that the tolerances requested would not meet the FFDCA safety standard. The existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

One comment was received in response to the April 28, 2022, Notice of Filing. The commenter opposed EPA approving the requested tolerances, stating that doing so would poison the food and feed in the U.S. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that the trinexapac-ethyl tolerances are safe. The commenter has provided no information indicating that a safety determination cannot be supported.

D. Revisions to Petitioned-For Tolerances

Several of the commodity definitions have been modified to conform to Agency nomenclature. Additionally, although the petitioner requested that EPA establish individual tolerances for the commodities contained in the proposed crop subgroups 6–XXE (Dried shelled bean, except soybean) and 6–XXF (Dried shelled pea subgroup), EPA is establishing tolerances for the corresponding subgroups that have recently been established by EPA in a final rule. See the **Federal Register** of September 21, 2022 (87 FR 57627) (FRL–5031–13–OCSPP). The corresponding subgroups that are being established are ''Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E'' and ''Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F''. The commodities in the established subgroups are the same as the individual commodities for which the petitioner sought tolerances.

EPA is not establishing a tolerance for Soybean, vegetable, dry seed because it is not a commodity that requires a tolerance. Edamame (vegetable soybean) exists only in the succulent seed and edible podded forms.

V. Conclusion

Therefore, tolerances are established for residues of ethalfluralin in or on Hemp, seed at 0.05 ppm; Onion, bulb, subgroup 3–07A at 0.01 ppm; Stevia,

dried leaves at 0.05 ppm; Stevia, fresh leaves at 0.05 ppm; Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E at 0.05 ppm; Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F at 0.05 ppm; and Vegetable, tuberous and corm, subgroup 1C at 0.01 ppm.

Additionally, the following tolerances are removed as unnecessary: Bean, dry, seed at 0.05 ppm; pea, dry, seed at 0.05 ppm; and potato at 0.01 ppm. Finally, EPA is removing the tolerance on potato at 0.05 ppm as a housecleaning measure, since that tolerance expired on January 28, 2021.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR part 180

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

Dated: March 31, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 as follows:

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

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

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

■ 2. In § 180.416, amend paragraph (a) by revising the table to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Dill, dried leaves	0.05
Dill, fresh leaves	0.05
Hemp, seed	0.05
Onion, bulb, subgroup 3–07A	0.01
Peanut	0.05
Rapeseed subgroup 20A	0.05
Soybean	0.05
Stevia, dried leaves	0.05
Stevia, fresh leaves	0.05
Sunflower subgroup 20B	0.05
Vegetable, cucurbit, group 9	0.05
Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E	0.05
Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F	0.05
Vegetable, tuberous and corm, subgroup 1C	0.01

* * * * *

[FR Doc. 2023–07456 Filed 4–7–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC 23–6; FR ID 135131]

Promoting Telehealth in Rural America; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) is correcting a final rule that appeared in the **Federal Register** on March 23, 2023. In the document, amendatory instruction 4 of the rules incorrectly removed the subparagraphs to paragraph (a) when paragraph (a) was revised. This correction is made to amend instruction 4 so that only paragraph (a) introductory text be revised and the subparagraphs remain in place.

DATES: Effective April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Bryan P. Boyle, *Bryan.Boyle@fcc.gov,* Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–04991, appearing on page 17379 in the **Federal Register** of Thursday, March 23, 2023, the following correction is made:

§ 54.619 [Corrected]

■ 1. On page 17396, in the first column, in part 54, in amendment 4, the

instruction ''Amend § 54.619 by revising paragraph (a) to read as follows:'' is corrected to read ''Amend § 54.619 by revising the introductory text of paragraph (a) to read as follows:''

Federal Communications Commission.

Dated: March 23, 2023.

Marlene Dortch,

Secretary.

[FR Doc. 2023–07215 Filed 4–7–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220510–0113; RTID 0648–XC858]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #48 Through #50

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

ACTION: Inseason modification of 2022–2023 management measures.

SUMMARY: NMFS announces three inseason actions for the 2023 portion of the 2022–2023 ocean salmon fishing season. These inseason actions modify the recreational and commercial salmon fisheries in the area from Cape Falcon, OR, to the U.S./Mexico border.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–980–4239, Email: *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The annual management measures for the 2022–2023 ocean salmon fisheries (87 FR 29690, May 16, 2022) govern the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2022, until the effective date of the 2023–2024 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect the SOF commercial and recreational salmon fisheries, as set out under the heading Inseason Actions below.

Consultations with the Council Chairperson on these inseason actions occurred on March 9, 2023. Representatives from NMFS, Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Wildlife (CDFW) and Council staff participated in these consultations. The Salmon Advisory Subpanel and Salmon Technical Team (STT) were also present.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Reason and authorization for inseason actions #48–#50

At its March 4–10, 2023, meeting, the STT presented updated stock abundance forecasts for salmon stocks managed under the Pacific Coast Salmon Fishery Management Plan (FMP). Based on the STT's report, SOF ocean salmon fisheries will be constrained in 2023 by the very low abundance forecasts for Klamath River fall-run Chinook (KRFC) salmon and Sacramento River fall-run Chinook (SRFC) salmon. KRFC salmon continue to meet the criteria as overfished, which was determined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 2018, and SRFC salmon is currently at risk of approaching an overfished condition. KRFC Chinook salmon expected abundance is low enough that the stock will be managed under the *de minimus* provisions of the harvest control rule in the Pacific Coast Salmon Fishery Management Plan (FMP). In addition, the abundance of these stocks has been substantially over-forecast in recent years, and escapements have been much lower than anticipated preseason. The forecast of potential spawner abundance is derived from the ocean abundance forecasts, ocean natural mortality rates, age-specific maturation rates, stray rates, and the proportion of escapement expected to spawn in natural areas. To reduce the impacts on KRFC salmon and SRFC salmon and respond to the forecasts, NMFS took three inseason actions on March 9, 2023, concurrent with the March Council meeting to restrict some fisheries that were previously scheduled to open prior to May 16, 2023 (87 FR 29690, May 16, 2022).

The NMFS West Coast Regional Administrator (RA) considered the abundance forecasts for Chinook salmon stocks and the projected impacts in the ocean salmon fisheries, as modeled by the STT, and determined that the inseason actions described below are necessary to meet management and conservations goals set preseason. These inseason actions modify quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Action #48

Description of the action: Inseason action #48 modifies the SOF commercial salmon troll fishery from Cape Falcon, OR, to the Heceta Bank Line (lat. 43°58′00″ N), OR; Heceta Bank Line (lat. 43°58′00″ N), OR, to Humbug Mountain, OR; and Humbug Mountain, OR, to the Oregon/California border, previously scheduled to open on March 15, 2023. This fishery is closed through May 15, 2023.

Effective date: Inseason action #48 took effect on March 15, 2023, at 12:01 a.m. and remains in effect until superseded.

Inseason Action #49

Description of the action: Inseason action #49 modifies the SOF ocean salmon recreational fishery from Cape Falcon, OR, to Humbug Mountain, OR, previously scheduled to open on March 15, 2023. This fishery is closed through May 15, 2023.

Effective date: Inseason action #49 took effect on March 15, 2023, at 12:01 a.m. and remains in effect until superseded.

Inseason Action #50

Description of the action: Inseason action #50 modifies the ocean salmon recreational fishery and the salmon troll commercial fishery from the Oregon/California border to the U.S./Mexico border. These fisheries are closed through May 15, 2023.

Effective dates: Inseason action #50 takes effect for the following areas and dates, and remains in effect until superseded.

• Effective May 1, 2023 at 12:01 a.m. for the salmon troll commercial fishery from the Oregon/California border to Humboldt South Jetty (California Klamath Management Zone).

• Effective April 16, 2023 at 12:01 a.m. for the salmon troll commercial fishery from lat. 40° 10′ N to Point Arena, CA (Fort Bragg management area).

• Effective May 1, 2023 at 12:01 a.m. for the salmon troll commercial fishery from Point Arena, CA, to Pigeon Point, CA (San Francisco management area).

• Effective May 1, 2023 at 12:01 a.m. for the salmon troll commercial fishery from Pigeon Point, CA, to the U.S./Mexico border (Monterey management area).

• Effective May 1, 2023 at 12:01 a.m. for the ocean salmon recreational fishery from the Oregon/California border to lat. 40° 10′ N (California Klamath Management Zone management area).

• Effective April 1, 2023 at 12:01 a.m. for the ocean salmon recreational fishery from lat. 40° 10′ N to Point Arena, CA (Fort Bragg management area).

• Effective April 1, 2023 at 12:01 a.m. for the ocean salmon recreational fishery from Point Arena, CA, to Pigeon Point, CA (San Francisco management area).

• Effective April 1, 2023 at 12:01 a.m. for the ocean salmon recreational fishery from Pigeon Point, CA to the U.S./Mexico border (Monterey management area).

All other restrictions and regulations remain in effect as announced for the 2022–2023 ocean salmon fisheries (87 FR 29690, May 16, 2022), as modified by previous inseason actions (87 FR 41260, July 12, 2022; 87 FR 49534, August 11, 2022; 87 FR 52353, August 25, 2022; 87 FR 54171, September 2, 2022; 87 FR 60105, October 4, 2022; 87 FR 66609, November 4, 2022).

The RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts, landings to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The states and tribes manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the states of Washington, Oregon, and California consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and are exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (87 FR 29690, May 16, 2022), the Pacific Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 4, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–07352 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 68
Monday, April 10, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0661; Project Identifier MCAI–2022–00737–Q]

RIN 2120–AA64

Airworthiness Directives; Ipeco Pilot and Co-Pilot Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–21–06, which applies to certain Ipeco Holdings Limited (Ipeco) pilot and co-pilot seats. AD 2019–21–06 requires modification and re-identification of the affected seats, initial and repetitive inspections of the affected track lock springs and, depending on the findings, replacement of the track lock springs with a part eligible for installation. Since the FAA issued AD 2019–21–06, the FAA determined the need for a mandatory terminating action to the track lock spring inspections. This proposed AD was prompted by reports of track lock spring failures occurring on affected seats. This proposed AD would retain the requirements of AD 2019–21–06. This proposed AD would also add a mandatory terminating action for the initial and repetitive inspections of the affected track lock springs. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by May 25, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0661; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Ipeco service information identified in this NPRM, contact Ipeco Holdings Limited, Aviation Way, Southend on Sea, SS2 6UN, United Kingdom; phone: +44 1702 545118; fax: +44 1702 540782; email: *Customersupport@ipeco.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Kevin Kung, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7244; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0661; Project Identifier MCAI–2022–00737–Q'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kevin Kung, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–21–06, Amendment 39–19772 (84 FR 60325, November 8, 2019) (AD 2019–21–06), for certain Ipeco pilot and co-pilot seats. AD 2019–21–06 was prompted by an MCAI originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2018–0262, dated December 6, 2018 (EASA AD 2018–0262), to correct an unsafe condition identified as reports of track lock spring failures occurring on affected seats, including those seats already modified by EASA AD 2016–0256, dated December 16, 2016 (EASA AD 2016–0256).

AD 2019–21–06 requires modification and re-identification of the affected seats, initial and repetitive inspections of the affected track lock springs and, depending on the findings, replacement of the track lock springs with a part

eligible for installation. AD 2019–21–06 also adds additional seat part numbers to the applicability. The FAA issued AD 2019–21–06 to prevent unexpected movement of pilot and co-pilot seats on takeoff and landing.

Actions Since AD 2019–21–06 Was Issued

Since the FAA issued AD 2019–21–06, the Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom (UK) (UK CAA), superseded EASA AD 2018–0262 and issued UK CAA AD G–2022–0011, dated June 9, 2022 (UK CAA AD G–2022–0011) (also referred to after this as the MCAI). The MCAI states that occurrences of track lock spring failures continued to be reported, including seats already modified, as required by EASA AD 2016–0256. Consequently, the manufacturer published revised service information, which specifies instructions for inspection and replacement, if necessary, of affected track lock springs. The MCAI partially retains the requirements of EASA AD 2018–0262, which is superseded. The MCAI maintains the inspection of affected seats and springs and, depending on the results of the inspection, replacement of the affected springs from EASA AD 2018–0262. The MCAI also adds a mandatory terminating action, which requires that replacement of affected springs and lever, and the installation of a lever control placard, is accomplished. Track lock spring failures, if not addressed, could lead to further cases of unexpected movement of pilot and co-pilot seats on takeoff and landing, which could result in reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0661.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Ipeco Service Bulletin (SB) Number 063–25–15, Issue 2; SB Number 063–25–16, Issue 2; SB Number 063–25–17, Issue 2; and SB Number 063–25–18, Issue 2; all dated March 8, 2022. These SBs provide instructions for removal and replacement of the levers and springs of affected track lock springs and the installation of a lever control placard.

This proposed AD would also require Ipeco SB Number 063–25–08, Revision 00; SB Number 063–25–09, Revision 00; and SB Number 063–25–10, Revision 00; all dated May 31, 2016, which the Director of the Federal Register approved for incorporation by reference as of December 12, 2017 (82 FR 51552, November 7, 2017).

This proposed AD would also require Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018, which the Director of the Federal Register approved for incorporation by reference as of December 13, 2019 (84 FR 60325, November 8, 2019).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2019–21–06. This proposed AD would also add a mandatory terminating action for the initial and repetitive inspections of the affected track lock springs.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 pilot and co-pilot seats installed on, but not limited to, ATR 42 and ATR 72 airplanes of U.S. registry. The FAA estimates that seats installed on 34 ATR 42 airplanes and seats installed on 21 ATR 72 airplanes will require modification and inspection.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect ATR 42 or ATR 72 flight crew seats	0.25 work-hours × $85 per hour = $21.25	$0	$21.25	$2,550
Modify ATR 42 or ATR 72 flight crew seats	2 work-hours × $85 per hour = $170	56	226	27,120
Report results of ATR 42 or ATR 72 inspection.	1 work-hour × $85 per hour = $85	0	85	10,200
Modify ATR 42 or ATR 72 flight crew seats per mandatory terminating action.	2.5 work-hours × $85 per hour = $212.50	56	268.50	32,220

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Remove seat and replace ATR 42 track lock spring	1.5 work-hours × $85 per hour = $127.50	$28	$155.50
Remove seat and replace ATR 72 track lock spring	1.50 work-hours × $85 per hour = $127.50	28	155.50

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby

reducing the cost impact on affected operators.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2019–21–06, Amendment 39–19772 (84 FR 60325, November 8, 2019); and

■ b. Adding the following new airworthiness directive:

Ipeco Holdings Limited: Docket No. FAA–2023–0661; Project Identifier MCAI–2022–00737–Q.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 25, 2023.

(b) Affected ADs

This AD replaces AD 2019–21–06, Amendment 39–19772 (84 FR 60325, November 8, 2019); (AD 2019–21–06).

(c) Applicability

(1) This AD applies to:

(i) Ipeco Holdings Limited (Ipeco) pilot and co-pilot seats with a part number (P/N) listed in Paragraph 1.A., Planning Information, Tables 1 and 2, of Ipeco Service Bulletin (SB) Number 063–25–14, Revision 00, dated August 14, 2018, and

(ii) Ipeco pilot seat P/N 3A063–0099–01–1 and Ipeco co-pilot seat P/N 3A063–0100–01–1.

(2) These seats are installed on, but not limited to, ATR–GIE Avions de Transport Régional ATR 42 and ATR 72 airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by reports of track lock spring failures occurring on affected seats. The FAA is issuing this AD to prevent unexpected movement of pilot and co-pilot seats on takeoff and landing. The unsafe condition, if not addressed, could result in reduced control of the airplane.

(f) Compliance

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

(g) Retained Modification and Re-identification of Seats, Inspections and Replacement of Track Lock Spring, and Reporting

This paragraph retains the requirements of paragraph (g) of AD 2019–21–06, with a revised compliance date for affected seat inspections and reporting of inspection results.

(1) For seats that have not installed the track lock spring modification kit, within two years after December 12, 2017 (the effective date of AD 2017–22–02), modify and re-identify each affected pilot and co-pilot seat using the Accomplishment Instructions of Ipeco SB Number 063–25–08, Revision 00; Ipeco SB Number 063–25–09, Revision 00; or Ipeco SB Number 063–25–10, Revision 00; all dated May 31, 2016, as applicable to each affected seat.

(2) For all affected seats:

(i) Within 750 flight hours (FHs) after December 13, 2019 (the effective date of AD 2019–21–06), and, thereafter at intervals not to exceed 750 FHs, inspect the track lock spring of each seat in accordance with the Accomplishment Instructions, paragraph 3.2, of Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(ii) If, during any inspection as required by paragraph (g)(2)(i) of this AD, any damage on, or incorrect installation of, any track lock spring is found on the pilot or co-pilot seat, before further flight, replace both track lock springs of the affected seat with a part eligible for installation using the Accomplishment Instructions, paragraph 3.3.3.1 or 3.3.3.2, as applicable, of Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(3) Within 30 days after the initial and repetitive inspections, and thereafter for two years after December 13, 2019 (the effective date of AD 2019–21–06), send the inspection results, including no findings, to Ipeco at *technicalsupport@ipeco.com.*

(h) New Mandatory Terminating Action

As a mandatory terminating action to the inspections required by paragraph (g)(2)(i) of this AD, within 12 months after the effective date of this AD, or at the next Base Maintenance check, whichever occurs later, modify and re-identify each affected seat in accordance with the Accomplishment Instructions of Ipeco SB Number 063–25–15, Issue 2; SB Number 063–25–16, Issue 2; SB Number 063–25–17, Issue 2; or SB Number 063–25–18, Issue 2; all dated March 8, 2022, as applicable to each affected seat.

(i) Installation Prohibition

After the effective date of this AD, do not install any pilot or co-pilot seat identified in paragraph (c)(1)(i) of this AD unless the seat is modified and re-identified as specified in paragraph (g)(1) of this AD.

(j) Definitions

(1) For the purpose of this AD, ''damage'' includes cracks, breaks, corrosion, or deformation of the track lock spring.

(2) For the purpose of this AD, ''incorrect installation'' is installing the track lock spring at an angle or position different from the angle or position shown in Figures 6 and 7 of Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(3) For the purpose of this AD, a ''part eligible for installation'' is:

(i) A modified seat provided, before installation, it has passed an inspection (no damage is found); and

(ii) A track lock spring provided that it passed an inspection (no damage is found).

(k) Credit for Previous Actions

You may take credit for the actions required by paragraph (g)(2)(ii) of this AD if the actions were performed before the effective date of this AD using ATR SB No. ATR42–25–0191, Original Issue, dated July 4, 2016; ATR SB No. ATR42–25–0191, Revision No. 01, dated July 20, 2016; or ATR SB No. ATR72–25–1157, Revision No. 02, dated March 9, 2017.

(l) Special Flight Permits

Special flight permits are prohibited.

(m) Alternative Methods of Compliance (AMOCs)

The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n)(2) of this AD. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(n) Additional Information

(1) Refer to United Kingdom (UK) Civil Aviation Authority (CAA) AD G–2022–0011, dated June 9, 2022, for related information. This UK CAA AD may be found in the AD docket at regulations under Docket No. FAA–2023–0661.

(2) For more information about this AD, contact Kevin Kung, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7244; email: *9-AVS-AIR-BACO-COS@faa.gov.*

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Ipeco Service Bulletin (SB) Number 063–25–15, Issue 2, dated March 8, 2022.

(ii) Ipeco SB Number 063–25–16, Issue 2, dated March 8, 2022.

(iii) Ipeco SB Number 063–25–17, Issue 2, dated March 8, 2022.

(iv) Ipeco SB Number 063–25–18, Issue 2, dated March 8, 2022.

(4) The following service information was approved for IBR on December 13, 2019 (84 FR 60325, November 8, 2019).

(i) Ipeco SB Number 063–25–14, Revision 00, dated August 14, 2018.

(ii) [Reserved]

(5) The following service information was approved for IBR on December 12, 2017 (82 FR 51552, November 7, 2017).

(i) Ipeco SB Number 063–25–08, Revision 00, dated May 31, 2016.

(ii) Ipeco SB Number 063–25–09, Revision 00, dated May 31, 2016.

(iii) Ipeco SB Number 063–25–10, Revision 00, dated May 31, 2016.

(6) For Ipeco service information identified in this AD, contact Ipeco Holdings Limited, Aviation Way, Southend on Sea, SS2 6UN, United Kingdom; phone: +44 1702 545118; fax: +44 1702 540782; email: *Customersupport@ipeco.com.*

(7) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on April 1, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–07177 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0666; Project Identifier MCAI–2022–00555–Q]

RIN 2120–AA64

Airworthiness Directives; Survitec Group Limited (RFD Beaufort Ltd.) Life Jackets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Survitec Group Limited (RFD Beaufort Ltd.) Type 102 Mk 3, 102 Mk 4, and 105 Mk 1 life jackets. This proposed AD was prompted by a report that some life jackets were found packed in the wrong valise (container). This proposed AD would require an inspection for a discrepancy (mismatch of the valise/container description and life jacket type) of life jackets and, if necessary, replacement of the life jacket. This proposed AD would also limit the installation of affected parts under certain conditions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 25, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0666; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Survitec Group Limited, t/a RFD Beaufort Ltd, Kingsway, Dunmurry, Belfast BT17 9AF, United Kingdom; telephone +44 2890 301531; fax +44 2890 621765; email *steve.pickering@survitecgroup.com;* website *survitecgroup.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Kevin Kung, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0666; Project Identifier MCAI–2022–00555–Q'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kevin Kung, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom (U.K.), has issued U.K. CAA AD G–2022–0009, dated April 21, 2022 (U.K. CAA AD G–2022–0009) (also referred to after this as the MCAI), to correct an unsafe condition on certain Survitec Group Limited (RFD Beaufort Ltd.) Type 102 Mk 3, 102 Mk 4, and 105 Mk 1 life jackets. The MCAI states Type 102 Mk 3 and Type 102 Mk 4 life jackets are designed for use by an adult or child. Type 105 Mk 1 life jackets are designed for use by an infant. Each is packed in a clear polyvinyl chloride (PVC) valise, which is marked ADULT/CHILD, CREW, or INFANT. Due to differences in parameters such as neck aperture and buoyancy, an infant life jacket cannot be used by an adult or child; likewise, an adult/child life jacket cannot be used by an infant. The MCAI stated that Survitec has found that some life jackets were packed in the wrong valise. This could cause incorrect life jackets to be provided for passengers onboard an aircraft.

The FAA is proposing this AD to address incorrectly labeled life jackets, which could, in the event of a water landing or evacuation, result in the unavailability of a life jacket with correct flotation, and possible drowning.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0666.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021. This service information specifies procedures for a general visual inspection for a discrepancy (mismatch of valise/container description and life jacket type) of affected life jackets, reporting of all inspection results to Survitec, and if a discrepancy is found, replacement of affected life jackets. (This service information is identified throughout as ''Survitec,'' while ''RFD'' is identified on only the first page of the document. Although both ''Survitec'' and ''RFD'' are current company names, the service information applies to RFD life jackets.) This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also limit the installation of affected parts under certain conditions.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 4 life jackets installed on, but not limited to, aircraft of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	None	$85	$340

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$55	$140

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Survitec Group Limited (RFD Beaufort Ltd): Docket No. FAA–2023–0666; Project Identifier MCAI–2022–00555–Q.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 25, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Survitec Group Limited (RFD Beaufort Ltd.) life jackets identified in paragraphs (c)(1) and (2) of this AD, having a part number and serial number identified in tables 2 through 13 of Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021, and a date of manufacture between October 1, 2018, and April 30, 2019, inclusive.

Note 1 to the introductory text of paragraph (c): This alert service bulletin is identified throughout as ''Survitec,'' while ''RFD'' is identified on only the first page of the document. Although both ''Survitec'' and ''RFD'' are current company names, the alert service bulletin applies to RFD life jackets.

(1) Type 102 Mk 3 and 102 Mk 4 life jackets, approved under European Union Aviation Safety Agency (EASA) Technical Standard Order Authorization EASA.21O.799.

(2) Type 105 Mk 1 life jackets, approved under United Kingdom Civil Aviation Authority (U.K. CAA) Aircraft Equipment Approval (AEAR) E15841.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report that some life jackets were found packed in the wrong valise (container). The FAA is issuing this AD to address incorrectly labeled life jackets. The unsafe condition, if not addressed, and combined with a water landing or evacuation, could result in inability to use a life jacket with correct flotation and possible drowning.

(f) Compliance

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

(g) Inspection

Within 4 months after the effective date of this AD, do a general visual inspection for a discrepancy (mismatch of the valise/container description and life jacket type) of the life jacket, in accordance with paragraphs 2.A. through 2.C. of the Accomplishment Instructions of Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021.

(h) Follow-on and Corrective Action

Before further flight after accomplishing the requirements of paragraph (g) of this AD, do the applicable actions required by paragraph (h)(1) and (2) of this AD.

(1) If no discrepancies are found during the inspection required by paragraph (g) of this AD, re-identify that part in accordance with paragraph 2.D.(1) of the Accomplishment Instructions of Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021.

(2) If any discrepancy is found during the inspection required by paragraph (g) of this

AD, do the actions required by paragraphs (h)(2)(i) and (ii) of this AD.

(i) Record the unserviceable part in accordance with paragraph 2.E.(1) of the Accomplishment Instructions of Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021.

(ii) Replace the discrepant part with a new or serviceable part, in accordance with paragraph 2.E.(2) of the Accomplishment Instructions of Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install a life jacket identified in paragraph (c) of this AD on any airplane, unless the life jacket and its valise/container have been inspected, and re-identified or replaced as applicable, in accordance with the requirements of paragraphs (g) and (h) of this AD.

(j) Reporting Requirement

At the applicable time specified in paragraph (j)(1) or (2) of this AD, submit a report of the inspection results to Survitec, in accordance with paragraph 2.F. of the Accomplishment Instructions of Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Special Flight Permits

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(l) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager, Boston ACO Branch, mail it to the address identified in paragraph (m)(2) of this AD or email to: *9-AVS-AIR-BACO-COS@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Boston ACO Branch, FAA; or the United Kingdom Civil Aviation Authority (U.K. CAA); or Survitec Group Limited's U.K. CAA's Alternative Procedure for Design Organization Approval (ADOA). If approved by the ADOA, the approval must include the ADOA-authorized signature.

(m) Additional Information

(1) Refer to U.K. CAA AD G–2022–0009, dated April 21, 2022, for related information. This U.K. CAA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0666.

(2) For more information about this AD, contact Kevin Kung, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Survitec [RFD] Alert Service Bulletin 25–207–A, Version 1, dated November 24, 2021.

Note 2 to paragraph (n)(2)(i): This alert service bulletin is identified throughout as ''Survitec,'' while ''RFD'' is identified on only the first page of the document. Although both ''Survitec'' and ''RFD'' are current company names, the alert service bulletin applies to RFD life jackets.

(ii) [Reserved]

(3) For service information identified in this AD, contact Survitec Group Limited, Kingsway, Dunmurry, Belfast BT17 9AF, United Kingdom; phone: +44 2890 301531, fax: +44 2890 621765; email: *steve.pickering@survitecgroup.com;* website *survitecgroup.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on April 4, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–07397 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0657; Project Identifier AD–2022–01351–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by reports of undetected water leaks from the faucet control module (FCM) migrating below the passenger floor in multiple lavatory locations during flight, and into the electronic equipment bay(s). This proposed AD would require repetitive general visual inspections of the area under all lavatory washbasins for evidence of intermittent and active leaks at the FCM and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 25, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0657; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention:

Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0657.

FOR FURTHER INFORMATION CONTACT: Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3986; email: *Courtney.K.Tuck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0657; Project Identifier AD–2022–01351–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3986; email: *Courtney.K.Tuck@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received reports of undetected water leaks from the faucet control module (FCM) migrating below the passenger floor in multiple lavatory locations during flight, and into the electronic equipment bay(s), which could damage flight critical equipment. One operator found wet carpet around the flight deck which led to an inspection of their fleet. After inspecting their fleet, multiple airplanes had water leaking from the FCMs.

The FCMs are located under the sinks in each lavatory and have an O-ring seal at the top of the FCM mixing chamber, which has been identified as the source of the leak. When the FCM is activated and the lavatory faucet is in use, a small amount of water can leak past the O-ring. The leak path is out of the lavatory module and through the airplane floor. Intermittent leakage will have a slow leak rate (approximately 8 ounces per hour) but a long latency period because it is difficult to detect.

This condition, if not addressed, could result in loss of multiple line replaceable units (LRUs) and subsequent loss of continued safe flight and landing.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022. This service information specifies procedures for a repetitive general visual inspection of the area under all lavatory washbasins for evidence of intermittent and active leaks at the FCM and applicable on-condition actions. On-condition actions include replacing the affected FCM with new or serviceable FCM at affected lavatory washbasin(s), and do a leak test. If a leak is found, do applicable corrective action. Repeat the leak test and make sure no leak is found.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD, and except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2023–0657.

Interim Action

The FAA considers that this proposed AD would be an interim action. The manufacturer is currently developing a redesigned FCM that will address the unsafe condition identified in this AD. Once this FCM is developed, approved, and available, the FAA might consider additional rulemaking.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022, is limited to Model 787–8, –9, and –10 airplanes, line numbers 6 through 9996. However, the applicability of this proposed AD includes all Boeing Model 787–8, 787–9, and 787–10 airplanes. The FAA has determined that until the redesigned FCM is developed, approved, and available, the interim solution provided in this proposed AD must be required for all Model 787–8, –9, and –10 airplanes. If an airplane has a redesigned FCM installed in production that would eliminate the need for the interim solution, the operator may request an alternative method of compliance (AMOC) in accordance with the procedures specified in the AD. Further, if the FAA later obtains updated information from Boeing regarding new production airplanes that have the redesigned FCM, the agency may consider revising the applicability of the final rule to exclude airplanes with the redesigned FCM.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 140 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle	$11,900

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	$6,021	$6,106

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–0657; Project Identifier AD–2022–01351–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 25, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Unsafe Condition

This AD was prompted by reports of undetected water leaks from the faucet control module (FCM) migrating below the passenger floor in multiple lavatory locations during flight, and into the electronic equipment bay(s). The FAA is issuing this AD to address undetected water leaks, which could damage flight critical equipment. The unsafe condition, if not addressed, could result in loss of multiple line replaceable units (LRUs) and subsequent loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB250290–00, Issue 001, dated November 1, 2022, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB250290–00, Issue 001, dated November 1, 2022.

(h) Exceptions to Service Information Specifications

Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022, uses the phrase ''the Issue 001 date of the Requirements Bulletin B787–

81205–SB250290–00 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3986; email: *Courtney.K.Tuck@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB250290–00 RB, Issue 001, dated November 1, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on March 24, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–07368 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0662; Project Identifier MCAI–2022–00745–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–07–13, which applies to certain Bombardier, Inc., Model BD–100–1A10 airplanes. AD 2020–07–13 requires revising the existing airplane flight manual (AFM) to provide the flightcrew with new warnings for ''Autoflight'' and ''Engine Failure in Climb During ALTS CAP.'' Since the FAA issued AD 2020–07–13, the procedures were revised to ensure that all applicable altitude capture modes utilized and annunciated in the affected fleet are included and to more clearly denote these altitude capture modes. This proposed AD would require revising the existing AFM to provide the flightcrew with new warnings for ''Autoflight'' and ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP.'' The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 25, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0662; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0662; Project Identifier MCAI–2022–00745–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner.

Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–07–13, Amendment 39–19892 (85 FR 20394, April 13, 2020) (AD 2020–07–13), for certain Bombardier, Inc., Model BD–100–1A10 airplanes. AD 2020–07–13 was prompted by an MCAI originated by Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2019–12, dated April 3, 2019 (AD CF–2019–12), to correct an unsafe condition.

AD 2020–07–13 requires revising the existing AFM to provide the flightcrew with new warnings for ''Autoflight'' and ''Engine Failure in Climb During ALTS CAP.'' The FAA issued AD 2020–07–13 to address the occurrence of an engine failure during or before a climb while in ALTS CAP or (V) ALTS CAP mode, as it could cause the airspeed to drop significantly below the safe operating speed and may require prompt flightcrew intervention to maintain a safe operating speed.

Actions Since AD 2020–07–13 was Issued

Since the FAA issued AD 2020–07–13, Transport Canada superseded AD CF–2019–12 and issued Transport Canada AD CF–2019–12R1, dated June 9, 2022 (referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states that during altitude capture flight, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The MCAI states that Transport Canada AD CF–2019–12 referenced specific altitude capture modes but did not consider all possible available annunciated altitude capture modes used in the affected airplanes. Therefore, the MCAI mandates further updates to the Limitation and Emergency Procedures sections of the AFM to ensure that all applicable altitude capture modes utilized and annunciated in the affected fleet are included and more clearly denotes these altitude capture modes in these new procedures.

The FAA is proposing this AD to address the occurrence of an engine failure during or before a climb while in altitude capture flight. The unsafe condition, if not addressed, could cause the airspeed to drop significantly below the safe operating speed and may require prompt flightcrew intervention to maintain a safe operating speed.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0662.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information, which provides new warnings for the ''Autoflight'' procedure in Section 02–04, ''Systems Limitations,'' of the LIMITATIONS section; and ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' procedure in Section 03–32, ''Powerplant,'' of the EMERGENCY PROCEDURES section; of the applicable AFMs.

- Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 69, dated July 4, 2022. (For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022. (For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

These documents are distinct since they apply to different airplane models in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2020–07–13. This proposed AD would require revising the existing AFM to provide the flightcrew with new warnings for ''Autoflight'' and ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP.''

Compliance With AFM Revisions

Transport Canada AD CF–2019–12R1 requires operators to ''advise all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 244 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$20,740

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–07–13, Amendment 39–19892 (85 FR 20394, April 13, 2020); and

■ b. Adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2023–0662; Project Identifier MCAI–2022–00745–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 25, 2023.

(b) Affected ADs

This AD replaces AD 2020–07–13, Amendment 39–19892 (85 FR 20394, April 13, 2020) (AD 2020–07–13).

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20500 inclusive, and 20501 through 20867 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Reason

This AD was prompted by a report that during altitude capture flight, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is issuing this AD to address the occurrence of an engine failure during or before a climb while in altitude capture flight. The unsafe condition, if not addressed, could cause the airspeed to drop significantly below the safe operating speed and may require prompt flightcrew intervention to maintain a safe operating speed.

(f) Compliance

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

(g) Revision of Existing Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD, revise the existing AFM to include the information specified in ''Autoflight'' procedure in Section 02–04, ''System Limitations,'' of the LIMITATIONS section, and ''Engine Failure in Climb During (V) ALTS CAP or (V) ALTV CAP,'' procedure in Section 03–32, ''Powerplant,'' of the EMERGENCY PROCEDURES section; of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 69, dated July 4, 2022 (for airplanes having serial numbers 20003 through 20500 inclusive); or the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022 (for airplanes having serial numbers 20501 through 20867 inclusive); as applicable.

Note 1 to paragraph (g): For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

Note 2 to paragraph (g): For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(h) Additional AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (i)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to Transport Canada AD CF–2019–12R1, dated June 9, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0662.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Section 02–04, ''Systems Limitations,'' of the LIMITATIONS section, of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 69, dated July 4, 2022.

Note 1 to paragraph (j)(2)(i) of this AD: This note applies to paragraphs (j)(2)(i) and (ii). For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(ii) Section 03–32, ''Powerplant,'' of the EMERGENCY PROCEDURES section, of the Bombardier Challenger 300 Airplane Flight Manual (Imperial Version), Publication No. CSP 100–1, Revision 69, dated July 4, 2022.

(iii) Section 02–04, ''Systems Limitations,'' of the LIMITATIONS section, of the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022.

Note 2 to paragraph (j)(2)(iii): This note applies to paragraphs (j)(2)(iii) and (iv) of this AD. For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(iv) Section 03–32, ''Powerplant,'' of the EMERGENCY PROCEDURES section, of the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 34, dated June 14, 2022.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on April 1, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–07189 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0615; Airspace Docket No. 23–ASW–4]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Winnie/Stowell, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Winnie/Stowell, TX. The FAA is proposing this action to support new public instrument procedures.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0615 and Airspace Docket No 23–ASW–4 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 establish Class E airspace extending upward from 700 feet above the surface at Chambers County/Winnie Stowell Airport, Winnie/Stowell, TX, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments,

without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *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, phone number, and hours of operations). 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.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G 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 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Chambers County/Winnie Stowell Airport, Winnie/Stowell, TX.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW TX E5 Winnie/Stowell, TX [Establish]

Chambers County/Winnie Stowell Airport, TX

(Lat. 29°49′08″ N, long. 094°25′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.3 -mile radius of the Chambers County/Winnie Stowell Airport.

Issued in Fort Worth, Texas, on April 4, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07375 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0854; Airspace Docket No. 23–AEA–08]

RIN 2120–AA66

Revocation of Class E Airspace; A.P. Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace extending upward from 700 feet above the surface for A.P. Hill AAF (Fort A.P. Hill), VA, as instrument approach procedures for this airport no longer exist.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0854 and Airspace Docket No. 23–AEA–08 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. FAA Order JO 7400.11G Airspace

Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

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 remove Class E airspace in A.P. Hill, VA, as all instrument approaches have been canceled for A.P. Hill AAF.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter, provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of NPRMs

An electronic copy of this document may be downloaded online at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to remove Class E airspace extending upward from 700 feet above the surface for A.P. Hill AAF, A.P. Hill, VA, as instrument approaches no longer exist for this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed rule, when promulgated, will 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.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, 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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AEA VA E5 Fort A.P. Hill, VA [Removed]

Issued in College Park, Georgia, on April 4, 2023

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–07376 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0642; Airspace Docket No. 23–ASW–8]

RIN 2120–AA66

Amendment of Class E Airspace; Van Horn, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Van Horn, TX. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Van Horn non directional beacon (NDB). The name and geographic coordinates of Culberson County Airport, Van Horn, TX airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0333 and Airspace Docket No. 23–ASW–8 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

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 Culberson County Airport, Van Horn, TX, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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, phone number, and hours of operations). 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.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G 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 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within an 6.6-mile (decreased from a 6.7-mile) radius of Culberson County Airport, Van Horn, TX; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updating 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 Van Horn NDB which provided navigation information for the instrument procedures at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW TX E5 Van Horn, TX [Amended]

Culberson County Airport, TX
(Lat. 31°03′28″ N, long. 104°47′02″ W)

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

Issued in Fort Worth, Texas, on April 4, 2023.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–07372 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0880; Airspace Docket No. 22–AEA–33]

RIN 2120–AA66

Amendment of VOR Federal Airways V–10 and V–210 in the Vicinity of Revloc, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–10 and V–210 in the vicinity of Revloc, PA. The amendments are due to the planned decommissioning of the VOR portion of the Revloc, PA (REC), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Revloc VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0880 and Airspace Docket No. 22–AEA–33 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the VOR portion of the Revloc, PA, VOR/DME in November 2023. The Revloc VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Revloc VOR/DME NAVAID is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The VOR Federal airways affected by the Revloc VOR decommissioning are V–10 and V–210. With the planned decommissioning of the Revloc VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, the proposed modification to V–10 would result in one of the three existing airway segments being removed and the proposed modification to V–210 would result in an existing gap in the airway being expanded.

To address these proposed modifications, instrument flight rules (IFR) traffic could use adjacent VOR Federal airways V–12 or V–106 or receive air traffic control (ATC) radar vectors to fly around or through the affected area. Additionally, pilots equipped with RNAV capabilities could also navigate point to point using the existing fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent ATS routes or ATC services listed previously.

Prior to this NPRM, the FAA published a rule for Docket No. FAA–2022–1113 in the **Federal Register** (88 FR 2504; January 17, 2023) amending V–10 by removing the airway segment between the Gipper, MI, VOR/Tactical Air Navigation (VORTAC) and the Litchfield, MI, VOR/DME NAVAIDs. The V–10 airway amendment will be effective April 20, 2023, and is reflected in this action.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending VOR Federal airways V–10 and V–210 due to the planned decommissioning of the VOR portion of the Revloc, PA, VOR/DME. The proposed airway action is described below.

V–10: V–10 currently extends between the Pueblo, CO, VORTAC and the intersection of the Bradford, IL, VORTAC 058° and Joliet, IL, VOR/DME 287° radials (PLANO Fix); between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES Fix) and the Gipper, MI, VORTAC; and between the Youngstown, OH, VORTAC and the Lancaster, PA, VOR/DME. The FAA proposes to remove the airway segment between the Youngstown, OH, VORTAC and the Lancaster, PA, VOR/DME. As amended, the airway would be changed to extend between the Pueblo VORTAC and the intersection of the Bradford VORTAC 058° and Joliet VOR/DME 287° radials (PLANO Fix), and between the intersection of the Chicago Heights VORTAC 358° and Gipper VORTAC 271° radials (NILES Fix) and the Gipper VORTAC.

V–210: V–210 currently extends between the Los Angeles, CA, VORTAC and the Lamar, CO, VOR/DME; between the Will Rogers, OK, VORTAC and the Okmulgee, OK, VOR/DME; between the Brickyard, IN, VORTAC and the Rosewood, OH, VORTAC; and between the Revloc, PA, VOR/DME and the Yardley, PA, VOR/DME. The FAA proposes to remove the airway segment between the Revloc, PA, VOR/DME and the Harrisburg, PA, VORTAC. As amended, the airway would be changed to extend between the Los Angeles VORTAC and the Lamar VOR/DME, between the Will Rogers VORTAC and

the Okmulgee VOR/DME, between the Brickyard VORTAC and the Rosewood VORTAC, and between the Harrisburg VOR/DME and the Yardley, PA, VOR/DME.

The NAVAID radials contained in the VOR Federal airway descriptions below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–10 [Amended]

From Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; Garden City, KS; Dodge City, KS; Hutchinson, KS; Emporia, KS; INT Emporia 063°and Napoleon, MO, 243° radials; Napoleon; Kirksville, MO; Burlington, IA; Bradford, IL; to INT Bradford 058° and Joliet, IL, 287° radials. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; to Gipper.

* * * * *

V–210 [Amended]

From Los Angeles, CA; INT Los Angeles 083° and Pomona, CA, 240° radials; Pomona; INT Daggett, CA, 229° and Hector, CA, 263° radials; Hector; Goffs, CA; 13 miles, 23 miles 71 MSL, 85 MSL Peach Springs, AZ; Grand Canyon, AZ; Tuba City, AZ; 10 miles 90 MSL, 91 miles 105 MSL Rattlesnake, NM; Alamosa, CO; INT Alamosa 074° and Lamar, CO, 250° radials; 40 miles, 51 miles 65 MSL to Lamar. From Will Rogers, OK; INT Will Rogers 113° and Okmulgee, OK, 238° radials; to Okmulgee. From Brickyard, IN; Muncie, IN; to Rosewood, OH. From Harrisburg, PA; Lancaster, PA; INT Lancaster 095° and Yardley, PA, 255° radials; to Yardley.

* * * * *

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07300 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0588; Airspace Docket No. 23–ASO–10]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Lakeland Linder International Airport, Lakeland, FL, as an airspace evaluation determined an update for this airport necessary. This action would also update this airport's name and geographic coordinates, as well as the names of Bartow Executive Airport, Plant City Airport, and Winter Haven Regional Airport. In addition, this action would remove the Lakeland VORTAC from the Class E airspace designated as an extension to a Class D surface area description.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0588 and Airspace Docket No. 23–ASO–10 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

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 Class D and E airspace in Lakeland, FL. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter, provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Lakeland Linder International Airport (formerly Lakeland Linder Regional Airport), Lakeland, FL, as an airspace evaluation determined an update for this airport necessary. This action would increase the Class D radius of the airport to 4.6 miles (previously 4.2 miles). This action would also update this airport's name and geographic coordinates, as well as the names of Bartow Executive Airport (formerly Bartow Municipal Airport), Plant City Airport (Plant City Municipal Airport), and Winter Haven Regional Airport (formerly Winter Haven's Gilbert Airport). In addition, this action would remove the Lakeland VORTAC from the Class E airspace designated as an extension to a Class D surface area description, as it is not needed to describe the airspace. Finally, this action would replace Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the appropriate airspace descriptions. Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed rule, when promulgated, will 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.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, 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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Lakeland, FL [Amended]

Lakeland Linder International Airport, FL
(Lat. 27°59′16″ N, long. 82°01′08″ W)
South Lakeland Airport
(Lat. 27°56′00″ N, long. 82°02′38″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.6-mile radius of the Lakeland Linder International Airport, excluding that airspace within a 1.5-mile radius of South Lakeland Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Is Designated as an Extension to Class D or E Surface Area.

* * * * *

ASO FL E4 Lakeland, FL [Amended]

Lakeland Linder International Airport, FL
(Lat. 27°59′16″ N, long. 82°01′08″ W)

That airspace extending upward from the surface within 1.5 miles on each side of the 090° bearing from Lakeland Linder International Airport, extending from the 4.6-mile radius to 7 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO FL E5 Lakeland, FL [Amended]

Lakeland Linder International Airport, FL
(Lat. 27°59′16″ N, long. 82°01′08″ W)
Bartow Executive Airport
(Lat. 27°56′36″ N, long. 81°47′00″ W)
Plant City Airport
(Lat. 28°00′01″ N, long. 82°09′48″ W)
Winter Haven Regional Airport
(Lat. 28°03′47″ N, long. 81°45′12″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lakeland Linder International Airport, and within a 6.7-mile radius of Bartow Executive Airport, and within a 6.6-mile radius of Plant City Airport, and within 3.5 miles on each side of the 266° bearing from the Plant City Airport extending from the 6.6-mile radius to 7.5 miles west of the airport, and within a 6.5-mile radius of Winter Haven Regional Airport.

Issued in College Park, Georgia, on April 3, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–07305 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0720; Airspace Docket No. 23–ASO–12]

RIN 2120–AA66

Amendment of Class E Airspace; Elberton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Elbert County-Patz Field Airport, Elberton, GA, as a new instrument approach procedure has been designed for this airport. This action would also update this airport's geographic coordinates to coincide with the FAA's database.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0720 and Airspace Docket No. 23–ASO–12 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

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 Class E airspace in Elberton, GA. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter, provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of NPRMs

An electronic copy of this document may be downloaded online at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Elbert County-Patz Field Airport, Elberton, GA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. The existing radius would be increased to 8 miles (previously 6.3 miles). This action would also update the airport's geographic coordinates to coincide with FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASO GA E5 Elberton, GA [Amended]

Elberton, Elbert County-Patz Field Airport, GA
(Lat. 34°05′43″ N, long. 82°49′03″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Elbert County-Patz Field Airport.

Issued in College Park, Georgia, on April 3, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–07306 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0687; Airspace Docket No. 22–AEA–16]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes, Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish 4 low altitude Area Navigation (RNAV) routes (T-routes) in support of the Very High Frequency (VHF) Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from ground-based navigation aids to a satellite-based navigation system.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0687 and Airspace Docket No. 22–AEA–16 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 expand the availability of RNAV in the eastern United States and improve the efficient flow of air traffic within the NAS by lessening the dependency on ground-based navigation.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA, 30337.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G 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 14 CFR part 71 to establish 4 low altitude RNAV T-routes in the northeast United States to support the VOR MON Program, and the transition of the NAS from ground-based navigation aids to satellite-based navigation. The proposed route changes are described below.

T–447: T–447 is a proposed new route that would extend from the Smyrna, DE (ENO), VOR/Tactical Air Navigational System (VORTAC) to the DLMAR, PA, waypoint (WP). The route would overlay T–356 from the APEER, MD, WP to the FOLEZ, PA, WP; VOR Federal airway V–408 from the Pottstown, PA (PTW), VORTAC to the East Texas, PA (ETX), VOR/Distance Measuring Equipment (VOR/DME); and VOR Federal airway V–164 from the East Texas, PA (ETX), VOR/DME to the Stonyfork, PA (SFK), VOR/DME.

T–449: T–449 is a proposed new route that would extend from the KITHE, PA, Fix to the Binghamton, NY (CFB), VOR/DME. The route would overlay VOR Federal airway V–499 from the KITHE, PA, Fix to the Binghamton, NY (CFV), VOR/DME.

T–460: T–460 is a proposed new route that would extend from the Philipsburg, PA (PSB), VORTAC to the GLYDE, MA, Fix. The route would overlay VOR Federal Airway V–576 from the Philipsburg, PA (PSB), VORTAC to the Hancock, NY (HNK), VOR/DME, and VOR Federal Airway V–292 from the Hancock, NY (HNK), VOR/DME, to the GLYDE, MA, Fix.

T–479: T–479 is a proposed new route that would extend from the DNVIL, VA, WP to the Elkins, WV (EKN), VORTAC. The route would overlay VOR Federal airway V–258 from the Danville, VA (DAN), VOR to the Roanoke, VA (ROA), VOR/DME; and VOR Federal airway V–103 from the Roanoke, VA (ROA), VOR/DME to the Elkins, WV (EKN), VORTAC. In the route description, the Danville, VA (DAN), VOR would be replaced by the DNVIL, VA, WP.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant

regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–447 SMYRNA, DE (ENO) TO DLMAR, PA [NEW]

Smyrna, DE (ENO)	VORTAC	(Lat. 39°13′53.93″ N, long. 075°30′57.49″ W)
CHAZR, DE	WP	(Lat. 39°29′28.14″ N, long. 075°44′28.13″ W)
APEER, MD	WP	(Lat. 39°37′32.94″ N, long. 075°50′25.39″ W)
REESY, PA	WP	(Lat. 39°45′27.94″ N, long. 075°52′07.09″ W)
FOLEZ, PA	WP	(Lat. 39°55′32.76″ N, long. 075°49′16.49″ W)
HOSKR, PA	WP	(Lat. 40°05′03.94″ N, long. 075°32′56.13″ W)
Pottstown, PA (PTW)	VORTAC	(Lat. 40°13′20.04″ N, long. 075°33′36.90″ W)
East Texas, PA (ETX)	VOR/DME	(Lat. 40°34′51.74″ N, long. 075°41′02.51″ W)
DIANO, PA	FIX	(Lat. 41°00′01.99″ N, long. 076°13′33.78″ W)
Williamsport, PA (FQM)	VOR/DME	(Lat. 41°20′18.81″ N, long. 076°46′29.52″ W)
DLMAR, PA	WP	(Lat. 41°41′42.56″ N, long. 077°25′11.02″ W)

* * * * * * *

T–449 KITHE, PA TO BINGHAMTON, NY (CFB) [NEW]

KITHE, PA	FIX	(Lat. 39°48′35.53″ N, long. 076°17′48.12″ W)
Lancaster, PA (LRP)	VOR/DME	(Lat. 40°07′11.91″ N, long. 076°17′28.66″ W)
Binghamton, NY (CFB)	VOR/DME	(Lat. 42°09′26.97″ N, long. 076°08′11.30″ W)

* * * * * * *

T–460 PHILIPSBURG, PA (PSB) TO GLYDE, MA [NEW]

Philipsburg, PA (PSB)	VORTAC	(Lat. 40°54′58.53″ N, long. 077°59′33.78″ W)
Williamsport, PA (FQM)	VOR/DME	(Lat. 41°20′18.81″ N, long. 076°46′29.52″ W)
Hancock, NY (HNK)	VOR/DME	(Lat. 42°03′47.01″ N, long. 075°18′58.62″ W)
SAGES, NY	FIX	(Lat. 42°02′46.33″ N, long. 074°19′10.33″ W)
Barnes, MA (BAF)	VORTAC	(Lat. 42°09′43.05″ N, long. 072°42′58.32″ W)
GLYDE, MA	FIX	(Lat. 42°16′03.84″ N, long. 071°48′42.76″ W)

* * * * * * *

T–479 DNVIL, VA TO ELKINS, WV (EKN) [NEW]

DNVIL, VA	WP	(Lat. 36°33′49.53″ N, long. 079°19′53.54″ W)
PIGGS, VA	FIX	(Lat. 36°56′01.81″ N, long. 079°42′40.61″ W)
Roanoke, VA (ROA)	VOR/DME	(Lat. 37°20′36.47″ N, long. 080°04′13.43″ W)
Elkins, WV (EKN)	VORTAC	(Lat. 38°54′51.97″ N, long. 080°05′57.38″ W)

* * * * *

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07296 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0614; Airspace Docket No. 23–ASW–7]

RIN 2120–AA66

Amendment of Class E Airspace; Artesia, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Artesia, NM. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Artesia nondirectional beacon (NDB). 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 May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0614 and Airspace Docket No. 23–ASW–7 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 OF THE West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

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 Artesia Municipal Airport, Artesia, NM, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy*.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *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, phone number, and hours of operations). 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.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G 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 14 CFR part 71 by modifying the

Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 7-mile) radius of Artesia Municipal Airport, Artesia, NM; removing all extensions as they are no longer required; 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 Artesia NDB which provided navigation information for the instrument procedures at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW NM E5 Artesia, NM [Amended]

Artesia Municipal Airport, NM
(Lat. 32°51′07″ N, long. 104°28′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Artesia Municipal Airport.

Issued in Fort Worth, Texas, on April 3, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07203 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0866; Airspace Docket No. 22–AAL–51]

RIN 2120–AA66

Amendment to United States Area Navigation Route Q–46; Point Hope, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) Route Q–46 in the vicinity of Point Hope, AK. The FAA is taking this action due to the pending decommissioning of the Point Hope, AK (PHO), Non-Directional Beacon (NDB) navigational aid (NAVAID).

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. [FAA–2023–0866] and Airspace Docket No. 22–AAL–51 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory,

aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The aviation industry has indicated a desire for the FAA to transition the Alaskan enroute navigation structures away from NDB dependency. Advances in technology have allowed for alternate navigation methods to support the decommissioning of high-cost ground navigation equipment, such as NDBs. The FAA conducted a non-rulemaking study in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters, in 2021 on the Point Hope, AK, NDB due to the ongoing high cost of maintenance and repairs. Interested parties were invited to participate in this effort by submitting comments on the proposal. The FAA received no comments or objections to the study. As a result, the Point Hope, AK, NDB was added to the schedule of NDBs to be decommissioned.

RNAV route Q–46 extends between the Point Hope, AK, NDB and the Barrow, AK, Very High Frequency (VHF) Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The decommissioning of the Point Hope, AK, NDB will leave the southwest portion of the route unsupported, as the NDB is the southwest end point of Q–46.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route Q–46 in the vicinity of Point Hope, AK, due to the pending decommissioning of the Point Hope (PHO) NDB. The proposed RNAV route amendment action is described below.

Q–46: Currently, Q–46 extends between the Point Hope, AK, NDB and the Barrow, AK, VOR/DME. The FAA proposed to amend the route by replacing the Point Hope, AK, NDB route point with the VANTY, AK, waypoint (WP). As amended, the route would be changed to extend between the VANTY WP and the Barrow VOR/DME.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 [FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–46 VANTY, AK TO BARROW, AK (BRW) [AMENDED]

VANTY, AK	WP	(Lat. 68°20′40.64″ N, long. 166°48′09.96″ W)
Barrow, AK (BRW)	VOR/DME	(Lat. 71°16′24.34″ N, long. 156°47′18.90″ W)

* * * * *

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07302 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0503; Airspace Docket No. 23–ASO–07]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E surface airspace and Class E airspace extending upward from 700 feet above the surface in Huntsville, AL, as the result of a biennial airspace evaluation. This action would extend the Class E airspace extending upward from 700 feet above the surface surrounding Redstone Army Airfield (AAF) and Huntsville Executive Tom Sharp Jr. Field. The FAA also proposes to update terminology in the Class D and Class E surface airspace descriptions for Redstone AAF.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0503 and Airspace Docket No. 23–ASO–07 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter, provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Office of Policy, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5946.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Ave., College Park, GA, 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in paragraphs 5000, 6002, and 6005 of FAA Order JO 7400.11, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface of Redstone AAF by increasing the radius to 14.1 miles (previously 9.5 miles). The FAA also proposes to amend Class E airspace extending upward from 700 feet above the surface of Huntsville Executive Tom Sharp Field by increasing the radius to 7.6 miles (previously 6.3 miles). In doing so, the Huntsville International-Carl T. Jones Field: RWY 36L–LOC will be removed from the legal description of Huntsville Executive Tom Sharp Field as it is no longer a necessary part of the legal description. In addition, this action would replace the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions in the Huntsville Class D and Class E surface airspace descriptions.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO AL D Huntsville, Redstone Army Airfield, AL

Redstone Army Airfield, AL
(Lat 34°40′43″ N, long 86°41′05″ W)

That airspace extending upward from the surface to but not including 2,400 feet MSL within a 4.4-mile radius of Redstone Army Airfield, excluding that portion within the Huntsville International-Carl T. Jones Field, AL, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO AL E2 Huntsville, AL

Huntsville International-Carl T. Jones Field, AL
(Lat 34°38′14″ N, long 86°46′30″ W)
Redstone AAF, AL
(Lat 34°40′43″ N, long 86°41′05″ W)

That airspace extending upward from the surface within a 5-mile radius of the Huntsville International-Carl T. Jones Field, excluding that airspace within a 1-mile radius of the Redstone AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO AL E5 Huntsville, AL

Redstone AAF, AL
(Lat 34°40′43″ N, long 86°41′05″ W)
Pryor Field Regional Airport, AL
(Lat 34°39′15″ N, long 86°56′43″ W)
Huntsville Executive Tom Sharp Jr. Field, AL
(Lat 34°51′34″ N, long 86°33′27″ W)

That airspace extending upward from 700 feet above the surface within a 14.1-mile radius of Redstone AAF, within a 7-mile radius of Pryor Field Regional Airport, and within a 7.6-mile radius of Huntsville Executive Tom Sharp Jr. Field.

Issued in College Park, GA on March 21, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–07194 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0881; Airspace Docket No. 22–AEA–34]

RIN 2120–AA66

Amendment of VOR Federal Airways V–469 and V–501, and Revocation of VOR Federal Airway V–474 in the Vicinity of St. Thomas, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–469 and V–501, and revoke V–474. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the St. Thomas, PA (THS), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The St. Thomas VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0881 and Airspace Docket No. 22–AEA–34 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the

online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the VOR portion of the St. Thomas, PA, VORTAC in November 2023. The St. Thomas VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the St. Thomas VORTAC is planned for decommissioning, the co-located Tactical Air Navigation (TACAN) portion of the NAVAID is being retained to provide navigational service for military operations and Distance Measuring Equipment (DME) service supporting current and future NextGen PBN flight procedure requirements.

The VOR Federal airways affected by the planned decommissioning of the St. Thomas VOR are V–469, V–474, and V–501. With the planned decommissioning of the St. Thomas VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to V–469 would result in a gap in the airway, to V–474 would result in the airway being revoked, and to V–501 would result in the airway being amended to replace the St. Thomas VORTAC route point with a reporting point Fix.

To address the affected airway proposed amendments and revocation, instrument flight rules (IFR) traffic could receive air traffic control (ATC) radar vectors or use adjacent VOR Federal airways V–12, V–268, or V–377 to fly around or through the affected

area. Additionally, pilots equipped with RNAV capabilities could also navigate point to point using the existing fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent airways or ATC services listed previously.

Prior to this NPRM, the FAA published a rule for Docket No. FAA–2022–1424 in the **Federal Register** (88 FR 18026; March 27, 2023) amending V–474 by removing the airway segment overlying the Indian Head, PA, VORTAC between the intersection of the Morgantown, WV, VOR/Distance Measuring Equipment (VOR/DME) 010° and Johnstown, PA, VOR/DME 260° radials (NESTO Fix) and the St. Thomas, PA, VORTAC. The V–474 airway amendment is effective June 15, 2023 and is reflected in this action.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–469 and V–501, and revoke V–474 due to the planned decommissioning of the VOR portion of the St. Thomas, PA, VORTAC. The proposed airway actions are described below.

V–469: V–469 currently extends between the Danville, VA, VORTAC and the Woodstown, NJ, VORTAC. The FAA proposes to remove the airway segment between the Johnstown, PA, VOR/DME and the Harrisburg, PA, VORTAC. As amended, the airway would be changed to extend between the Danville VORTAC and the Johnstown VOR/DME and between the Harrisburg VORTAC and the Woodstown VORTAC.

V–474: V–474 currently extends between the St. Thomas, PA, VORTAC and the Modena, PA, VORTAC. The FAA proposes to remove the airway in its entirety.

V–501: V–501 currently extends between the Martinsburg, WV, VORTAC and the Philipsburg, PA, VORTAC. The FAA proposes to remove the St. Thomas, PA, VORTAC airway point and replace it with the VINSE reporting point Fix at the intersection of the Harrisburg, PA, VORTAC 244°(T)/254°(M) and Philipsburg, PA, VORTAC 178°(T)/188°(M) radials. The VINSE Fix is being added to the Low Enroute charts and is located approximately three nautical miles north of the St. Thomas VORTAC. As amended, the airway would continue to extend between the Martinsburg VORTAC and the Philipsburg VORTAC.

The NAVAID radials listed in the V–469 description below are unchanged and stated in degrees True north. The NAVAID radials listed in the V–501 description below are proposed and stated in degrees True (T) north and Magnetic (M) north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–469 [Amended]

From Danville, VA; Lynchburg, VA; INT Lynchburg 347° and Elkins, WV, 142° radials; Elkins; Morgantown, WV; INT Morgantown 010° and Johnstown, PA, 260° radials; to Johnstown. From Harrisburg, PA; Dupont, DE; to Woodstown, NJ.

* * * * *

V–474 [Removed]

* * * * *

V–501 [Amended]

From Martinsburg, WV; Hagerstown, MD; INT Harrisburg, PA, 244°(T)/254°(M) and Philipsburg, PA, 178°(T)/188°(M) radials; to Philipsburg.

* * * * *

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07301 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0333; Airspace Docket No. 23–ASW–5]

RIN 2120–AA66

Amendment of Class E Airspace; Carthage, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Carthage, TX. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Carthage non directional beacon (NDB). 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 May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0333 and Airspace Docket No. 23–ASW–5 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West

Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

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 Panola County Airport-Sharpe Field, Carthage, TX, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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, phone number, and hours of operations). 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.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G 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 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within an 6.7-mile (decreased from a 7-mile) radius of Panola County Airport-Sharpe Field, Carthage, TX; removing the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updating the name (previously Panola County-Sharpe Field) and 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 Carthage NDB which provided navigation information for the instrument procedures at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW TX E5 Carthage, TX [Amended]

Panola County Airport-Sharpe Field, TX (Lat. 32°10′24″ N, long. 94°17′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Panola County Airport-Sharpe Field.

Issued in Fort Worth, Texas, on April 1, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–07209 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2023–0504; Airspace Docket No. 21–ASO–25]

RIN 2120–AA66

Amendment of Restricted Areas R–3004A, R–3004B, and R–3004C; Fort Gordon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend restricted areas R–3004A, R–3004B, and R–3004C at U.S. Army Installation Management Command (IMCOM) Fort Gordon, GA. The proposed amended airspace would align the lateral boundaries to encompass the majority of the training complex and amend the vertical divisions for better management to activate only the airspace required to support the Army's training. It would also remove restrictions on aircraft operations on weekends, flight above 12,000 feet above ground level (AGL), and the requirement that weather minima exceed standard Visual Flight Rules (VFR) criteria.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0504 and Airspace Docket No. 21–ASO–25 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 as it amends restricted area airspace at Fort Gordon, GA, to enhance aviation safety and accommodate essential U.S. Army training activities.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *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 **ADDRESSES** section for address, phone number, and hours of operation). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Background

The U.S. Army submitted a proposal to the FAA to amend the existing restricted areas at IMCOM Fort Gordon, GA, to realign the lateral boundaries to encompass the majority of the training complex, to align with weapon delivery system advancements in aviation and artillery, and to contain artillery and rockets. Amending the vertical divisions of the area will align with typical training requirements and would result in simpler and more efficient scheduling, and release of airspace to the public when not in use.

The removal of the aircraft weather minima and altitude restriction will increase aviation-related training opportunities and provide additional aviation maneuvering space to support training and operations. The removal of weekend restrictions will provide the opportunity for National Guard and Reserve units to conduct air operations and airborne training during their weekend drills.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to amend restricted areas R–3004A, R–3004B, and R–3004C at U.S. Army IMCOM Fort Gordon, GA. The three areas share common boundaries that overlie each other. The proposed changes are described below.

R–3004A: R–3004A currently extends from the surface to but not including 3,500 feet mean sea level (MSL). This proposal would lower the ceiling of R–3004A to read ''to but not including 2,500 feet MSL.'' This change would contain the majority of day-to-day training requirements so that, as amended, only R–3004A would need to be activated on a regular basis.

R–3004B: R–3004B currently extends from 3,500 feet MSL to 7,000 feet MSL. The floor of R–3004B would be lowered from 3,500 feet MSL to 2,500 feet MSL in conjunction with the amended ceiling of R–3004A, described above. The ceiling of R–3004B would be raised from 7,000 feet MSL to but not including 10,000 feet MSL. This change would better align restricted airspace with Fort Gordon's typical training requirements.

R–3004C: R–3004C currently extends from 7,000 feet MSL to 16,000 feet MSL. This proposal would raise the floor of R–3004C from 7,000 feet MSL to 10,000 feet MSL, in conjunction with the change to R–3004B, described above.

The proposed changes to the restricted area altitudes described above would reduce the need to activate all three restricted areas to accomplish daily training. This would provide the flexibility to activate only those restricted area segments required for the planned training events, while leaving the unused segment(s) available for access by other aviation users.

The current lateral configuration of R–3004A, B, and C is not large enough to allow for the use of realistic tactics and procedures to support current and emerging training requirements at Fort Gordon. The southwest boundary of the restricted areas extends slightly beyond the installation property line. This proposal would adjust the southwest boundary so that the boundary is contained within installation property. Additionally, the proposal would expand the lateral limits R–3004A, B, and C farther to the north and northeast to incorporate the majority of Fort Gordon property. This expansion would be fully contained within the current boundaries of federally owned land within the Fort Gordon range complex.

The time of designation for all three restricted areas would remain ''By NOTAM 24 hours in advance.''

The current descriptions of R–3004A, B, and C contain certain terms and conditions that limit aircraft activities in the airspace as follows:

1. Aircraft activities must not be conducted on weekends, national holidays, or from the Sunday prior to the Masters Golf Tournament through the Monday after (and subsequent weather days if required).

2. Aircraft activities may only be conducted from the surface to 12,000 feet AGL.

3. Weather conditions required for aircraft activities are 5 miles visibility and with prevailing clouds or obscuring phenomena no greater than five-tenths coverage of the sky and bases no lower than 3,000 feet AGL.

These conditions were implemented in 1984 when the U.S. Air Force began using the restricted areas to conduct air-to-surface inert and practice ordnance delivery. The Air Force no longer uses the restricted areas for delivery of aerial munitions, so these terms and conditions now restrict combined arms and joint service training opportunities (involving aircraft) for units that train at Fort Gordon.

Consequently, this proposal would remove the restrictions on aircraft activities on weekends and remove the restrictions on aircraft activities above 12,000 feet AGL and remove the overly restrictive weather minima. However, the following limitations would be retained:

''Aircraft activities must not be conducted on national holidays, or from the Sunday prior to the Masters Tournament through the Monday after (and subsequent weather days if required).''

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed rule, when promulgated, will 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 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.30 Georgia [Amended]

■ 2. Section 73.30 is amended as follows:

* * * * *

R–3004A Fort Gordon, GA [Amended]

Boundaries. Beginning at lat. 33°25′03″N, long. 82°12′15″W;
to lat. 33°23′48″N, long. 82°08′56″W;
to lat. 33°22′20″N, long. 82°08′33″W;
to lat. 33°21′33″N, long. 82°09′10″W;
to lat. 33°20′15″N, long. 82°10′57″W.,
to lat. 33°17′41″N, long. 82°16′11″W;
to lat. 33°18′23″N, long. 82°16′17″W;
to lat. 33°18′22″N, long. 82°16′39″W;
to lat. 33°17′29″N, long. 82°16′52″W;
to lat. 33°16′57″N, long. 82°17′39″W;
to lat. 33°16′56″N, long. 82°18′50″W;
to lat. 33°17′27″N, long. 82°21′19″W;
to lat. 33°17′41″N, long. 82°22′35″W;
to lat. 33°19′26″N, long. 82°22′15″W;
to lat. 33°22′37″N, long. 82°16′58″W;
to lat. 33°23′50″N, long. 82°14′03″W;
to the point of beginning.

Designated Altitudes. Surface to but not including 2,500 feet MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Atlanta ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort Gordon, GA.

Remarks. Aircraft activities must not be conducted on national holidays or from the Sunday prior to the Masters Golf Tournament through the Monday after (and subsequent weather days if required).

R–3004B Fort Gordon, GA [Amended]

Boundaries. Beginning at lat. 33°25′03″N, long. 82°12′15″W;
to lat. 33°23′48″N, long. 82°08′56″W;
to lat. 33°22′20″N, long. 82°08′33″W;
to lat. 33°21′33″N, long. 82°09′10″W;
to lat. 33°20′15″N, long. 82°10′57″W;
to lat. 33°17′41″N, long. 82°16′11″W;
to lat. 33°18′23″N, long. 82°16′17″W;
to lat. 33°18′22″N, long. 82°16′39″W;
to lat. 33°17′29″N, long. 82°16′52″W;
to lat. 33°16′57″N, long. 82°17′39″W;
to lat. 33°16′56″N, long. 82°18′50″W;
to lat. 33°17′27″N, long. 82°21′19″W;
to lat. 33°17′41″N, long. 82°22′35″W;
to lat. 33°19′26″N, long. 82°22′15″W;
to lat. 33°22′37″N, long. 82°16′58″W;
to lat. 33°23′50″N, long. 82°14′03″W;
to the point of beginning.

Designated Altitudes. 2,500 feet MSL to but not including 10,000 feet MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Atlanta ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort Gordon, GA.

Remarks. Aircraft activities must not be conducted on national holidays or from the Sunday prior to the Masters Golf Tournament through the Monday after (and subsequent weather days if required).

R–3004C Fort Gordon, GA [Amended]

Boundaries. Beginning at lat. 33°25′03″N, long. 82°12′15″W;
to lat. 33°23′48″N, long. 82°08′56″W;
to lat. 33°22′20″N, long. 82°08′33″W;
to lat. 33°21′33″N, long. 82°09′10″W;
to lat. 33°20′15″N, long. 82°10′57″W;
to lat. 33°17′41″N, long. 82°16′11″W;
to lat. 33°18′23″N, long. 82°16′17″W;
to lat. 33°18′22″N, long. 82°16′39″W;
to lat. 33°17′29″N, long. 82°16′52″W;
to lat. 33°16′57″N, long. 82°17′39″W;
to lat. 33°16′56″N, long. 82°18′50″W;
to lat. 33°17′27″N, long. 82°21′19″W;
to lat. 33°17′41″N, long. 82°22′35″W;
to lat. 33°19′26″N, long. 82°22′15″W;
to lat. 33°22′37″N, long. 82°16′58″W;
to lat. 33°23′50″N, long. 82°14′03″W;
to the point of beginning.

Designated Altitudes. 10,000 feet MSL to 16,000 feet MSL.

Times of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Atlanta ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort Gordon, GA.

Remarks. Aircraft activities must not be conducted on national holidays or from the Sunday prior to the Masters Golf Tournament through the Monday after (and subsequent weather days if required).

* * * * *

Issued in Washington, DC, on April 4, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations Group.

[FR Doc. 2023–07398 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130, 131, 133, 136, 137, 139, 145, 150, 155, 156, 158, 161, 163, 166, 168, and 169

[Docket No. FDA–2022–N–2226]

RIN 0910–AI72

Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to amend our standard of identity (SOI) regulations that specify salt (sodium chloride) as a required or optional ingredient to permit the use of salt substitutes in standardized foods, to reduce the sodium content. Reducing sodium may help reduce the risk of hypertension, a leading cause of heart disease and stroke. The proposed rule, if finalized, would help support a healthier food supply by providing flexibility to facilitate industry innovation in the production of standardized foods lower in sodium while maintaining the basic nature and essential characteristics of the foods.

DATES: Either electronic or written comments on the proposed rule must be submitted by August 8, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 8, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://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 *http://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–2022–N–2226 for ''Use of Salt Substitutes to Reduce the Sodium Content in Standardized Foods.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• 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.'' We will review this copy, including the claimed confidential information, in our 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 *http://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.govinfo.gov/content/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 *http://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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Andrew Yeung, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371 or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Proposed Rule

This proposed rule, if finalized, would amend FDA's definitions and standards of identity (SOI; the acronym is used to refer to both the singular ''standard of identity'' and the plural ''standards of identity'') that specify salt (sodium chloride) as a required or optional ingredient. Foods for which FDA has established a SOI are referred to as ''standardized'' foods. The amendments would permit the use of safe and suitable salt substitutes to replace some or all of the salt used in the manufacture of standardized foods. The proposed rule would not list specific salt substitutes; instead, the proposed rule would cover ingredients or combinations of ingredients used as salt substitutes by food manufacturers currently or in the future. If finalized, the proposed rule would support efforts to reduce sodium content in standardized foods and may help to improve consumer dietary patterns by reducing sodium consumption. On average Americans consume 50% more sodium than the recommended limit for those aged 14 and older (Ref. 1). Reducing sodium consumption may help reduce the risk of hypertension, a leading cause of heart disease and stroke. The proposed rule would allow food manufacturers the flexibility to use salt substitutes and allow for innovation in producing healthier standardized foods. The proposed rule would promote honesty and fair dealing in the interest of consumers by accommodating their preferences for lower sodium varieties of foods. This, in turn, would make lower-sodium options available to them.

B. Summary of the Major Provisions of the Proposed Rule

FDA is proposing to amend its SOI that specify salt as a required or optional ingredient to permit the use of safe and suitable salt substitutes in standardized foods, to reduce the sodium content. We propose to amend our regulation entitled ''Food Standards: General'' (21 CFR part 130) to create a new subpart C entitled ''Flexibility in Standardized Foods'' and add a new section entitled ''Ingredient Flexibility in Standardized Foods'' to define salt substitute. We also propose to amend 80 SOI to permit salt substitutes.

We also propose to update the incorporation by reference (IBR) information of several SOI to refer to the most recent versions of the IBR materials and to provide up-to-date contact information for obtaining the IBR materials. For example, the proposed rule would update the referenced methods of analysis to those in the ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 21st Ed. 2019. We also propose to make technical amendments to correct inconsistencies and typographical errors in some SOI regulations.

We tentatively conclude that the proposed amendments are necessary to modernize SOI to provide flexibility and facilitate innovation in the production of standardized foods with less sodium, and to promote honesty and fair dealing in the interest of consumers.

C. Legal Authority

We are proposing this rule consistent with our authority in sections 201, 401, 402, 409, and 701 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 341, 342, 348, 371). We

discuss our legal authority in greater detail in section IV.

D. Costs and Benefits

The proposed rule would amend SOI that specify salt as a required or optional ingredient, to permit the use of salt substitutes. The proposed rule would give manufacturers the flexibility to use salt substitutes in standardized foods, to reduce sodium content. If finalized, the proposed rule would not result in regulatory costs for firms. The proposal would not require manufacturers to replace salt with salt substitutes. Instead, manufacturers would have the option of using salt substitutes to replace salt in standardized foods. Should manufacturers choose to use this flexibility to reformulate some products by substituting some salt with salt substitutes, the primary benefits realized would result from lower sodium consumption by U.S. consumers who choose to purchase and consume the reformulated versions of such products, and increased profit (producer surplus) for manufacturers (or at least no decrease in profits). The primary cost of such voluntary market behavior would include reformulation and relabeling costs for the manufacturers.

II. Table of Abbreviations/Acronyms

Abbreviation/ acronym	What it means
CDRR	Chronic Disease Risk Reduction Intake
CFR	Code of Federal Regulations
FD&C Act	Federal Food, Drug, and Cosmetic Act
FDA	Food and Drug Administration
FR	FEDERAL REGISTER
GRAS	Generally Recognized as Safe
IBR	Incorporation by Reference
mg	Milligram
SOI	Standard(s) of Identity
U.S.C.	United States Code

III. Background

A. Introduction

As a public health agency, FDA seeks to improve dietary patterns in the United States to help reduce the burden of diet-related chronic diseases and advance health equity as nutrition-related chronic diseases are experienced disproportionately by certain racial and ethnic minority groups, those living in rural communities, and those with lower socioeconomic status. We are committed to accomplishing this, in part, by creating a healthier food supply for all. One way FDA is working towards this goal is by helping to reduce sodium across the food supply.

Americans consume, on average, 3,400 milligrams of sodium per day (mg/day) (Ref. 1). This is nearly 50 percent more than the sodium Chronic Disease Risk Reduction Intake (CDRR) established by the National Academies of Sciences, Engineering and Medicine, which sets the limit for sodium for individuals 14 years and older at 2,300 mg/day. This CDRR was adopted as a recommendation by the Dietary Guidelines for Americans, 2020–2025 (Refs. 1 and 2). Reducing sodium intake to below the CDRR level is expected to help reduce the risk of chronic disease. Excess sodium intake increases risk for hypertension, commonly referred to as high blood pressure, a leading cause of heart disease and stroke and the first and fifth leading cause of mortality in 2020 in the United States (Refs. 2–6). Decreasing sodium intake is, therefore, expected to reduce the rate of hypertension. It has been estimated that sufficient reductions in the population average sodium intake could potentially result in tens of thousands fewer cases of heart disease and stroke and associated mortality each year (Refs. 7–9).

Reducing sodium in processed, packaged and prepared foods will help create a healthier food supply. A healthier food supply has the potential to contribute to better health outcomes and reduce preventable death and disease related to poor nutrition; many of which are experienced at higher rates by certain racial and ethnic groups (Ref. 10). For example, more than 4 in 10 American adults have hypertension and that number increases to nearly 6 in 10 for non-Hispanic Black Americans (Ref. 11). African American women are almost 60 percent more likely to have hypertension when compared to non-Hispanic white women, and African American adults are 30% more likely than non-Hispanic white Americans to die from coronary heart disease (CHD) (Refs. 12 and 13); further, American Indians/Alaskan Natives are 50% more like to be diagnosed with CHD than non-Hispanic Whites (Ref. 13). The proposed rule's likely effect on increasing the availability of lower sodium products may contribute to government-wide efforts to reduce health disparities.

Reducing sodium in processed, packaged and prepared food is a critical step in helping to improve consumer dietary patterns. More than 70 percent of sodium consumed in the United States comes from sodium added during manufacturing and commercial food preparation (Ref. 14). This makes it challenging for consumers to reduce their sodium consumption. Further, because salt (sodium chloride) serves various functions in processed, packaged, and prepared foods, industry must balance sodium reduction efforts while manufacturing products that maintain the properties of a certain food and still meet the preferences of consumers.

FDA is engaged in several efforts aimed at encouraging gradual, efficient reduction of overall sodium content in processed, packaged and prepared food products. We recently issued two guidance documents for industry to support voluntary industry efforts to reduce sodium in the food supply and facilitate industry innovation toward creating healthier foods. The December 2020 guidance for industry entitled ''The Use of an Alternate Name for Potassium Chloride in Food Labeling'' (Potassium Chloride guidance) (Ref. 15) sets forth FDA's enforcement discretion policy with respect to declaring potassium chloride as ''potassium salt'' in the ingredient statement in the labeling of food products. In October 2021, we issued guidance for industry entitled ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods'' (Voluntary Sodium Reduction Goals guidance) (Ref. 16). The guidance document finalizes the short-term (2.5 year) voluntary sodium reduction targets in over 160 categories of packaged and restaurant prepared food. These short-term targets are based on a reduction of average sodium intake from current levels of 3,400 mg/day to 3,000 mg/day, and they serve as initial benchmarks for a broad and gradual reduction of sodium in the food supply (Ref. 16 and 17). Through the two guidance documents and this rulemaking, our intent is to support the gradual reduction of sodium across the food supply.

Under our authority in section 401 of the FD&C Act, FDA establishes SOI to promote honesty and fair dealing in the interest of consumers. SOI are established under the common or usual name of a food. Such foods are said to be ''standardized.'' SOI define the food and typically provide the types of ingredients that it must contain (*i.e.,* mandatory ingredients) and that it may contain (*i.e.,* optional ingredients). They sometimes specify the amount or proportion of each ingredient. Many SOI also designate methods of production. We have over 250 SOI for a wide variety of food products.

B. Need for the Regulation

Salt substitutes are ingredients that can help reduce sodium in processed, packaged and prepared foods. Food manufacturers wishing to reduce salt in their products to accommodate consumer preferences or for other reasons sometimes use substitute ingredients that provide similar taste and other technical functions of salt in foods. Most of our SOI that include salt as a required or optional ingredient do not permit the use of salt substitutes. Therefore, food manufacturers are currently precluded from using salt substitutes in the production of these standardized foods. However, manufacturers may use salt substitutes in the production of non-standardized foods. Various stakeholders have expressed concern that many SOI are out of date and may impede innovation, including the ability to produce healthier foods (Ref. 18). Manufacturers seeking to reduce sodium in standardized foods are limited because they are unable to produce foods using salt substitutes and still conform to the SOI. In this way, the SOI may become a barrier to innovation.

Permitting the use of salt substitutes is aligned with FDA's goal to reduce sodium across the food supply and our work to reduce sodium consumption. Research suggests that consumers usually do not notice small reductions in sodium and, over time, consumer palates adjust to lower sodium levels (Ref. 19). Through our work on the Voluntary Sodium Reduction Goals guidance and the Potassium Chloride guidance, we learned that stakeholders, including industry, consumers, consumer advocacy, scientific and professional health organizations, generally support allowing the use of salt substitutes. In another public engagement, some stakeholders discussed modernizing SOI to allow the use of salt substitutes using a ''horizontal approach'' (Ref. 18). A horizontal approach to amending standards is a change that could be made across all, or broad categories of SOI to provide flexibility and facilitate innovation in the production of more nutritious foods. We considered several options for permitting salt substitutes in standardized foods and evaluated how to apply this change across multiple SOI. The proposed rule, if finalized, would adopt a horizontal approach to amending the applicable SOI. The proposed rule would permit the use of salt substitutes in SOI that specify salt as a required or optional ingredient, to reduce sodium in the food. Because the use of salt substitutes in these SOI is currently precluded, any use of salt substitutes by manufacturers under the rule would contribute to reduced sodium intake to some degree.

Permitting the use of salt substitutes in standardized foods would contribute to our goal to reduce sodium across the food supply. It would facilitate voluntary industry efforts toward sodium reduction by providing flexibility and supporting innovation in the production of healthier standardized foods, which may help some consumers to gradually reduce the sodium in their diet and contribute to better health outcomes. The proposed rule may have the potential to contribute to government-wide efforts to reduce health disparities if the use of salt substitutes helps populations disproportionately affected by hypertension to consume less sodium.

C. FDA's Current Regulatory Framework

The FD&C Act gives us the authority to establish definitions and standards for foods with respect to identity, quality, and fill of container (21 U.S.C. 341). SOI specify the permitted ingredients, both mandatory and optional, and sometimes describe the amount or proportion of each ingredient. Many SOI also prescribe a method of production or formulation. Foods for which FDA has established a SOI must conform to the applicable definition and standard. A food is misbranded if it purports to be or is represented as a food for which a SOI has been established but fails to conform to the definition and standard (21 U.S.C. 343(g)).

SOI are codified in parts 130 to 169 (21 CFR parts 130 to 169). Part 130 outlines general provisions, including the use of food additives in food standards. Part 130 also includes the general definition and SOI (*i.e.,* § 130.10). Parts 131 to 169 set forward SOI for foods in 21 food product categories.

We have long interpreted the term ''salt'' in the food standards in parts 131 to 169 to refer to sodium chloride. Salt is specified as a required or optional ingredient in 80 SOI across these parts. Some SOI cross reference other SOI. For example, in part 136 (21 CFR part 136), salt is an optional ingredient in the SOI for bread, rolls, and buns (§ 136.110) which is referenced in several other SOI, including: enriched bread, rolls, and buns (§ 136.115), milk bread, rolls, and buns (§ 136.130), raisin bread, rolls, and buns (§ 136.160), and whole wheat bread, rolls, and buns (§ 136.180). The result of such cross referencing is that salt is a required or an optional ingredient in 140 SOI.

Manufacturers of standardized foods have few options for reducing the sodium content of their products. If salt is a required ingredient, they may generally use less salt. If salt is an optional ingredient, they may either use no salt or less salt. However, they cannot replace salt with another ingredient unless the standard permits the use of another ingredient. Most SOI do not provide for a substitute for salt. In some instances, we established separate SOI for low sodium foods, thereby allowing manufacturers to reduce the amount of salt used and to substitute other ingredients. Manufacturers may also modify the sodium content of standardized foods under the general definition and SOI in § 130.10 (Requirements for foods named by use of a nutrient content claim and a standardized item), provided that certain conditions are met.

Deviation from a SOI is permitted under the general definition and SOI in § 130.10. The deviation must be due to a modification described by an expressed nutrient content claim defined by regulation. Expressed nutrient content claims for the sodium content of foods (*e.g.,* ''low sodium'') are provided under § 101.61 (21 CFR 101.61) (Nutrient content claims for the sodium content of foods). Thus, sodium modifications to a standardized food are permitted if the modification meets the requirements for a nutrient content claim under § 101.61. The modified food becomes a new standardized food under § 130.10 and is named with the nutrient content claim and the name of the standardized food from which it deviates (*e.g.,* ''low sodium provolone cheese''). It may be impracticable for manufacturers to reduce the sodium content in standardized foods to the extent required by a nutrient content claim. For example, to meet the requirements for a ''reduced sodium'' nutrient content claim, manufacturers must decrease the sodium in the food by at least 25 percent. Certain foods do not retain the same characteristics when the amount of sodium is reduced to this degree, and therefore, the general definition and SOI does not facilitate the production of lower sodium varieties. This proposed rule would allow manufacturers to reduce the sodium in standardized foods in amounts less than the amounts prescribed in § 101.61. This would provide manufacturers greater flexibility when reformulating standardized foods to lower the sodium content.

Presently, three SOI specifically permit the use of a salt substitute. The SOI for low sodium cheddar cheese (§ 133.116) and low sodium colby

cheese (§ 133.121) permit the use of a salt substitute. The SOI for low sodium colby cheese prohibits the use of salt and permits the use of a salt substitute that contains no sodium (§ 133.121(a)). The SOI for margarine (§ 166.110) specifically permits the use of potassium chloride in the manufacture of dietary margarine. Potassium chloride, in some instances, can be used as a partial substitute for sodium chloride in food processing and manufacturing.

If finalized, the proposed rule would provide a new means for manufacturers to reduce the sodium content of standardized foods. Salt substitutes would be permitted in any food for which an SOI has been established and that specifies salt as a required or an optional ingredient. This would be achieved without requiring the minimum reductions in sodium content under § 101.61 and renaming of food products as is required for modifications under § 130.10.

IV. Legal Authority

We are issuing this proposed rule consistent with our authority in sections 201, 401, 402, 409, and 701of the FD&C Act. Section 401 of the FD&C Act directs the Secretary of Health and Human Services (Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, standard of quality, or standard of fill of container, whenever in the judgment of the Secretary, such action will promote honesty and fair dealing in the interest of consumers. We tentatively conclude that permitting the use of salt substitutes to replace some or all of the salt used in the production of standardized foods would promote honesty and fair dealing in the interest of consumers. Consumers desire more nutritious and healthy food options, such as lower sodium versions of foods. This proposed rule, if finalized, would allow for industry development and sale of such foods while ensuring that standardized foods meet consumer expectations and preferences with respect to lower-sodium varieties.

FDA has codified food standards in parts 130 to 169. These regulations do not provide either an authorization or exemption from regulation as a food additive under section 409 of the FD&C Act. The FD&C Act defines ''food additive,'' in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food, if such substance is not generally recognized by experts as safe under the conditions of its intended use (section 201(s) of the FD&C Act). The definition of ''food additive'' exempts any uses that are the subject of prior sanction (section 201(s)(4) of the FD&C Act)). Food additives are deemed unsafe except to the extent that FDA approves their use (section 409(a) of the FD&C Act). Food is adulterated when it contains an unapproved food additive (section 402(a)(2)(C) of the FD&C Act).

We also are issuing this proposed rule under section 701(a) of the FD&C Act, which authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act. Regulations issued under section 701(a) ''must effectuate a congressional objective expressed elsewhere in the Act'' (*Association of American Physicians and Surgeons, Inc.* v. *FDA,* 226 F. Supp. 2d 204 (D.D.C. 2002) (citing *Pharm. Mfrs. Ass'n.* v. *FDA,* 484 F. Supp. 1179, 1183 (D. Del. 1980))). Amending SOI to permit the use of salt substitutes would effectuate the congressional objective ''to promote honesty and fair dealing in the interest of consumers'' expressed in section 401 of the FD&C Act. Permitting salt substitutes in standardized foods under this rule may help provide more options to consumers while ensuring that the foods maintain their basic nature and essential characteristics. The proposed amendments to the SOI for dairy products under parts 131, 133, and 135 are issued under section 701(e) of the FD&C Act.

V. Description of the Proposed Rule

The proposed rule, if finalized, would:

- Amend part 130 to add a new subpart C entitled ''Flexibility in Standardized Foods.''
- Add a new § 130.30 to provide for ''Ingredient Flexibility in Standardized Foods'' and define ''salt substitute'' as a safe and suitable ingredient (or combination of ingredients) that is used to replace some or all of the added salt (sodium chloride), to reduce sodium in the food, and that serves the functions of salt in the food.
- Amend the 80 SOI that specify salt as a required or an optional ingredient to add regulatory text to permit the use of salt substitute, as defined in proposed § 130.30.
- Update the IBR information of several SOI to refer to the most recent versions of the IBR materials and to provide up-to-date contact information for obtaining the IBR materials. The proposed rule would also update the referenced methods of analysis to those in the ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 21st Ed. 2019.
- Make technical amendments to correct inconsistencies and typographical errors in some SOI regulations.

A. Scope/Applicability

The proposed rule, if finalized, would amend SOI in parts 131 to 169. Specifically, the proposed rule would permit the use of salt substitutes in the foods covered by 80 SOI that include salt as a required or an optional ingredient. The proposal would also permit the use of salt substitutes in foods covered by SOI that reference some of the 80 SOI.

This rule does not propose to amend the SOI for oysters (§ 161.130). The SOI in § 161.130 provides for the optional use of salt water in the shucking of oysters. We understand that it is not standard industry practice to constitute a salt and water solution for this process. Rather, seawater accessible at the processing location is collected and used in the shucking process. Because salt is not an ingredient added by the manufacturer, we are not proposing to amend this SOI. We request comments on this approach and our understanding of current industry practice.

B. The Basic Nature and Essential Characteristics of a Standardized Food

Proposed § 130.30(b) would require that ingredients used as salt substitutes do not change the basic nature and essential characteristics of the standardized food. FDA previously discussed its understanding about the basic nature of a food in a proposed rule entitled ''Food Standards; General Principles and Food Standards Modernization,'' (70 FR 29214, May 20, 2005). The basic nature of a food is generally what the food is. It concerns the general attributes of the product. For example, the basic nature of a particular type of cheese is that it is a milk-derived food of a certain form and consistency. The essential characteristics of a food may contribute to achieving the basic nature of the food, but consumers may not be aware of the essential characteristics. The essential characteristics of a food are those that distinguish a food. Foods may be distinguished by their ingredients, compositional characteristics, physical characteristics, or levels of certain nutrients or the way they are produced—all of which are the essential characteristics of the food. For example, the essential characteristics of a particular type of cheese may include the bacterial culture used, the processing method, or the fat and moisture content that contribute to the unique characteristics of that cheese.

Use of salt substitutes that do not change the basic nature and essential characteristics of the standardized food under this proposed rule is necessary to ensure the availability of foods that promote honesty and fair dealing in the interest of consumers, in accordance with section 401 of the FD&C Act.

C. Definition of Salt Substitute

Under the FD&C Act, any substance that is intentionally added to food is a food additive that is subject to premarket review and approval by FDA unless that substance is excluded from the definition of a food additive. These excluded food substances include substances that are generally recognized, among qualified experts, as having been adequately shown to be safe under the conditions of its intended use (''generally recognized as safe'' or ''GRAS''), or the substances are prior sanctioned and excepted from the definition of a food additive. FDA considers salt a common food ingredient that is GRAS for its intended use (21 CFR 182.1(a)). A salt substitute that is added to a standardized food, to replace some or all of the salt, must be an approved food additive or GRAS for its intended use. For example, potassium chloride is a GRAS substance (21 CFR 184.1622).

The proposed rule would amend § 130.30(c)(1) to define salt substitute as a safe and suitable ingredient (see § 130.3(d)) or combination of ingredients that is used to replace some or all of the added salt (sodium chloride), to reduce the sodium in the food, and that serves the functions of salt in the food. We are proposing to define salt substitute broadly to provide flexibility and facilitate innovation in the future without the need for additional rulemaking. Thus, the proposed rule would not list specific salt substitutes; instead, the proposed rule would cover ingredients or combinations of ingredients currently used as salt substitutes and ingredients or combinations of ingredients that may be used as salt substitutes in the future, as a result of advances in food science and technological changes.

Salt is a required or optional ingredient in a wide range of standardized foods. The proposed rule also would allow manufacturers the flexibility to explore new ways to replace salt and reduce the sodium content of standardized foods while preserving the basic nature and essential characteristics of the food.

We recognize that salt serves various functions in standardized foods. For example, depending on the food, salt may be important for taste, microbial safety, and other functions. The proposed definition would require that the salt substitute be used to replace some or all of the added salt, to reduce the sodium in the food, and serve the functions of salt in the food. This would ensure that the salt substitute performs a similar function to salt in the standardized food, while helping to reduce the sodium content. The extent to which salt can be replaced depends on the ability of the salt substitute to replicate the functions of salt in the food without compromising the food's safety and nutritional quality. The proposed rule would not establish a minimum replacement level for salt. It would not prescribe the sodium content of the foods or any parameters pertaining to the production of the food. Manufacturers would determine the level of salt replacement appropriate for the particular standardized food.

Our intent is to provide manufacturers flexibility and facilitate sodium reduction across the food supply while not changing the basic nature and essential characteristics or adversely affecting the nutritional quality and safety of standardized foods. To accomplish this, proposed § 130.30(c)(1) would limit the definition of salt substitute and therefore the use of salt substitutes to an ingredient or a combination of ingredients that serve the functions that salt served in the particular standardized food. The ingredient or combination of ingredients may include substances intended to mitigate the impact of removing salt and are needed to maintain the basic nature and essential characteristics of the food.

Some manufacturers are currently using salt substitutes to reduce sodium in foods in the marketplace. Scientific articles and reports have used several examples of salt substitutes when discussing sodium reduction efforts (Ref. 19, 20, 21). The use of potassium chloride is one example of a safe and suitable ingredient discussed in the scientific literature that, in some instances, serves as a partial substitute for sodium chloride in food processing and manufacturing (Ref. 15). Other examples of ingredients listed in the scientific literature include herbs and spices, yeast extracts, monosodium glutamate, amino acids, and dairy extracts (Ref. 19). The food industry is pursuing sodium reduction efforts, including the use of salt substitutes (*e.g.,* in products marketed as ''low'' or ''reduced'' sodium), in a variety of foods, including in canned fish and soups (Ref. 21). We request data and information on the types of salt substitutes currently being used in the U.S. market to support sodium reduction and on potential salt substitutes that may be used as a result of the new flexibility provided in this proposed rule.

D. Amending Standard of Identity Regulations to Permit Salt Substitutes

We propose to amend our regulations to permit the use of salt substitutes in SOI that specify salt as a required or an optional ingredient. Foods for which FDA has established a SOI must conform to the applicable standard. Consequently, without these amendments, most standardized foods cannot be modified to replace salt with salt substitutes unless salt can be reduced in sufficient quantity to meet a nutrient content claim under § 101.61 (see section III.C). As stated previously, amending 80 applicable SOI to permit the use of salt substitutes is necessary to give manufacturers the most flexibility to use salt substitutes in standardized foods. The proposed rule would permit the use of salt, salt substitute or a combination of the two in applicable standardized foods. Salt substitutes used would be declared on the label in accordance with section 403(i)(2) of the FD&C Act.

Where salt is permitted in our SOI, the use is not described uniformly in the provisions of the standards. This is largely due to the standards having been established with different structural formats. The lack of uniformity is also due to the use of salt differing across different standardized foods. In some foods, salt is a mandatory ingredient, and in other foods, salt is an optional ingredient. For some foods, salt is permitted at a specific point in the manufacturing process, whereas salt is permitted in other foods without regard to manufacturing time. These differences mean that different amendatory language in the individual standards is necessary to permit the use of salt substitutes. To address this, we propose four types of revisions to the current regulatory text in the applicable SOI.

In particular, there are differences in how the use of salt is prescribed in certain SOI for cheeses and related cheese products in part 133 (21 CFR part 133). For example, several SOI for cheeses use terms such as ''salted,'' ''salting,'' ''brine,'' or ''salt solution,'' to prescribe the application of salt in the cheesemaking process. For additional clarity, the proposed amendments for cheeses and related cheese products are grouped and discussed separately from other SOI.

There are 4 types of revisions to the applicable SOI in this proposed rule.

The third and fourth types only apply to SOI in part 133.

- Type 1: When the current text of the SOI lists ''salt'' as an optional ingredient, the proposed rule would amend the SOI to state, ''salt or salt substitute.''
- Type 2: When the current text of the SOI provides for the use of ''salt'' in a paragraph, the proposed rule would amend the SOI to state, ''salt or salt substitute.''
- Type 3: When the current text of the SOI uses terms such as ''salted,'' ''salted with dry salt or brine,'' or ''salting,'' to provide for use of salt in the food, but does not specify salt as an ingredient, the proposed rule would amend the optional ingredient list to add ''salt substitute.''
- Type 4: When the current text of the SOI uses terms such as ''salted,'' or ''salted in brine,'' to provide for the use of salt in the food, but does not provide a list of optional ingredients, the proposed rule would amend the SOI to add a paragraph stating that, ''During the cheesemaking process, where the curd is salted, salt substitute may be used.''

We summarize these changes in tables 1 and 2.

1. Amendments to SOI not in Part 133

We propose amendments to permit the use of salt substitutes in 39 SOI for products that are not cheeses or related cheese products prescribed in part 133. The amendments would occur through two types of revisions to the current regulatory text of the applicable SOI.

a. Type 1 revision for SOI not in part 133. Several SOI provide for the addition of salt by listing it as an ingredient (*e.g.,* as an ''optional ingredient,'' ''other optional ingredient,'' or including salt in a list of substances that could be added as a seasoning or flavoring.) We propose to amend these SOI to permit the addition of a salt substitute in addition to, or in place of, salt by replacing ''salt'' with ''salt or salt substitute.'' For example, the SOI for acidified milk (§ 131.111(e)(8)) lists ''salt'' under ''other optional ingredients;'' the proposed rule would replace ''salt'' with ''salt or salt substitute.'' As another example, the SOI for canned tuna (21 CFR 161.190) includes ''salt'' in a list of seasoning or flavoring ingredients (§ 161.190 (a)(6)(i)); the proposed rule would replace ''salt'' with ''salt or salt substitute.''

b. Type 2 revision for SOI not in part 133. Five SOI prescribe the use of salt in paragraphs that describe the food, rather than as part of an ingredient list. We propose to amend these SOI to permit the addition of a salt substitute in addition to, or in place of, salt by replacing ''salt'' with ''salt or salt substitute'' in the regulatory text. For example, the SOI for catsup (21 CFR 155.194) specifies the optional use of salt by stating, ''[t]he food may contain salt''; and the SOI for self-rising flour (21 CFR 137.180) specifies that the food ''is seasoned with salt.'' In both examples, we propose to replace ''salt'' with ''salt or salt substitute.''

Table 1 summarizes the amendments to the SOI for foods other than cheeses and related cheese products. We request comment on whether there would be safety concerns, technical infeasibilities, or other issues that would prevent the use of a salt substitute in any SOI listed in table 1.

TABLE 1—AMENDMENTS TO DEFINITIONS AND STANDARDS OF IDENTITY—FOODS OTHER THAN CHEESES AND RELATED CHEESE PRODUCTS

CFR section	Title	Paragraph	Type of revision
§ 131.111	Acidified milk	(e)(8)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 131.112	Cultured milk	(d)(8)	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 131.160	Sour cream	(b)(5)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 131.162	Acidified sour cream	(b)(4)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 131.170	Eggnog	(e)(2)	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 136.110	Bread, rolls, and buns	(c)(4)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 137.180	Self-rising flour	(a)	Type 2; amends paragraph that describes the food to add salt substitute.
§ 137.270	Self-rising white corn meal	(a)	Type 2; amends paragraph that describes the food to add salt substitute.
§ 139.110	Macaroni products	(a)(4)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 139.150	Noodle products	(a)(2)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 145.110	Canned applesauce	(a)(2)(iii)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 145.130	Canned figs	(a)(5)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 150.110	Fruit butter	(c)(4)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.120	Canned green beans and canned wax beans.	(a)(3)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.130	Canned corn	(a)(3)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.170	Canned peas	(a)(2)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.190	Canned tomatoes	(a)(2)(iv)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.191	Tomato concentrates	(a)(2)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.194	Catsup	(a)(1)(iv)	Type 2; amends paragraph that describes the food to add salt substitute.
§ 155.200	Certain other canned vegetables	(c)(4)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 155.201	Canned mushrooms	(a)(3)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 156.145	Tomato juice	(a)(1)	Type 2; amends paragraph that describes the food to add salt substitute.
§ 158.170	Frozen peas	(a)(1)(iv)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 161.145	Canned oysters	(a)(1)	Type 2; amends paragraph that describes the food to add salt substitute.
§ 161.170	Canned Pacific salmon	(a)(4)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 161.173	Canned wet pack shrimp in transparent or nontransparent containers.	(a)(4)(i)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 161.190	Canned tuna	(a)(6)(i)	Type 1; amends salt in seasoning and flavoring ingredients to add salt substitute.
§ 163.111	Chocolate liquor	(b)(6)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 163.112	Breakfast cocoa	(b)(4)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 163.123	Sweet chocolate	(b)(3)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 163.124	White chocolate	(b)(4)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 163.130	Milk chocolate	(b)(3)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 166.110	Margarine	(b)(2)	Type 1; amends salt in optional ingredients to add salt substitute.

TABLE 1—AMENDMENTS TO DEFINITIONS AND STANDARDS OF IDENTITY—FOODS OTHER THAN CHEESES AND RELATED CHEESE PRODUCTS—Continued

CFR section	Title	Paragraph	Type of revision
§ 168.130	Cane sirup	(b)(1)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 168.140	Maple sirup	(b)(1)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 168.160	Sorghum sirup	(b)(1)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 168.180	Table sirup	(b)(7)	Type 1; amends salt in optional ingredients to add salt substitute.
§ 169.140	Mayonnaise	(d)(1)	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 169.150	Salad dressing	(e)(1)	Type 1; amends salt in other optional ingredients to add salt substitute.

2. Amendments to SOI in Part 133

Type 1 and type 2 amendments are also proposed for certain SOI for cheeses and related cheese products. We propose type 3 and type 4 amendments for the several SOI in part 133 that specify salt as an ingredient, using terms such as ''brine,'' ''salt brine,'' ''salt solution,'' ''salted,'' and ''salting.'' ''Brine,'' ''salt brine,'' and ''salt solution'' are solutions containing sodium chloride and ''salted'' and ''salting'' in the manufacture of cheese refer to the use of sodium chloride. The proposed rule would provide manufacturers of standardized cheeses and related cheese products, the flexibility to use salt substitutes to replace some or all of the salt prescribed in these processes.

We propose to permit the use of salt substitutes in 41 SOI for cheeses and related cheese products. Some SOI in part 133 list salt under ''optional ingredients'' or ''other optional ingredients,'' while others vary in how they prescribe the use of salt in the paragraph that describes the cheese or cheesemaking process. Because of these differences, we propose four types of revisions to the current regulatory text of the applicable SOI for cheeses and related cheese products.

a. Type 1 revision for SOI in part 133. Several SOI for cheeses and related cheese products provide for the addition of salt by listing it as an ingredient (*e.g.,* as an ''optional ingredient'' or ''other optional ingredient.'') We propose to amend these SOI to permit the addition of salt substitute in addition to, or in place of, salt by replacing ''salt'' in the list with ''salt or salt substitute.'' For example, the SOI for cold-pack and club cheese lists ''salt'' under ''optional ingredients'' (§ 133.123(c)(3)). The proposed rule would replace ''salt'' with ''salt or salt substitute.''

b. Type 2 revision for SOI in part 133. Five SOI provide for the use of salt in paragraphs that describe the cheese, rather than as part of an ingredient list. We propose to amend these SOI to permit the addition of a salt substitute in addition to, or in place of, salt by replacing ''salt'' in the paragraphs with ''salt or salt substitute.'' For example, the proposed rule would replace ''salt'' with ''salt or salt substitute'' in three paragraphs of the SOI for dry curd cottage cheese (§ 133.129(b)(1)(i) through (iii)) and in one paragraph of the SOI for sap sago cheese (§ 133.186 (a)(2)).

c. Type 3 revision for SOI in part 133. Some SOI for cheeses and related cheese products provide for the use of salt in a paragraph that describes the cheesemaking process, through terms such as ''salted,'' ''salted with dry salt or brine,'' or ''salting,'' and do not specify salt in a list of ingredients (*e.g.,* as an ''other optional ingredient''). We propose to amend these SOI to permit the addition of a salt substitute in addition to, or in place of, salt by adding ''salt substitute'' as a new subparagraph in the current list of other optional ingredients. For example, the SOI for cheddar cheese (§ 133.113(a)(3)) states that ''the curd is salted, stirred, further drained, and pressed into forms,'' but does not list salt in the optional ingredients in § 133.113(b)(3). The proposed rule would amend § 133.113(b)(3) by adding a new subparagraph, ''salt substitute'' (proposed § 133.113(b)(3)(vi)).

d. Type 4 revision for SOI in part 133. Several SOI for cheeses and related cheese products provide for the use of salt in a paragraph that describes the cheesemaking process through terms such as ''salted'' or ''salted in brine,'' but do not include a list of ingredients (*e.g.,* ''optional ingredient'' or ''other optional ingredient'') that could be amended to add salt substitute. We propose to amend these SOI to explicitly permit the use of a salt substitute in the cheesemaking process. For example, the SOI for asiago fresh and asiago soft cheese (§ 133.102(b)) provides that ''the curd is salted in brine and cured in a well-ventilated room,'' but does not have an optional ingredient list. The proposed rule would amend this SOI by adding a new subparagraph at § 133.102(c)(3) to state, ''During the cheesemaking process, where the curd is salted, salt substitute may be used.''

Table 2 summarizes the amendments to the SOI for cheeses and related cheese products. We request comment on whether there would be safety concerns, technical infeasibilities, or other issues that would prevent the use of salt substitute in any SOI listed in table 2.

TABLE 2—PROPOSED AMENDMENTS TO DEFINITIONS AND STANDARDS OF IDENTITY—CHEESES AND RELATED CHEESE PRODUCTS

CFR section	Title	Current paragraph	Revised or added paragraph designation	Type of revision
§ 133.102	Asiago fresh and asiago soft cheese.	(c)	(c)(3)	Type 4; amends SOI to add a new paragraph to permit salt substitute.
§ 133.106	Blue cheese	(b)(3)	(b)(3)(vii)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.108	Brick cheese	(b)(3)	(b)(3)(v)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.111	Caciocavallo siciliano cheese	(c)	(c)(3)	Type 4; amends SOI to add a new paragraph to permit salt substitute.

TABLE 2—PROPOSED AMENDMENTS TO DEFINITIONS AND STANDARDS OF IDENTITY—CHEESES AND RELATED CHEESE PRODUCTS—Continued

CFR section	Title	Current paragraph	Revised or added paragraph designation	Type of revision
§ 133.113	Cheddar cheese	(b)(3)	(b)(3)(vi)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.118	Colby cheese	(c)	(c)(4)	Type 4; amends SOI to add new paragraph to permit salt substitute.
§ 133.123	Cold-pack and club cheese ...	(c)(3)	N/A	Type 1; amends salt in optional ingredients to add salt substitute.
§ 133.124	Cold-pack cheese food	(e)(3)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.127	Cook cheese, koch kaese	(b)(3)(v)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.129	Dry curd cottage cheese	(b)(1)(i)–(iii)	N/A	Type 2; amends paragraph that describes the food to add salt substitute.
§ 133.133	Cream cheese	(b)(3)(i)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.136	Washed curd and soaked curd cheese.	(b)(3)	(b)(3)(vi)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.138	Edam cheese	(b)(3)	(b)(3)(v)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.141	Gorgonzola cheese	(b)(3)	(b)(3)(vii)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.144	Granular and stirred curd cheese.	(b)(3)	(b)(3)(vi)	Type 3; amends other optional ingredients to add a new paragraph to list salt substitute.
§ 133.147	Grated American cheese food	(c)(5)	N/A	Type 1; amend salt in other optional ingredients to add salt substitute.
§ 133.148	Hard grating cheeses	(c)	(c)(1) and (2)	Type 4; amends SOI to add a new paragraph to permit salt substitute.
§ 133.149	Gruyere cheese	(b)(3)	(b)(3)(iv)	Type 3; amends other optional ingredients to add a new paragraph to list salt substitute.
§ 133.150	Hard cheeses	(c)	(c)(3)	Type 4; amends SOI to add a new paragraph to permit salt substitute.
§ 133.152	Limburger cheese	(b)(3)	(b)(3)(iv)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.153	Monterey cheese and monterey jack cheese.	(b)(3)(iii)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.155	Mozzarella cheese and scamorza cheese.	(b)(3)(iii)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.156	Low-moisture mozzarella and scamorza cheese.	(b)(3)(iii)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.160	Muenster and munster cheese.	(b)(3)	(b)(3)(vi)	Type 3; amends other optional ingredients to add a new paragraph to list salt substitute.
§ 133.162	Neufchatel cheese	(b)(3)(i)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.164	Nuworld cheese	(b)(3)	(b)(3)(iv)	Type 3; amends other optional ingredients to add a new paragraph to list salt substitute.
§ 133.165	Parmesan and reggiano cheese.	(c)	(c)(3)	Type 4; amends SOI to add a new paragraph to permit salt substitute.
§ 133.169	Pasteurized process cheese ..	(d)(4)	N/A	Type 1; amends salt in optional ingredients to add salt substitute.
§ 133.173	Pasteurized process cheese food.	(e)(4) Salt	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.179	Pasteurized process cheese spread.	(f)(5) Salt	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.181	Provolone cheese	(b)(3)	(b)(3)(vi)	Type 3; amends other optional ingredients to add a new paragraph to list salt substitute.
§ 133.182	Soft ripened cheeses	(b)	N/A	Type 2; amends paragraph that describes the food to add salt substitute.
§ 133.183	Romano cheese	(c)	(c)(3)	Type 4; amends SOI to add a new paragraph to permit salt substitute.
§ 133.184	Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.	(b)(3)	(b)(3)(i) and (ii)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.185	Samsoe cheese	(b)(3)	(b)(3)(v)	Type 3; amends other optional ingredients to add new paragraph to list salt substitute.
§ 133.186	Sap sago cheese	(a)	N/A	Type 2; amends paragraph that describes the food to add salt substitute.
§ 133.187	Semisoft cheeses	(b)	N/A	Type 2; amends paragraph that describes the food to add salt substitute.

TABLE 2—PROPOSED AMENDMENTS TO DEFINITIONS AND STANDARDS OF IDENTITY—CHEESES AND RELATED CHEESE PRODUCTS—Continued

CFR section	Title	Current paragraph	Revised or added paragraph designation	Type of revision
§ 133.188	Semisoft part-skim cheeses ...	(b)	N/A	Type 2; amends paragraph that describes the food to add salt substitute.
§ 133.189	Skim milk cheese for manufacturing.	(d)	(d)(1) and (2)	Type 4; amends SOI to add a new paragraph to permit salt substitute.
§ 133.190	Spiced cheeses	(b)(3)(iii)	N/A	Type 1; amends salt in other optional ingredients to add salt substitute.
§ 133.195	Swiss and emmentaler cheese.	(b)(3)	(b)(3)(vii)	Type 3; amends other optional ingredients to add a new paragraph to list salt substitute.

E. Update Incorporation by Reference

Several of the 80 SOI that specify salt as a required or optional ingredient contain outdated references. We propose to update the IBR paragraphs in these SOI to refer to the most recent versions of the IBR materials and to provide up-to-date contact information for obtaining the IBR materials. We propose to add IBR paragraphs to subparts A of parts 131, 137, 139, 150, 155, and 161. SOI in subparts B of these parts would reference applicable IBR paragraphs in subpart A. We also propose to update the IBR paragraphs in the SOI under parts 136, 145, and 166 which would not have IBR paragraphs in subparts A of these parts. The revised format is for administrative efficiency. Specifically, the proposed rule would update the IBR information for §§ 131.111, 131.112, 131.160, 131.162, 131.170, 136.110, 137.180, 137.270, 139.110, 139.150, 145.110, 150.110, 155.120, 155.130, 155.170, 161.145, 161.173,161.190, and 166.110. These SOI list methods of analysis that are from the 13th or 15th editions of ''Official Methods of Analysis of the Association of Official Analytical Chemists.'' Additionally, § 155.170 lists an incorrect section number for the method for alcohol insoluble solids in canned peas. We propose to update the referenced methods of analysis to those in the ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 21st Ed. 2019. These proposed changes will ensure that the reference materials are current, accessible, and meet Federal requirements pertaining to IBR (see 1 CFR part 51).

- Definition of Terms and Explanatory Notes; Table 1. Nominal Dimensions of Standard Test Sieves (USA Standard Series). The reference lists the test sieve designations and their nominal dimensions.
- AOAC Reference Table 909.04; Correction Factors for Gasometric Determination of Carbon Dioxide. The reference lists the correction factors of carbon dioxide measurements for different atmospheric conditions.
- AOAC Official Method 923.02A; Reagent under Carbon Dioxide (Total) in Baking Powders-Gasometric Determination. The reference describes the reagent used in measuring the amount of carbon dioxide released from a sample.
- AOAC Official Method 923.02B; Apparatus under Carbon Dioxide (Total) in Baking Powders-Gasometric Determination. The reference describes the apparatus used in measuring the amount of carbon dioxide released from a sample.
- AOAC Official method 926.07A; Vacuum Oven Method, under Solids (Total) and Loss on Drying (Moisture) in Macaroni Products. The reference provides method references for the preparation of a sample and the total solid determination of a sample.
- AOAC Official method 932.12; Solids (Soluble) in Fruits and Fruit Products. The reference provides a method reference for measuring soluble solids and the formula for calculating the percentage of soluble solids in a sample.
- AOAC Official method 932.14C; By Means of Refractometer under Solids in Syrups. The reference provides the method for measuring the percentage of soluble solids in a sample.
- AOAC Official method 935.36(a); Solids (Total) in Bread. The reference provides the method for measuring the percentage of solids in a sample.
- AOAC Official method 938.06A; Indirect Method, under Fat in Butter. The reference provides the method for measuring the percentage of fat in a sample.
- AOAC Official method 938.10; Solids (Alcohol-Insoluble) in Canned Peas Gravimetric Method. The reference provides the method for measuring the percentage of alcohol-insoluble solids in a sample.
- AOAC Official Method 945.48G; under Evaporated Milk (Unsweetened). The reference provides the method for sample preparation and a method reference for measuring the percentage of milk fat in a sample.
- AOAC Official Method 947.05; Acidity of Milk Titrimetric Method. The reference provides the method for measuring the percentage of lactic acid in a sample.
- AOAC Official Method 989.05; Fat in Milk-Modified Mojonnier Ether Extraction method. The reference provides the method for measuring the percentage of milk fat in a sample.
- AOAC Official Method 990.21; Solid-Not-Fat in Milk By Difference between Total Solids and Fat Contents. The reference provides method references for measuring total solids and fat contents of a sample and the formula for calculating the percentage of nonfat solid in a sample.

You may purchase a copy of the material from AOAC International (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622. You may inspect a copy at Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, between 9 a.m. and 4 p.m., Monday through Friday.

F. Technical Amendments

We also propose to make technical amendments to correct inconsistencies and typographical errors in several of the 80 SOI regulations that specify salt as a required or optional ingredient. The corrections are non-substantive. The proposed rule would:

- Amend § 133.118(c)(2) to replace ''143'' with ''145.''
- Amend § 133.150(c)(2) to replace ''143'' with ''145.''
- Amend § 133.150(e)(1) to replace ''unusual'' with ''usual.''
- Amend § 133.182(c)(2) to replace ''143'' with ''145.''

- Amend § 133.184(b) to replace ''Operational'' with ''Optional.''
- Amend § 133.186(c) to replace ''Nonmenclature'' with ''Nomenclature.''
- Amend § 133.187(c)(2) to replace ''143'' with ''145.''
- Amend § 133.188(c)(2) to replace ''143'' with ''145.''
- Amend § 155.170(b)(1)(iii) to replace ''shrivelled'' with ''shriveled.''
- Amend § 158.170(b)(1)(iii) to replace ''shrivelled'' with ''shriveled.''
- Amend § 168.140(a) to replace ''mapel'' with ''maple.''

VI. Proposed Effective/Compliance Dates

We propose that any final rule resulting from this rulemaking be effective 30 days after the final rule's date of publication in the **Federal Register** insofar as it amends non-dairy SOI. We believe that this effective date is appropriate because it will provide industry the flexibility to use salt substitutes to reduce the sodium content in standardized foods. Some manufacturers are already exploring ways to reduce sodium in standardized foods, and this proposed rule, if finalized, will assist in those efforts. For the same reasons, FDA proposes that any dairy SOI that may be amended based on this proposal, unless stayed by the filing of proper objections, will also be effective 30 days after the final rule's date of publication in the **Federal Register**.

VII. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Office of Information and Regulatory Affairs has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866 Section 3(f)(1).[1]

[1] We note that this Executive Order 12866 applies only to the non-dairy SOI portions of this rulemaking; the dairy SOI covered by this rulemaking are ''regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557'' (see 21 U.S.C. 701(e)(1)) and therefore excluded by section (d)(1) of Executive Order (E.O.) 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. We do not anticipate the proposed rule would generate regulatory impacts on small entities. As with any voluntary market behavior, larger firms may have certain advantages over small firms in some areas, while smaller firms may have advantages in other areas. As a result, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. The proposed rule would not result in a mandated expenditure in any year that meets or exceeds this amount.

The proposed rule would permit, but not require, manufacturers to use salt substitutes to replace salt where salt is a required or optional ingredient in standardized foods. If finalized, the benefits of this rule would be additional flexibility in the manufacture of standardized foods and the potential for reduced salt consumption by consumers which may contribute to better health outcomes. We have no information to suggest the use of currently available salt substitutes would lead to improved product characteristics (*e.g.,* shelf life) or would lead to reduced production costs and potentially lower prices. We request comment on such potential benefits of reformulation for manufacturers and on how many standardized foods manufacturers might choose to reformulate, either in the relatively near or longer-run future.

The proposed rule, if finalized, would not impose requirements resulting in regulatory costs on firms or consumers. Manufacturers would have the *option* of using salt substitutes. There are no regulatory implications for not reading the rule or deciding not to use salt substitutes. Should manufacturers choose to use this flexibility to reformulate some products by substituting some salt with salt substitutes, the primary benefits realized would result from lower sodium consumption on average by U.S. consumers, assuming they choose to purchase and consume the reformulated versions of such products, and increased profit (producer surplus) for manufacturers, assuming they find offering reformulated versions of such products consistent with maximizing firm profits. The primary costs of such voluntary market behavior would be reformulation and relabeling costs for manufacturers. We currently lack data to estimate any net social benefits from voluntary market behavior relating to future use of salt substitutes made possible by this rule, but cite some published analyses below related to meeting voluntary sodium reduction targets that could partially be addressed via the flexibility provided by this rule. We request public comment on possible producer response (*e.g.,* how many manufacturers may choose to take voluntary action in response to this rule, what share of standardized food products may get reformulated) and on possible consumer willingness to purchase and consume such products with various types of salt substitutes at various levels, which would allow us to provide a range of net social benefit estimates when this rule is finalized.

A. Economic Analysis of Impacts

1. Background

There are 80 SOI that specify salt as a mandatory or optional ingredient. Some of these standards are referenced by other SOI, resulting in salt as an ingredient in 140 SOI. The salt in the foods covered by these 140 SOI may serve a variety of functions such as taste, texture, moisture control, and microbial safety. FDA has a public health interest in reducing sodium across the food supply. Therefore, we propose to give manufacturers the flexibility to use salt substitutes in standardized foods where salt is a required or optional ingredient, to reduce the sodium content. While there may be potential data sources (*e.g.,* IRI, Label Insight, Mintel, NHANES, Syndigo) that could provide market or consumption share (*e.g.,* contribution of sodium and/or caloric intake) for foods covered by these 140 SOI, FDA does not currently have sufficient estimates to further extrapolate impacts at this time. We request public comment on additional potential data sources for estimates of market share and/or caloric and/or sodium consumption share of the products included in these SOI.

We request comment on potential regulatory alternatives including allowing the use of only specified salt substitutes, at only specified levels of substitution, for only specified

purposes, for only specified products, in conjunction with only specified ancillary formulation changes, or with specified labeling requirements. More generally, we request comments on potential regulatory approaches to reducing salt in food or the dietary intake of salt that do not involve allowing the use of salt substitutes in standardized foods.

2. Benefits of the Proposed Rule

The benefit of this proposed rule is that manufacturers would have additional flexibility in producing standardized foods covered by 140 SOI, which may lead to social benefits in the form of increased consumer satisfaction (consumer surplus), increased profits (producer surplus), or both. In addition, a change in voluntary market behavior relating to patterns of food consumption, or to use a potassium-based salt as a salt substitute and consumers who would benefit from increasing their potassium intake choose to consume those products, those consumers may experience positive health effects.

Salt is a relatively inexpensive ingredient, and we would not expect manufacturers to begin using salt substitutes based on cost cutting considerations alone at this time. To explore the possibility of manufacturers voluntarily replacing salt with salt substitutes to improve the healthfulness of their standardized foods, one would need to identify the costs and level of potential substitution, and extent of consumer acceptance of salt substitutes at differing levels in different standardized foods in order to estimate the number of manufacturers who would decide to use salt substitutes. We currently lack data on these potential industry responses and request public comment from manufactures, suppliers, and consumers on the extent to which the additional flexibility provided by this rule would be used by manufacturers, hence also desired or tolerated by consumers, and viable in the supply chain.

As discussed in the preamble of this rule, on average, Americans consume approximately 3,400 milligrams of sodium per day (mg/day), which is nearly 50 percent more than the recommended daily limit on sodium intake for individuals 14 years and older (Refs. 1 and 2). Excess sodium intake increases the risk for hypertension, or high blood pressure, a leading cause of heart disease and stroke (Refs. 2–6). Decreasing sodium consumption is expected to reduce hypertension and potentially result in fewer cases of heart disease and stroke (Refs. 7–9 [2]). More than 70 percent of sodium consumed in the U.S. comes from sodium added during manufacturing and commercial food preparation (Ref. 14). The health benefits from reducing sodium consumption are expected to be higher for populations that currently have higher sodium consumption or that are more sensitive to any given level of sodium consumption than other populations. Hence, there may be potential health equity effects to any regulation that generates or facilitates reduced intake of sodium. In order to estimate such health benefits, we would need data and information on the complex pathway between allowing manufactures to use salt substitutes, the extent to which manufactures will develop products of interest to those at highest risk of hypertension, the likely demographic patterns of consumers purchasing those new products, and eventually, the extent of the reduction in sodium uptake among those at most risk of hypertension.

In the absence of necessary data to fully estimate the impacts of this rule, we refer to published literature on the health benefits of sodium reduction targets to provide broader context of potential impacts of this rule. A 2018 study by Pearson-Stuttard, et al. looked at the health and economic effects of FDA's 2016 draft voluntary sodium reduction guidance (Refs. 8 and 22) and estimated benefits of meeting sodium reduction targets in the form of medical cost savings and consumer health improvements, net of producer reformulation costs and some government administrative and monitoring costs. Over a 20-year period, the authors of the study find net social benefits from only consumer health effects to be roughly $12 billion (uncertainty range of $0 billion to $28 billion) under what it described as the most pessimistic scenario relating to potential sodium reduction among the three presented (Ref. 8). This roughly $12 billion *net* benefit arises from roughly $19 billion in estimated health cost savings (benefits) and just over $7 billion of estimated reformulation, administrative and monitoring costs.[3]

Since these benefit estimates are not comprehensive, we would need additional data on possible producer and consumer response to fully assess health benefits. Moreover, benefits might be higher or lower than what would be indicated by estimates that focus on the subset of effects tracked by Pearson-Stuttard et al. Benefits might be higher if firms were to realize additional profits or producer surplus from any product reformulation (since we assume firms would use salt substitutes only if profits would remain the same or increase). Benefits might also be higher due to possible changes in consumer surplus from consumers willing to buy reformulated products whose valuation includes factors beyond medical cost savings or health state utility. Benefits might be lower if some consumers experience disutility associated with the reformulated product and adjust their consumption pattern accordingly, which could partially offset the estimated health benefits presented above.

In addition, as mentioned above, we currently lack data to determine how much, if any, of the aggregate effects that Pearson-Stuttard et al. attribute to broader voluntary sodium reduction efforts could be directly connected to the flexibility provided by this rule. The rule does not cover all foods analyzed in the Pearson-Stuttard, et al. scenarios, which included many non-standardized foods. With comprehensive data on the share of foods affected by this rule, we could estimate health benefits across only such products as a subset of the Pearson-Stuttard, et al. estimate. We request such data and also data on possible consumer and producer response to the flexibility provided by this rule.

3. Costs of the Proposed Rule

The proposed rule, if finalized would not impose *regulatory* costs on manufacturers or consumers. There would be no regulatory requirements or regulatory penalties relative to the baseline of taking no regulatory action. Manufacturers would be required to use safe and suitable ingredients regardless of the amount or type of salt substitutes they choose to use. The flexibility provided by this rule creates parity for use of existing salt substitutes in both standardized and non-standardized foods (see section V.C. for discussion of examples of current salt substitutes in use) and such uses are already required to be disclosed and labeled. It is

[2] These studies may be sensitive to assumptions regarding consumer response. If some consumers experience disutility associated with the reformulated product and adjust their consumption pattern accordingly, this could partially offset some of the estimated health benefits.

[3] These results may be sensitive to assumptions regarding consumer response to product reformulation. For example, benefits might be lower if some consumers experience disutility associated with the reformulated product and adjust their consumption pattern accordingly, which could partially offset the estimated health benefits presented above. Ref. 9, for instance, indicates that its cost-effectiveness results are highly sensitive to such issues.

possible that a change in voluntary market behavior relating to food consumption may generate health costs. For example, to the extent manufacturers choose to use potassium chloride as a salt substitute and consumers choose to consume those products, consumers who may need to limit their potassium intake may see negative health effects that should be accounted for in cost estimates. We request comments on evidence that could contribute to a more thorough assessment (including possible quantification) of such costs. The agency will continue to monitor the use of salt substitutes in the U.S. food supply.

The economic rationale for food standards involves reducing consumers' search costs; in particular, their ability to infer certain product characteristics from representation as certain standardized foods. The proposed rule may affect product characteristics by allowing manufacturers to use salt substitutes that replace any one or any combination of the functions of added salt. However, the proposed rule would preclude ingredient substitutions that change the basic nature and essential characteristics of a standardized food. The basic nature of a food concerns the general attributes of the product that is offered for sale to consumers. The essential characteristics of a food may contribute to achieving the basic nature of the food, but consumers may not be aware of the essential characteristics. Use of safe and suitable salt substitutes that do not change the basic nature and essential characteristics of the standardized food ensures that products on the market retain their general attributes. For purposes of this analysis, we assume products that retain their general attributes will also retain consistency with consumer beliefs and expectations relating to those products and that the use of salt substitutes will therefore not generate consumer dissatisfaction relating to the identity of the standardized food. To the extent that this assumption may not be accurate, we request comment on the degree to which consumers may be willing to purchase and consume such products after salt substitutes are used.

If finalized, manufacturers may choose to take advantage of the flexibility provided in this proposed rule. As discussed above, the primary potential costs of that voluntary market behavior would arise from producers choosing to use the flexibility afforded to them to reformulate some products such as reformulation, consumer testing, labeling, and possibly marketing costs. Pearson-Stuttard, et al., estimate that reformulation costs (using the FDA model, Ref. 23) corresponding to the draft voluntary short term sodium reduction targets could range from $2.7 to $15 billion over a 20-year time period and that these costs would comprise roughly 95 percent of the costs related to reaching short term sodium reduction targets (Ref. 8). Producers may voluntarily choose to reformulate some products in response to this rule's added flexibility and the magnitude of such costs would depend on the number of products reformulated. The more firms choose to reformulate using salt substitutes given the flexibility provided by this rule, the greater the share of sodium reduction efforts (and associated reformulation costs) that could be attributed to this rule. Regardless of what amount of reformulation producers voluntarily choose to undertake, they will only do so if their private benefits in the form of increased revenue are at least as much as their private costs. We request comment on the number of manufacturers who may choose to reformulate standardized food products and the extent to which manufacturers may choose to reformulate those products given this new flexibility. We also request comment on all other considerations relating to manufacturers' voluntary market decision to use salt substitutes including cost of reformulation, ability to source substitute ingredients, expected impact on sales, profits, and consumer acceptance or lack of acceptance.

B. Initial Small Entity Analysis

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. If finalized, we do not expect the proposed rule would generate impacts on small entities. The rule would not impose regulatory costs on small entities. There would be no regulatory requirements or regulatory penalties relative to the baseline of taking no regulatory action. We have no basis to suppose or estimate any other impacts on small entities. As a result, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This analysis, as well as other sections in this document, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

This analysis is also available in the docket for this proposed rule (Ref. 24) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(a) 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.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would 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. We invite comments from tribal officials on any potential impact on Indian tribes from this proposed action.

XII. References

The following references marked with an asterisk (*) are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* References without asterisks are not on public

display at *http://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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List of Subjects

21 CFR Part 130

Food additives, Food grades and standards.

21 CFR Part 131

Dairy products, Food grades and standards, Incorporation by reference, Milk.

21 CFR Part 133

Dairy products, Food grades and standards, Food labeling.

21 CFR Part 136

Bakery products, Food grades and standards, Incorporation by reference.

21 CFR Part 137

Foods, Food grades and standards, Incorporation by reference.

21 CFR Part 139

Food grades and standards, Incorporation by reference.

21 CFR Parts 145 and 150

Food grades and standards, Fruits, Incorporation by reference.

21 CFR Part 155

Food grades and standards, Incorporation by reference, Vegetables.

21 CFR Part 156

Food grades and standards, Vegetable juices.

21 CFR Part 158

Food grades and standards, Frozen foods, Vegetables.

21 CFR Part 161

Food grades and standards, Frozen foods, Incorporation by reference, Seafood.

21 CFR Part 163

Cacao products, Food grades and standards.

21 CFR Part 166

Food grades and standards, Food labeling, Incorporation by reference, Margarine.

21 CFR Part 168

Food grades and standards, Sugar.

21 CFR Part 169

Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR parts 130, 131, 133, 136, 137, 139, 145, 150, 155, 156, 158, 161, 163, 166, 168, and 169 be amended as follows:

PART 130—FOOD STANDARDS: GENERAL

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

■ 2. Add subpart C to read as follows:

* * * * *

Subpart C—Flexibility in Standardized Foods

§ 130.30 Ingredient flexibility in standardized foods.

(a) The definitions listed in this section apply to parts 131 through 169 of this chapter.

(b) The ingredients used as substitutes must not change the basic nature and essential characteristics of the food.

(c) *Definitions.*

(1) Salt substitute means a safe and suitable ingredient (or combination of ingredients) that is used to replace some or all of the added salt (sodium chloride), to reduce sodium in the food, and that serves the functions of salt in the food.

(2) [Reserved]

PART 131—MILK AND CREAM

■ 3. The authority citation for part 131 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 4. Add § 131.10 to read as follows:

§ 131.10 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622:

(a) Official Methods of Analysis, 21st Ed. (2019);

(1) AOAC Official Method 945.48G, under Evaporated Milk (Unsweetened); IBR §§ 131.160(c); 131.162(c).

(2) AOAC Official Method 947.05, Acidity of Milk Titrimetric Method; IBR §§ 131.111(f); 131.112(e); 131.160(c); 131.162(c).

(3) AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method; IBR §§ 131.111(f); 131.112(e); 131.170(f).

(4) AOAC Official Method 990.21, Solid-Not-Fat in Milk By Difference between Total Solids and Fat Contents; IBR §§ 131.111(f); 131.112(e); 131.170(f).

(b) [Reserved]

■ 5. In § 131.111, revise paragraphs (e)(8) and (f) to read as follows:

§ 131.111 Acidified milk.

* * * * *

(e) * * *

(8) Salt or salt substitute.

* * * * *

(f) *Methods of analysis.* Referenced methods are from ''Official Methods of Analysis'' (incorporated by reference, see § 131.10):

(1) Milkfat content—As determined by the method prescribed in AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method.

(2) Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content using the method prescribed in AOAC Official Method 990.21, Solid-Not-Fat in Milk By Difference between Total Solids and Fat Contents.

(3) Titratable acidity—As determined by the methods prescribed in AOAC Official Method 947.05, Acidity of Milk Titrimetric Method or by an equivalent potentiometric method.

* * * * *

■ 6. In § 131.112, revise paragraphs (d)(8) and (e) to read as follows:

§ 131.112 Cultured milk.

* * * * *

(d) * * *

(8) Salt or salt substitute.

* * * * *

(e) *Methods of analysis.* Referenced methods are from ''Official Methods of Analysis'' (incorporated by reference, see § 131.10):

(1) Milkfat content—As determined by the method prescribed in AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method.

(2) Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content using the method prescribed in AOAC Official Method 990.21, Solid-Not-Fat in Milk By Difference between Total Solids and Fat Contents.

(3) Titratable acidity—As determined by the methods prescribed in AOAC Official Method 947.05, Acidity of Milk Titrimetric Method or by an equivalent potentiometric method.

* * * * *

■ 7. In § 131.160, revise paragraphs (b)(5) and (c) to read as follows:

§ 131.160 Sour cream.

* * * * *

(b) * * *

(5) Salt or salt substitute.

* * * * *

(c) *Methods of analysis.* Referenced methods are from ''Official Methods of Analysis'' (incorporated by reference, see § 131.10).

(1) Milkfat content—AOAC Official Method 945.48G, under Evaporated Milk (Unsweetened).

(2) Titratable acidity—AOAC Official Method 947.05, Acidity of Milk Titrimetric Method.

* * * * *

■ 8. In § 131.162, revise paragraphs (b)(4) and (c) to read as follows:

§ 131.162 Acidified sour cream.

* * * * *

(b) * * *

(4) Salt or salt substitute.

* * * * *

(c) *Methods of analysis.* Referenced methods are from ''Official Methods of Analysis'' (incorporated by reference, see § 131.10).

(1) Milkfat content—AOAC Official Method 945.48G, under Evaporated Milk (Unsweetened).

(2) Titratable acidity—AOAC Official Method 947.05, Acidity of Milk Titrimetric Method.

* * * * *

■ 9. In § 131.170, revise paragraphs (e)(2) and (f) to read as follows:

§ 131.170 Eggnog.

* * * * *

(e) * * *

(2) Salt or salt substitute.

* * * * *

(f) *Methods of analysis.* Referenced methods are from ''Official Methods of Analysis'' (incorporated by reference, see § 131.10).

(1) Milkfat content—As determined by the method prescribed in AOAC Official Method 989.05, Fat in Milk Modified Mojonnier Ether Extraction Method.

(2) Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content using the method prescribed in AOAC Official Method 990.21, Solid-Not-Fat in Milk By Difference between Total Solids and Fat Contents.

* * * * *

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

■ 10. The authority citation for part 133 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 11. In § 133.102, add paragraph (c)(3) to read as follows:

§ 133.102 Asiago fresh and asiago soft cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 12. In § 133.106, add paragraph(b)(3)(vii) to read as follows:

§ 133.106 Blue cheese.

* * * * *

(b) * * *

(3) * * *

(vii) Salt substitute.

* * * * *

■ 13. In § 133.108, add paragraph (b)(3)(v) to read as follows:

§ 133.108 Brick cheese.

* * * * *

(b) * * *

(3) * * *

(v) Salt substitute.

* * * * *

■ 14. In § 133.111, add paragraph (c)(3) to read as follows:

§ 133.111 Caciocavallo siciliano cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 15. In § 133.113, add paragraph (b)(3)(vi) to read as follows:

§ 133.113 Cheddar cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 16. In § 133.118, revise the first sentence of paragraph (c)(2) and add paragraph (c)(4) to read as follows:

§ 133.118 Colby cheese.

* * * * *

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

* * * * *

(4) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 17. In § 133.123, revise paragraph (c)(3) to read as follows:

§ 133.123 Cold-pack and club cheese.

* * * * *

(c) * * *

(3) Salt or salt substitute.

* * * * *

■ 18. In § 133.124, revise paragraph (e)(3) to read as follows:

§ 133.124 Cold-pack cheese food.

* * * * *

(e) * * *

(3) Salt or salt substitute.

* * * * *

■ 19. In § 133.127, revise paragraph (b)(3)(v) to read as follows:

§ 133.127 Cook cheese, koch kaese.

* * * * *

(b) * * *

(3) * * *

(v) Salt or salt substitute.

* * * * *

■ 20. In § 133.129, revise paragraphs (b)(1)(i) through (b)(1)(iii) to read as follows:

§ 133.129 Dry curd cottage cheese.

* * * * *

(b) * * *

(1) * * *

(i) Harmless lactic-acid-producing bacteria, with or without rennet and/or other safe and suitable milk-clotting enzyme that produces equivalent curd formation, are added and it is held until it becomes coagulated. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd may be washed with water and further drained; it may be pressed, chilled, worked, seasoned with salt or salt substitute; or

(ii) Food grade phosphoric acid, lactic acid, citric acid, or hydrochloric acid, with or without rennet and/or other safe and suitable milk-clotting enzyme that produces equivalent curd formation, is added in such amount as to reach a pH of between 4.5 and 4.7; coagulation to a firm curd is achieved while heating to a maximum of 120 °F without agitation during a continuous process. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd is washed with water, stirred, and further drained. It may be pressed, chilled, worked, seasoned with salt or salt substitute.

(iii) Food grade acids as provided in paragraph (b)(1)(ii) of this section, D-Glucono-delta-lactone with or without rennet, and/or other safe and suitable milk clotting enzyme that produces equivalent curd formation, are added in such amounts as to reach a final pH value in the range of 4.5–4.8, and it is held until it becomes coagulated. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd is then washed with water, and further drained. It may be pressed, chilled, worked, and seasoned with salt or salt substitute.

* * * * *

■ 21. In § 133.133, revise paragraph (b)(3)(i) to read as follows:

§ 133.133 Cream cheese.

* * * * *

(b) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

■ 22. In § 133.136, add paragraph (b)(3)(vi) to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 23. In § 133.138, add paragraph (b)(3)(v) to read as follows:

§ 133.138 Edam cheese.

* * * * *

(b) * * *

(3) * * *

(v) Salt substitute.

* * * * *

■ 24. In § 133.141, add paragraph (b)(3)(vii) to read as follows:

§ 133.141 Gorgonzola cheese.

* * * * *

(b) * * *

(3) * * *

(vii) Salt substitute.

* * * * *

■ 25. In § 133.144, add paragraph (b)(3)(vi) to read as follows:

§ 133.144 Granular and stirred curd cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 26. In § 133.147, revise paragraph (c)(5) to read as follows:

§ 133.147 Grated American cheese food.

* * * * *

(c) * * *

(5) Salt or salt substitute.

* * * * *

■ 27. In § 133.148, revise paragraph (c) to read as follows:

§ 133.148 Hard grating cheeses.

* * * * *

(c)(1) For the purposes of this section, the word ''milk'' means cow's milk or goat's milk or sheep's milk or mixtures of two or all of these. Such milk may be adjusted by separating part of the fat therefrom or (in the case of cow's milk) by adding one or more of the following: Cream, skim milk, concentrated skim milk, nonfat dry milk; (in the case of goat's milk) the corresponding products from goat's milk; (in the case of sheep's milk) the corresponding products from sheep's milk; water in a quantity sufficient to reconstitute any such concentrated or dried products used.

(2) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 28. In § 133.149, add paragraph (b)(3)(iv) to read as follows:

§ 133.149 Gruyere cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Salt substitute.

* * * * *

■ 29. In § 133.150, revise the first sentence of paragraph (c)(2), add paragraph (c)(3), and revise paragraph (e)(1) to read as follows:

§ 133.150 Hard cheeses.

* * * * *

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

(e) * * *

(1) The specific common or usual name of such hard cheese, if any such name has become generally recognized therefor; or

* * * * *

■ 30. In § 133.152, add paragraph (b)(3)(iv) to read as follows:

§ 133.152 Limburger cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Salt substitute.

* * * * *

■ 31. In § 133.153, revise paragraph (b)(3)(iii) to read as follows:

§ 133.153 Monterey cheese and Monterey jack cheese.

* * * * *

(b) * * *

(3) * * *

(iii) Salt or salt substitute.

* * * * *

■ 32. In § 133.155, revise paragraph (b)(3)(iii) to read as follows:

§ 133.155 Mozzarella cheese and scamorza cheese.

* * * * *

(b) * * *

(3) * * *

(iii) Salt or salt substitute.

* * * * *

■ 33. In § 133.156, revise paragraph (b)(3)(iii) to read as follows:

§ 133.156 Low-moisture mozzarella and scamorza cheese.

* * * * *

(b) * * *

(3) * * *

(iii) Salt or salt substitute.

* * * * *

■ 34. In § 133.160, add paragraph (b)(3)(vi) to read as follows:

§ 133.160 Muenster and munster cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 35. In § 133.162, revise paragraph (b)(3)(i) to read as follows:

§ 133.162 Neufchatel cheese.

* * * * *

(b) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

■ 36. In § 133.164, add paragraph (b)(3)(iv) to read as follows:

§ 133.164 Nuworld cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Salt substitute.

* * * * *

■ 37. In § 133.165, add paragraph (c)(3) to read as follows:

§ 133.165 Parmesan and reggiano cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 38. In § 133.169, revise paragraph (d)(4) to read as follows:

§ 133.169 Pasteurized process cheese.

* * * * *

(d) * * *

(4) Salt or salt substitute.

* * * * *

■ 39. In § 133.173, revise paragraph (e)(4) to read as follows:

§ 133.173 Pasteurized process cheese food.

* * * * *

(e) * * *

(4) Salt or salt substitute.

* * * * *

■ 40. In § 133.179, revise paragraph (f)(5) to read as follows:

§ 133.179 Pasteurized process cheese spread.

* * * * *

(f) * * *

(5) Salt or salt substitute.

* * * * *

■ 41. In § 133.181, add paragraph (b)(3)(vi) to read as follows:

§ 133.181 Provolone cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 42. In § 133.182, revise the tenth sentence in paragraph (b) and revise paragraph (c)(2) to read as follows:

§ 133.182 Soft ripened cheeses.

* * * * *

(b) * * * Salt or salt substitute may be added during the procedure. * * *

* * * * *

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a

temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction.

* * * * *

■ 43. In § 133.183, add paragraph (c)(3) to read as follows:

§ 133.183 Romano cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 44. In § 133.184, revise paragraphs (b) introductory text and (b)(3) to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

* * * * *

(b) *Optional Ingredients.* The following safe and suitable ingredients may be used:

* * * * *

(3) *Other optional ingredients.*

(i) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(ii) Salt substitute.

* * * * *

■ 45. In § 133.185, add paragraph (b)(3)(v) to read as follows:

§ 133.185 Samsoe cheese.

* * * * *

(b) * * *

(3) * * *

(v) Salt substitute.

* * * * *

■ 46. In § 133.186, revise paragraphs (a)(2) and (c) to read as follows:

§ 133.186 Sap sago cheese.

(a) * * *

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling temperature, with stirring. Sufficient sour whey is added to precipitate the casein. The curd is removed, spread out in boxes, and pressed, and while under pressure is allowed to drain and ferment. It is ripened for not less than 5 weeks. The ripened curd is dried and ground; salt or salt substitute and dried clover of the species *Melilotus coerulea* are added. The mixture is shaped into truncated cones and ripened. The optional ingredient in paragraph (b)(2) of this section may be added during this procedure.

* * * * *

(c) *Nomenclature.* The name of the food is ''sap sago cheese.''

* * * * *

■ 47. In § 133.187, revise the tenth sentence of paragraph (b) and the first sentence of paragraph (c)(2) to read as follows:

§ 133.187 Semisoft cheeses.

* * * * *

(b) * * * Salt or salt substitute may be added during the procedure. * * *

* * * * *

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

* * * * *

■ 48. In § 133.188, revise the tenth sentence in paragraph (b) and the first sentence in paragraph (c)(2) to read as follows:

§ 133.188 Semisoft part-skim cheeses.

* * * * *

(b) * * * Salt or salt substitute may be added during the procedure. * * *

* * * * *

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

* * * * *

■ 49. In § 133.189, revise paragraph (d) to read as follows:

§ 133.189 Skim milk cheese for manufacturing.

* * * * *

(d)(1) For the purposes of this section, ''skim milk'' means cow's milk from which the milk fat has been separated.

(2) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 50. In § 133.190, revise paragraph (b)(3)(iii) to read as follows:

§ 133.190 Spiced cheeses.

* * * * *

(b) * * *

(3) * * *

(iii) Salt or salt substitute.

* * * * *

■ 51. In § 133.195, add paragraph (b)(3)(vii) to read as follows:

§ 133.195 Swiss and emmentaler cheese.

* * * * *

(b) * * *

(3) * * *

(vii) Salt substitute.

* * * * *

PART 136—BAKERY PRODUCTS

■ 52. The authority citation for part 136 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 53. In § 136.110, revise paragraphs (c)(4) and (d) to read as follows:

§ 136.110 Bread, rolls, and buns.

* * * * *

(c) * * *

(4) Salt or salt substitute.

* * * * *

(d) Total solids are determined by the method prescribed in AOAC Official Method 935.36(a), Solids (Total) in Bread, except that if the baked unit weighs 454 grams (1 pound) or more, one entire unit is used for the determination; if the baked unit weighs less than 454 grams, enough units to weigh 454 grams or more are used. AOAC Official Method 935.36(a), Solids (Total) in Bread, ''Official Methods of Analysis,'' 21st Ed. (2019), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* This material is also available from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622.

* * * * *

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

■ 54. The authority citation for part 137 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 55. Add subpart A, consisting of §§ 137.1 through 137.100, to read as follows:

Subpart A—General Provisions.

Sec.

137.10 Incorporation by reference.

137.20 through 137.100 [Reserved]

Subpart A—General Provisions.

§ 137.10 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622:

(a) Official Methods of Analysis, 21st Ed. (2019);

(1) AOAC Official Method 923.02A, Reagent; IBR §§ 137.180(c); 137.270(b).

(2) AOAC Official Method 923.02B, Apparatus, under Carbon Dioxide (Total) in Baking Powders Gasometric Determination; IBR §§ 137.180(c); 137.270(b).

(3) Reference Table 909.04, Correction Factors for Gasometric Determination of Carbon Dioxide; IBR §§ 137.180(c); 137.270(b).

(b) [Reserved]

§§ 137.20 through 137.100 [Reserved]

■ 56. In § 137.180, revise paragraphs (a), (c) introductory text, and (c)(1) to read as follows:

§ 137.180 Self-rising flour.

(a) *Description.* Self-rising flour, self-rising white flour, self-rising wheat flour, is an intimate mixture of flour, sodium bicarbonate, and one or more of the acid-reacting substances monocalcium phosphate, sodium acid pyrophosphate, and sodium aluminum phosphate. It is seasoned with salt or salt substitute. When it is tested by the method prescribed in paragraph (c) of this section, not less than 0.5 percent of carbon dioxide is evolved. The acid-reacting substance is added in sufficient quantity to neutralize the sodium bicarbonate. The combined weight of such acid-reacting substance and sodium bicarbonate is not more than 4.5 parts to each 100 parts of flour used. Subject to the conditions and restrictions prescribed by § 137.105(a), the bleaching ingredients specified in such section may be added as optional ingredients. If the flour used in making the self-rising flour is bleached, the optional bleaching ingredient used therein (see § 137.105(a)) is also an optional ingredient of the self-rising flour.

* * * * *

(c) *Method of analysis.* Follow the method prescribed in AOAC Official Method 923.02A, Reagent, and 923.02B, Apparatus, under Carbon Dioxide (Total) in Baking Powders Gasometric Determination (incorporated by reference, see § 137.10): Instead of using AOAC Official Method 923.02C, Determination, use the following procedure:

(1) Weigh 17 grams of the official sample into flask A, add 15–20 glass beads (4–6 mm. diameter), and connect this flask with the apparatus (fig. 923.02). Open stopcock C and by means of the leveling bulb E bring the displacement solution to the 25 cc. graduation above the zero mark. (This 25 cc. is a partial allowance for the volume of acid to be used in the decomposition.) Allow the apparatus to stand 1–2 minutes to ensure that the temperature and pressure within the apparatus are the same as those of the room. Close the stopcock, lower the leveling bulb somewhat to reduce the pressure within the apparatus, and slowly run into the decomposition flask from burette F 45 cc. of sulfuric acid (1 + 5). To prevent the liberated carbon dioxide from escaping through the acid burette into the air, keep the displacement solution in the leveling bulb at all times during the decomposition at a lower level than that in the gas-measuring tube. Rotate and then vigorously agitate the decomposition flask for 3 minutes to mix the contents intimately. Allow to stand for 10 minutes to bring to equilibrium. Equalize the pressure in the measuring tube by means of the leveling bulb and read the volume of gas from the zero point on the tube. Deduct 20 cc. from this reading (this 20 cc. together with previous allowance of 25 cc. compensates for the 45 cc. acid used in the decomposition). Observe the temperature of the air surrounding the apparatus and also the barometric pressure and multiply the number of milliliters of gas evolved by the factor given in Reference Table 909.04, ''Correction Factors for Gasometric Determination of Carbon Dioxide'', incorporated by reference, see § 137.10) for the temperature and pressure observed. Divide the corrected reading by 100 to obtain the apparent percent by weight of carbon dioxide in the official sample.

* * * * *

■ 57. In § 137.270, revise paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 137.270 Self-rising white corn meal.

(a) *Description.* Self-rising white corn meal is an intimate mixture of white corn meal, sodium bicarbonate, and one or both of the acid-reacting substances monocalcium phosphate and sodium aluminum phosphate. It is seasoned with salt or salt substitute. When it is tested by the method prescribed in paragraph (b) of this section, not less than 0.5 percent of carbon dioxide is evolved. The acid-reacting substance is added in sufficient quantity to neutralize the sodium bicarbonate. The combined weight of such acid-reacting substance and sodium bicarbonate is not more than 4.5 parts to each 100 parts of white corn meal used.

(b) *Method of analysis.* Follow the method prescribed in AOAC Official Method 923.02A, Reagent, and 923.02B, Apparatus, under Carbon Dioxide (Total) in Baking Powders Gasometric Determination (incorporated by reference, see § 137.10): Instead of using AOAC Official Method 923.02C, Determination, use the following procedure:

(1) Weigh 17 grams of the official sample into flask A, add 15–20 glass beads (4–6 mm. diameter), and connect this flask with the apparatus (fig. 923.02). Open stopcock C and by means of the leveling bulk E bring the displacement solution to the 25 cc. graduation above the zero mark. (This 25 cc. is a partial allowance for the volume of acid to be used in the decomposition.) Allow the apparatus to stand 1–2 minutes to ensure that the temperature and pressure within the apparatus are the same as those of the room. Close the stopcock, lower the leveling bulb somewhat to reduce the pressure within the apparatus, and slowly run into the decomposition flask from burette F 45 cc. of sulfuric acid (1 + 5). To prevent the liberated carbon dioxide from escaping through the acid burette into the air, keep the displacement solution in the leveling bulb at all times during the decomposition at a lower level than that in the gas-measuring tube. Rotate and then vigorously agitate the decomposition flask for 3 minutes to mix the contents intimately. Allow to stand for 10 minutes to bring to equilibrium. Equalize the pressure in the measuring tube by means of the leveling bulb and read the volume of gas from the zero point on the tube. Deduct 20 cc. from this reading (this 20 cc. together with previous allowance of 25 cc. compensates for the 45 cc. acid used

in the decomposition). Observe the temperature of the air surrounding the apparatus and also the barometric pressure and multiply the number of milliliters of gas evolved by the factor given in the Reference Table 909.04, ''Correction Factors for Gasometric Determination of Carbon Dioxide'' (incorporated by reference, see § 137.10) for the temperature and pressure observed. Divide the corrected reading by 100 to obtain the apparent percent by weight of carbon dioxide in the official sample.

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

■ 58. The authority citation for part 139 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 59. Add subpart A, consisting of §§ 1397.10 through 139.100, to read as follows:

Subpart A—General Provisions.

Sec.
139.10 Incorporation by reference.
139.20 through 139.100 [Reserved]

Subpart A—General Provisions.

§ 139.10 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622.

(a) Official Methods of Analysis, 21st Ed. (2019);

(1) AOAC Official Method 926.07A, Vacuum Oven Method, under Solids (Total) and Loss on Drying (Moisture) in Macaroni Products; IBR §§ 139.110(a); 139.150(a).

(2) [Reserved]

(b) [Reserved]

§§ 139.20 through 139.100 [Reserved]

■ 60. In § 139.110, revise paragraphs (a)(4) and (5) to read as follows:

§ 139.110 Macaroni products.

(a) * * *

(4) Salt or salt substitute, in a quantity that seasons the food.

(5) Gum gluten, in such quantity that the protein content of the finished food is not more than 13 percent by weight. The finished macaroni product contains not less than 87 percent of total solids as determined by AOAC Official Method 926.07A(incorporated by reference, see § 139.10).

* * * * *

■ 61. In § 139.150, revise paragraphs (a)(2) and (4) to read as follows:

§ 139.150 Noodle products.

(a) * * *

(2) Salt or salt substitute, in a quantity that seasons the food.

* * * * *

(4) Concentrated glyceryl monostearate (containing not less than 90 percent monoester) in a quantity not exceeding 3 percent by weight of the finished food. The finished noodle product contains not less than 87 percent of total solids as determined by AOAC Official Method 926.07A(incorporated by reference, see § 139.10). The total solids of noodle products contains not less than 5.5 percent by weight of the solids of egg, or egg yolk.

* * * * *

PART 145—CANNED FRUITS

■ 62. The authority citation for part 145 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 63. In § 145.110, revise paragraphs (a)(1) and (a)(2)(iii) to read as follows:

§ 145.110 Canned applesauce.

(a) * * *

(1) *Definition.* Canned applesauce is the food prepared from comminuted or chopped apples (*Malus domestica* Borkhausen), which may or may not be peeled and cored, and which may have added thereto one or more of the optional ingredients specified in paragraph (a)(2) of this section. The apple ingredient is heated and, in accordance with good manufacturing practices, bruised apple particles, peel, seed, core material, carpel tissue, and other coarse, hard, or extraneous materials are removed. The food is sealed in containers. It is so processed by heat, either before or after sealing, as to prevent spoilage. The soluble solids content, measured by refractometer and expressed as percent sucrose (degrees Brix) with correction for temperature to the equivalent at 20 °C (68 °F), is not less than 9 percent (exclusive of the solids of any added optional nutritive carbohydrate sweeteners) as determined by AOAC Official Method 932.12 but without correction for invert sugar or other substances. AOAC Official Method 932.12, ''Solids (Soluble) in Fruits and Fruit Products,'' in ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 21st Ed. (2019), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51,. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and the National Archives and Records Administration (NARA). Contact the FDA at FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* This material is available from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622.

(2) * * *

(iii) Salt or salt substitute.

* * * * *

■ 64. In § 145.130, revise paragraph (a)(5) to read as follows:

§ 145.130 Canned figs.

(a) * * *

(5) Salt or salt substitute.

* * * * *

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

■ 65. The authority citation for part 150 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 66. Add subpart A, consisting of §§ 150.10 through 150.100, to read as follows:

Subpart A—General Provisions.

Sec.
150.10 Incorporation by reference.
150.20 through 150.100 [Reserved]

Subpart A—General Provisions.

§ 150.10 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration

(FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622.

(a) Official Methods of Analysis, 21st Ed. (2019);

(1) AOAC Official Method 932.12, Solids (Soluble) in Fruits and Fruit Products; IBR § 150.110(d).

(2) AOAC Official Method 932.14C, By Means of Refractometer, under Solids in Syrups; IBR § 150.110(d).

(b) [Reserved]

§§ 150.20 through 150.100 [Reserved]

■ 67. In § 150.110, revise paragraphs (c)(4), (d)(3), and (d)(5) to read as follows:

§ 150.110 Fruit butter.

* * * * *

(c) * * *

(4) Salt or salt substitute.

* * * * *

(d) * * *

(3) The soluble solids content of the finished fruit butter is not less than 43 percent, as determined by AOAC Official Method 932.12 (incorporated by reference, see § 150.10).

* * * * *

(5) The weight of fruit juice or diluted fruit juice or concentrated fruit juice (optional ingredient, paragraph (c)(6) of this section) from a fruit specified in paragraph (b)(1) of this section is the weight of such juice, as determined by the method prescribed in paragraph (d)(2) of this section, except that the percent of soluble solids is determined by AOAC Official Method 932.14C, under Solids in Syrups (incorporated by reference, see § 150.10); the weight of diluted concentrated juice from any other fruits is the original weight of the juice before it was diluted or concentrated.

* * * * *

PART 155—CANNED VEGETABLES

■ 68. The authority citation for part 155 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379(e).

■ 69. Add § 155.10 to subpart A to read as follows:

§ 155.10 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622.

(a) Official Methods of Analysis, 21st Ed. (2019);

(1) Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series),'' under the heading ''Definition of Terms and Explanatory Notes''; IBR §§ 155.120(b); 155.130(b).

(2) AOAC Official Method 938.10, Solids (Alcohol-Insoluble) in Canned Peas Gravimetric Method; IBR § 155.170(b).

(b) [Reserved]

■ 70. In § 155.120, revise paragraphs (a)(3)(i) and (b)(2)(i) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 mm (0.0937 in), which has been previously weighed. The diameter of the sieve is 20.3 cm (8 in) if the quantity of contents of the container is less than 1.36 kg (3 lbs) and 30.5 cm (12 in) if such quantity is 1.36 kg (3 lbs) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications of such cloth set forth in ''Official Methods of Analysis'', Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series),'' under the heading ''Definition of Terms and Explanatory Notes,'' (incorporated by reference, see § 155.10). Without shifting the material on the sieve, incline the sieve 17° to 20° to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (ounces) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

■ 71. In § 155.130, revise paragraphs (a)(3)(i) and (b)(2)(i) to read as follows:

§ 155.130 Canned corn.

(a) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve, which has previously been weighed. The diameter of the sieve is 20.3 cm. (8 in) if the quantity of the contents of the container is less than 1.36 kg. (3 lbs), and 30.5 cm. (12 in) if such quantity is 1.36 kg. (3 lbs) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such sieve set forth in ''Official Methods of Analysis'', Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series),'' under the heading ''Definition of Terms and Explanatory Notes'' (incorporated by reference, see § 155.10). Without shifting the material on the sieve, so incline the sieve at approximately 17° to 20° angle to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and the drained material. Record, in grams (ounces), the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

■ 72. In § 155.170, revise paragraph (a)(2)(i), and paragraphs (b)(1)(iii) and (vi) to read as follows:

§ 155.170 Canned peas.

(a) * * *

(2) * * *

(i) Salt or salt substitute.

* * * * *

(b) * * *

(1) * * *

* * * * *

(iii) *Seriously blemished peas.* Not more than 1 percent of the drained weight is seriously blemished peas, *i.e.,* peas that are hard, shriveled, spotted,

discolored, or otherwise blemished to an extent that the appearance or eating quality is seriously affected.

* * * * *

(vi) *Alcohol-insoluble solids.* The alcohol-insoluble solids of smooth-skin or substantially smooth-skin peas, such as Alaska-type peas or hybrids having similar characteristics, may not be more than 23.5 percent and, of sweet green wrinkled varieties or hybrids having similar characteristics, not more than 21 percent based on the procedure set forth in tAOAC Official Method 938.10(incorporated by reference, see § 155.10).

* * * * *

■ 73. In § 155.190, revise paragraph (a)(2)(iv) to read as follows:

§ 155.190 Canned tomatoes.

(a) * * *

(2) * * *

(iv) Salt or salt substitute.

* * * * *

■ 74. In § 155.191, revise paragraph (a)(2)(i) to read as follows:

§ 155.191 Tomato concentrates.

(a) * * *

(2) * * *

(i) Salt or salt substitute (sodium chloride formed during acid neutralization shall be considered added salt).

* * * * *

■ 75. In § 155.194, revise paragraph (a)(1)(iv) to read as follows:

§ 155.194 Catsup.

(a) * * *

(1) * * *

(iv) The liquid obtained from the residue from partial extraction of juice from such tomatoes. Such liquid is strained so as to exclude skins, seeds, and other coarse or hard substances in accordance with current good manufacturing practice. Prior to straining, food-grade hydrochloric acid may be added to the tomato material in an amount to obtain a pH no lower than 2.0. Such acid is then neutralized with food-grade sodium hydroxide so that the treated tomato material is restored to a pH of 4.2 ± 0.2. The final composition of the food may be adjusted by concentration and/or by the addition of water. The food may contain salt or salt substitute (sodium chloride formed during acid neutralization shall be considered added salt) and is seasoned with ingredients as specified in paragraph (a)(2) of this section. The food is preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

■ 76. In § 155.200, revise paragraph (c)(4)(i) to read as follows:

§ 155.200 Certain other canned vegetables.

* * * * *

(c) * * *

(4) * * *

(i) Salt or salt substitute.

* * * * *

■ 77. In § 155.201, revise paragraph (a)(3)(i) to read as follows:

§ 155.201 Canned mushrooms.

(a) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

PART 156—VEGETABLE JUICES

■ 78. The authority citation for part 156 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371.

■ 79. In § 156.145, revise paragraph (a)(1) to read as follows:

§ 156.145 Tomato juice.

(a) * * *

(1) *Definition.* Tomato juice is the food intended for direct consumption, obtained from the unfermented liquid extracted from mature tomatoes of the red or reddish varieties of *Lycopersicum esculentum* P. Mill, with or without scalding followed by draining. In the extraction of such liquid, heat may be applied by any method which does not add water thereto. Such juice is strained free from peel, seeds, and other coarse or hard substances, but contains finely divided insoluble solids from the flesh of the tomato in accordance with current good manufacturing practice. Such juice may be homogenized, may be seasoned with salt or salt substitute, and may be acidified with any safe and suitable organic acid. The juice may have been concentrated and later reconstituted with water and/or tomato juice to a tomato soluble solids content of not less than 5.0 percent by weight as determined by the method prescribed in § 156.3(b). The food is preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

PART 158—FROZEN VEGETABLES

■ 80. The authority citation for part 158 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371.

■ 81. In § 158.170, revise paragraphs (a)(1)(iv) and (b)(1)(iii) to read as follows:

§ 158.170 Frozen peas.

(a) * * *

(1) * * *

(iv) Salt or salt substitute.

* * * * *

(b) * * *

(1) * * *

(iii) Not more than 2 percent by weight seriously blemished peas, *i.e.,* peas that are hard, shriveled, spotted, discolored or otherwise blemished to an extent that the appearance or eating quality is seriously affected.

* * * * *

PART 161—FISH AND SHELLFISH

■ 82. The authority citation for part 161 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 83. Add § 161.10 to read as follows:

§ 161.10 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visitn *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622.

(a) Official Methods of Analysis, 21st Ed. (2019);

(1) Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series),'' under the heading ''Definition of Terms and Explanatory Notes''; IBR §§ 161.145(c); 161.173(c); 161.190(a)(7).

(2) [Reserved]

(b) [Reserved]

■ 84. In § 161.145, revise paragraphs (a)(1) and (c)(3) to read as follows:

§ 161.145 Canned oysters.

(a) * * *

(1) Canned oysters is the food prepared from one or any mixture of two or all of the forms of oysters

specified in paragraph (a)(2) of this section, and a packing medium of water, or the watery liquid draining from oysters before or during processing, or a mixture of such liquid and water. The food may be seasoned with salt or salt substitute. It is sealed in containers and so processed by heat as to prevent spoilage.

* * * * *

(c) * * *

(3) Drained weight is determined by the following method: Keep the unopened canned oyster container at a temperature of not less than 68 °F or more than 95 °F for at least 12 hours immediately preceding the determination. After opening, tilt the container so as to distribute its contents evenly over the meshes of a circular sieve that has been previously weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds and 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under ''2.36 mm (No. 8)'' in ''Official Methods of Analysis,'' Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series),'' under the heading ''Definition of Terms and Explanatory Notes,'' (incorporated by reference, see § 161.10). Without shifting the material on the sieve, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and the drained oysters. The weight so found, less the weight of the sieve, shall be considered to be the drained weight of the oysters.

* * * * *

■ 85. In § 161.170, revise paragraph (a)(4)(i) to read as follows:

§ 161.170 Canned Pacific salmon.

(a) * * *

(4) * * *

(i) Salt or salt substitute.

* * * * *

■ 86. In § 161.173, revise paragraphs (a)(4)(i) and (c)(1) to read as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

(a) * * *

(4) * * *

(i) Salt or salt substitute.

* * * * *

(c) * * *

(1) The standard of fill of transparent or nontransparent containers for canned wet pack shrimp is a fill such that the cut-out weight of shrimp taken from each container is not less than 60 percent of the weight of the water required to fill the container. The weight of the water required to fill the container is determined by the general method provided in § 130.12(a) of this chapter. Cut-out weight is determined by the following method: Keep the unopened canned shrimp container at a temperature of not less than 68 °F nor more than 75 °F for at least 12 hours immediately preceding the determination. After opening, distribute the shrimp evenly over the meshes of a circular sieve that has been previously weighed. The diameter of the sieve is 20.3 centimeters (8 inches) if the quantity of the contents of the container is less than 1.36 kilograms (3 pounds), and 30.5 centimeters (12 inches) if such quantity is 1.36 kilograms (3 pounds) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth as a 2.36 mm (No. 8) sieve in ''Official Methods of Analysis'' (incorporated by reference, see § 161.10), Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series), under the heading ''Definition of Terms and Explanatory Notes'' (incorporated by reference, see § 161.10) Without shifting the material on the sieve, incline the sieve at an angle of approximately 17° to 20° to facilitate drainage. Allow the shrimp to drain for 2 minutes, measured from the moment the product is poured onto the sieve. Weigh the sieve and the drained shrimp. The weight so found, less the weight of the sieve, shall be considered to be the cut-out weight of the shrimp.

* * * * *

■ 87. In § 161.190, revise paragraphs (a)(6)(i) and (a)(7) introductory text to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(6) * * *

(i) Salt or salt substitute.

* * * * *

(7) For determination of the color designations specified in paragraph (a)(4) of this section, the following method shall be used: Recombine the separations of pressed cake resulting from the method prescribed in paragraph (c)(2) of this section. Pass the combined portions through a sieve fitted with woven-wire cloth of ¼-inch mesh complying with the specifications for such cloth set forth in ''Official Methods of Analysis'', Table 1, ''Nominal Dimensions of Standard Test Sieves (USA Standard Series),'' under the heading ''Definitions of Terms and Explanatory Notes'' (incorporated by reference, see § 161.10) Mix the sieved material and place a sufficient quantity into a 307 × 113 size container (bearing a top seam and having a false bottom approximately ½-inch deep and painted flat black inside and outside) so that after tamping and smoothing the surface of the sample the material will be ⅛-inch to ¼-inch below the top of the container. Within 10 minutes after sieving through the ¼-inch mesh woven-wire cloth, determine the Munsell value of sample surface.

* * * * *

PART 163—CACAO PRODUCTS

■ 88. The authority citation for part 163 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 341, 343, 348, 371, 379e.

■ 89. In § 163.111, revise paragraph (b)(6) to read as follows:

§ 163.111 Chocolate liquor.

* * * * *

(b) * * *

(6) Salt or salt substitute.

* * * * *

■ 90. In § 163.112, revise paragraph (b)(4) to read as follows:

§ 163.112 Breakfast cocoa.

* * * * *

(b) * * *

(4) Salt or salt substitute.

* * * * *

■ 91. In § 163.123, revise paragraph (b)(3) to read as follows:

§ 163.123 Sweet chocolate.

* * * * *

(b) * * *

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt or salt substitute, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

* * * * *

■ 92. In § 163.124, revise paragraph (b)(4) to read as follows:

§ 163.124 White chocolate.

* * * * *

(b) * * *

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt or salt substitute, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

* * * * *

■ 93. In § 163.130, revise paragraph (b)(3) to read as follows:

§ 163.130 Milk chocolate.

* * * * *

(b) * * *

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt or salt substitute, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

PART 166—MARGARINE

■ 94. The authority citation for part 166 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 347, 348, 371, 379e.

■ 95. In § 166.110, revise paragraphs (a) and (b)(2) to read as follows:

§ 166.110 Margarine.

(a) *Description.* Margarine (or oleomargarine) is the food in plastic form or liquid emulsion, containing not less than 80 percent fat determined by the method prescribed in AOAC Official Method 938.06A. AOAC Official Method 938.06A, ''Indirect Method, under Fat in Butter,'' found in ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 21st Ed. (2019), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and the National Archives and Records Administration (NARA). Contact the FDA at FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* This material is available from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622. Margarine contains only safe and suitable ingredients, as defined in § 130.3(d) of this chapter. It is produced from one or more of the optional ingredients in paragraph (a)(1) of this section, and one or more of the optional ingredients in paragraph (a)(2) of this section, to which may be added one or more of the optional ingredients in paragraph (b) of this section. Margarine contains vitamin A as provided for in paragraph (a)(3) of this section.

* * * * *

(b) * * *

(2) Salt (sodium chloride) or salt substitute; potassium chloride for dietary margarine or oleomargarine.

* * * * *

PART 168—SWEETENERS AND TABLE SIRUPS

■ 96. The authority citation for part 168 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 97. In § 168.130, revise paragraph (b)(1) to read as follows:

§ 168.130 Cane sirup.

* * * * *

(b) * * *

(1) Salt or salt substitute.

* * * * *

■ 98. In § 168.140, revise the first sentence of paragraph (a) and paragraph (b)(1) to read as follows:

§ 168.140 Maple sirup.

(a) Maple sirup is the liquid food derived by concentration and heat treatment of the sap of the maple tree (Acer) or by solution in water of maple sugar (maple concrete) made from such sap. * * *

(b) * * *

(1) Salt or salt substitute.

* * * * *

■ 99. In § 168.160, revise paragraph (b)(1) to read as follows:

§ 168.160 Sorghum sirup.

* * * * *

(b) * * *

(1) Salt or salt substitute.

* * * * *

■ 100. In § 168.180, revise paragraph (b)(7) to read as follows:

§ 168.180 Table sirup.

* * * * *

(b) * * *

(7) Salt or salt substitute.

* * * * *

PART 169—FOOD DRESSINGS AND FLAVORINGS

■ 101. The authority citation for part 169 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 102. In § 169.140, revise paragraph (d)(1) to read as follows:

§ 169.140 Mayonnaise.

* * * * *

(d) * * *

(1) Salt or salt substitute.

* * * * *

■ 103. In § 169.150, revise paragraph (e)(1) to read as follows:

§ 169.150 Salad dressing.

* * * * *

(e) * * *

(1) Salt or salt substitute.

* * * * *

Dated: March 23, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023–06456 Filed 4–7–23; 8:45 am]

BILLING CODE 4164–01–P

Notices

Federal Register
Vol. 88, No. 68
Monday, April 10, 2023

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by May 10, 2023. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

National Agricultural Statistics Service (NASS)

Title: Cooperator Funded Chemical Use Surveys—Substantive Change.

OMB Control Number: 0535–0273.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code title 7, section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Cooperator Funded Chemical Use Surveys information collection request (OMB No. 0535–0273) for the 2022 Minnesota Best Practices and 2023 Minnesota Pesticide Use Surveys. The change is needed to accommodate updates, requested by the Minnesota Department of Agriculture, to simplify questions for respondent and better match future data needs.

These updates will not change the approved burden.

Need and Use of the Information: These changes will simplify questions for respondent and better match future data needs.

Description of Respondents: Farms and ranches.

Number of Respondents: 24,585.

Frequency of Responses: Reporting: once per year.

Total Burden Hours: 11,182.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–07409 Filed 4–7–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0032]

Notice of Request for Extension of Approval of an Information Collection; Johne's Disease in Domestic Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with its efforts to control Johne's disease in the United States.

DATES: We will consider all comments that we receive on or before June 9, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0032 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0032, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on Johne's disease, contact Dr. Mark Lyons, Acting Director, Ruminant Health Center, Strategy & Policy, VS, APHIS, 4700 River Road, Riverdale, MD; (614) 592–7954; *mark.a.lyons@usda.gov.* For information about the information collection process, contact Mr. Joseph Moxey,

APHIS' Paperwork Reduction Act Coordinator at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Johne's Disease in Domestic Animals.

OMB Control Number: 0579–0338.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests.

Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing APHIS' ability to compete in the world market of animal and animal product trade. Johne's disease affects cattle, sheep, goats, and other ruminants. It is an incurable and contagious disease that results in progressive wasting and eventual death. The disease is nearly always introduced into a healthy herd by an infected animal that is not showing symptoms of the disease.

The regulations in 9 CFR part 80 pertain specifically to the interstate movement of domestic animals that are positive to an official test for Johne's disease. These regulations provide that cattle, sheep, goats, and other domestic animals that are positive to an official test for Johne's disease may generally be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment. However, they may also be moved for purposes other than slaughter under certain conditions. Moving Johne's-positive livestock interstate for slaughter or for other purposes without increasing the risk of disease spread requires a movement permit or an owner-shipper statement, official ear tags, and a permission to move request. Permission may also be sought, in writing, for movement of animals that do not have a permit, owner-shipper statement, or ear tags.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public burden for this collection of information is estimated to average 0.69 hours per response.

Respondents: Accredited veterinarians, herd owners, and livestock shippers.

Estimated Annual Number of Respondents: 6.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Annual Number of Responses: 10.

Estimated Total Annual Burden on Respondents: 7 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of April 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–07428 Filed 4–7–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–25–2023]

Foreign-Trade Zone (FTZ) 7, Notification of Proposed Production Activity; FMC Agricultural Caribe Industries, Ltd.; (Agricultural Chemicals); Manati, Puerto Rico

FMC Agricultural Caribe Industries, Ltd., submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Manati, Puerto Rico within Subzone 7E. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on April 4, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished product is tetflupyrolimet technical (chemical formula (3S,4S)-N-(2-fluorophenyl)-1-methyl-2-oxo-4-[3-(trifluoromethyl)phenyl]-3-pyrrolidinecarboxamide) (duty rate 6.5%).

The proposed foreign-status materials are Pyrrolidine Intermediate and 2-Fluoroaniline (duty rates 6.5%). The request indicates that 2-Fluoroaniline is subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 22, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: April 4, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–07423 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–813]

Strontium Chromate From Austria: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Habich GmbH (Habich) did not make sales of subject merchandise in the United States at prices below normal value during the period of review (POR) November 1, 2020, through October 31, 2021.

DATES: Applicable April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, 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) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2022, Commerce published the preliminary results of the 2020–2021 administrative review of the antidumping duty order on strontium chromate from Austria.[1] The administrative review covers Habich, the only company for which a review was requested. For the events that occurred since the *Preliminary Results,* see the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise covered by the *Order* is strontium chromate from Austria. The merchandise subject to review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2841.50.9100. Subject merchandise may also enter under HTSUS subheading 3212.90.0050. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed in this administrative review in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is 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 *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on the comments received from interested parties regarding our *Preliminary Results* and our review of the record to address those comments, we made changes to the weighted-average dumping margin calculations for Habich, as detailed in the Issues and Decision Memorandum.

Final Results of Review

We determine that the following weighted-average dumping margin for Habich exists for the period November 1, 2020, through October 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Habich GmbH	0.00

Disclosure

Commerce intends to disclose the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Where the respondent's weighted-average dumping margin is either zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[4] Accordingly, because the final weighted-average dumping margin for Habich in this review is zero percent, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by Habich where it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation of 25.90 percent *ad valorem* [5] if there is no rate for the intermediate company(ies) involved in the transaction.[6]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Habich will be equal to the weighted-average dumping margin established in the final results of this administrative review (*i.e.,* 0.00 percent); (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV

[1] *See Strontium Chromate from Austria: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 74126 (December 2, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Antidumping Duty Administrative Review: Strontium Chromate from Austria,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Strontium Chromate from Austria and France: Antidumping Duty Orders,* 84 FR 65349 (November 27, 2019) (*Order*).

[4] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[5] *See Order.*

[6] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 25.90 percent *ad valorem,* the all-others rate established in the LTFV investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

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

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 3, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–07422 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that PT. Cheil Jedang Indonesia (CJ Indonesia) and PT. Miwon Indonesia (PT. Miwon) [1] made sales of subject merchandise below normal value. The period of review (POR) is November 1, 2020, through October 31, 2021.

DATES: Applicable April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2022, Commerce published the preliminary results of the administrative review of the antidumping duty order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia).[2] For a history of events that have occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The merchandise covered by the order is MSG, whether or not blended or in solution with other products. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

Commerce addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. These issues are identified 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 *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculation for PT. Miwon since the *Preliminary Results.* Specifically, we have revised our calculation of the general and administrative expense ratio for PT. Miwon to remove certain bank charges and revised the comparison market program accordingly.[4] There have been no changes to the dumping margin determined for CJ. Indonesia, which is based on facts available with an adverse inference.[5]

Final Results of Review

As a result of this administrative review, we determine the following weighted-average dumping margins for the period November 1, 2020, through October 31, 2021:

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021). On August 26, 2022, Commerce published the final results of a changed circumstances review of MSG from Indonesia. Commerce found that PT. Daesang Ingredients Indonesia (PT. Daesang) is the successor-in-interest to PT. Miwon. *See Monosodium Glutamate from the Republic of Indonesia: Final Results of Changed Circumstances Review,* 87 FR 52506 (August 26, 2022) (*MSG from Indonesia CCR*). Because the effective date of this decision was after the POR, we continue to reference the respondent here as PT. Miwon.

[2] *See Monosodium Glutamate from the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 74599 (December 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Monosodium Glutamate from the Republic of Indonesia; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Final Analysis for PT. Miwon Indonesia,'' dated concurrently with this memorandum.

[5] *See Preliminary Results* PDM at 3–6.

Manufacturer/exporter	Weighted-average dumping margin (percent)
PT. Cheil Jedang Indonesia	* 58.67
PT. Daesang Ingredients Indonesia and PT. Miwon Indonesia [6]	14.34

* Rate based on adverse facts available.

Disclosure

Commerce intends to disclose the calculations performed for PT. Miwon in these final results to interested parties within five days of the date of publication of this notice in the **Federal Register,** in accordance with 19 CFR 351.224(b). We will not release calculations for CJ Indonesia, because there have been no changes since the *Preliminary Results.*

Assessment

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this administrative review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Where the respondent reported reliable entered values, Commerce calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[7] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to a specific importer or customer by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[8] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[9] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[10]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by CJ Indonesia or PT. Miwon for which the respondent did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,[11] if there is no rate for the intermediate company(ies) involved in the transaction.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results in the **Federal Register,** as provided by section 751(a)(2)(C) of the Act: (1) for the companies covered by this review, the cash deposit rate will be the rates listed above in the section ''Final Results of Review''; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in a completed segment for the most recent POR; (3) if the exporter is not a firm covered in this review or in the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (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 investigation.[13] 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 certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction 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 sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–07477 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–DS–P

[6] As noted above, on August 26, 2022, Commerce published the final results of a changed circumstances review of MSG from Indonesia. Commerce found that PT. Daesang is the successor-in-interest to PT. Miwon. *See MSG from Indonesia CCR.* Cash deposits of estimated antidumping duties required pursuant to the final results of this review will be applied to PT. Daesang. Liquidation instructions for the POR will be issued for PT. Miwon.

[7] *See* 19 CFR 351.212(b)(1).

[8] *Id.*

[9] *Id.*

[10] *See* 19 CFR 351.106(c)(2).

[11] *See Monosodium Glutamate from the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value,* 79 FR 58329 (September 29, 2014) (*MSG from Indonesia Investigation Final Determination*).

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See MSG from Indonesia Investigation Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–089]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to producers and exporters of certain steel racks and parts thereof (steel racks) from the People's Republic of China (China) during the period of review (POR), January 1, 2020, through December 31, 2020.

DATES: Applicable April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Drew Jackson AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2022, Commerce published the *Preliminary Results*.[1] This review covers one mandatory respondent, Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng), as well as 29 non-selected companies under review. We invited interested parties to comment on the *Preliminary Results*.[2] We received timely case briefs from the Government of China (GOC),[3] the Coalition for Fair Rack Imports (the petitioner),[4] and Dongsheng,[5] and timely filed rebuttal briefs from the petitioner[6] and Dongsheng.[7] For a detailed description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[8] On January 6, 2023, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing the final results until April 4, 2023.[9]

Scope of the Order[10]

The merchandise covered by the *Order* is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*e.g.,* end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, row spacers, and wall ties).

Merchandise covered by the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7326.90.8688, 9403.20.0081, 9403.90.8041, and 9403.99.9041.[11] Subject merchandise may also be classified under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. customs purposes only. The written description of the scope is dispositive.

A full description of the scope of the *Order* is contained in the Issues Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain revisions to the countervailable subsidy rate calculations for the sole mandatory respondent, Dongsheng.[12] As a result of the changes to Dongsheng's program rates, the final rate for the 29 non-selected companies under review also changed.[13] These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[14] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act.

Partial Rescission of Review

On November 5, 2021, Commerce initiated an administrative review of Hebei Minmetals Co., Ltd. (Hebei Minmetals).[15] In the *Preliminary Results,* we stated our intent to rescind the review with respect to Hebei Minmetals because it claimed no shipments during the POR and we did not receive any information to contradict its claim.[16] Therefore, in

[1] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review, in Part; 2020,* 87 FR 60644 (October 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *Id.,* 87 FR at 60644.

[3] *See* GOC's Letter, ''GOC Administrative Case Brief,'' dated November 10, 2022.

[4] *See* Petitioner's Letter, ''Petitioner's Case Brief,'' dated November 10, 2022.

[5] *See* Dongsheng's Letter, ''Case Brief,'' dated November 10, 2022.

[6] *See* Petitioner's Letter, ''Petitioner's Rebuttal,'' dated November 17, 2022.

[7] *See* Dongsheng's Letter, ''Rebuttal Brief,'' dated November 17, 2022.

[8] *See* Memorandum, ''Certain Steel Racks and Parts Thereof from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2020 Countervailing Duty Administrative Review,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[9] *See* Memorandum, ''Extension of Deadline for the Final Results of Countervailing Duty Administrative Review,'' dated January 6, 2023.

[10] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order* 84 FR 48584 (September 16, 2019) (*Order*).

[11] On February 9, 2022, Commerce received a request from U.S. Customs and Border Protection (CBP) to update the ACE Case Reference File (CRF) for this proceeding. Specifically, CBP requested that Commerce add HTSUS number 9403.99.9041 to the CRF to reflect 2022 updates to the HTSUS. On May 4, 2022, Commerce added HTSUS number 9403.99.9041 to the CRF for this proceeding (A–570–088). *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File: Certain Steel Racks and Parts Thereof from the People's Republic of China (A–570–088, C–570–089),'' dated May 4, 2022.

[12] *See* Memorandum, ''Final Results Calculations for Nanjing Dongsheng Shelf Manufacturing Co., Ltd.,'' dated concurrently with this notice.

[13] *See* Appendix II, which identifies the 29 non-selected companies subject to the instant administrative review.

[14] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[15] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 61121 (November 5, 2021).

[16] *See Preliminary Results,* 87 FR at 60644.

accordance with 19 CFR 351.213(d)(3), we are rescinding this administrative review with respect to Hebei Minmetals.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

As stated above, there are 29 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents, or found to be cross owned with a mandatory respondent. For these non-selected companies, because the rate calculated for the only participating mandatory respondent in this review, Dongsheng, was *above de minimis* and not based entirely on facts available, we are applying to the 29 non-selected companies Dongsheng's subsidy rate. This methodology used to establish the rate for the non-selected companies is consistent with our practice regarding the calculation of the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Results of Review

We find the countervailable subsidy rates for the sole mandatory respondent and non-selected respondents under review for the period of January 1, 2020, through December 31, 2020, to be as follows:

Company	Subsidy rate (percent *ad valorem*)
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	6.09
Non-Selected Companies Under Review [17]	6.09

[17] *See* Appendix II for a full list of companies not individually examined in this review.

Disclosure

We intend to disclose the calculations performed in connection with the final results of review to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of the final results of review, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: April 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

List of Companies Not Selected for Individual Examination

1. Ateel Display Industries (Xiamen) Co., Ltd.
2. CTC Universal (Zhangzhou) Industrial Co., Ltd.
3. David Metal Craft Manufactory Ltd.
4. Fujian Ever Glory Fixtures Co., Ltd.
5. Guangdong Wireking Housewares and Hardware Co., Ltd.
6. Hebei Wuxin Garden Products Co., Ltd.
7. Huanghua Xinxing Furniture Co., Ltd.
8. i-Lift Equipment Ltd.
9. Johnson (Suzhou) Metal Products Co., Ltd.
10. Master Trust (Xiamen) Import and Export Co., Ltd.
11. Nanjing Ironstone Storage Equipment Co., Ltd.
12. Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.
13. Ningbo Xinguang Rack Co., Ltd.
14. Redman Corporation
15. Redman Import & Export Limited
16. Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co. Ltd.
17. Tianjin Master Logistics Equipment Co., Ltd.
18. Xiamen Baihuide Manufacturing Co., Ltd.
19. Xiamen Ever Glory Fixtures Co., Ltd.
20. Xiamen Golden Trust Industry & Trade Co., Ltd.
21. Xiamen Kingfull Imp and Exp Co., Ltd.. (d.b.a) Xiamen Kingfull Displays Co., Ltd.
22. Xiamen LianHong Industry and Trade Co., Ltd.
23. Xiamen Luckyroc Industry Co., Ltd.
24. Xiamen Luckyroc Storage Equipment Manufacture Co., Ltd.
25. Xiamen Meitoushan Metal Products Co., Ltd.
26. Xiamen Power Metal Display Co., Ltd.
27. Xiamen XinHuiYuan Industrial & Trade Co., Ltd.
28. Xiamen Yiree Display Fixtures Co., Ltd.
29. Zhangjiagang Better Display Co., Ltd.

[FR Doc. 2023–07475 Filed 4–7–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain exporters under review sold subject merchandise at less than normal value during the period of review (POR), September 1, 2020, through August 31, 2021. Additionally, Commerce determines that Hebei Minmetals Co., Ltd. (Hebei Minmetals) and Xiamen Luckyroc Industry Co., Ltd., (Luckyroc) had no shipments of subject merchandise during the POR.

DATES: Applicable April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 and (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2022, Commerce published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment on those results.[1] On January 26, 2023, Commerce extended the deadline to issue the final results of this review by 60 days until April 4, 2023.[2] For details regarding the events that occurred subsequent to publication of the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[4]

The merchandise covered by the *Order* is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*e.g.,* end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, row spacers, and wall ties).

Merchandise covered by the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7326.90.8688, 9403.20.0081, 9403.90.8041, and 9403.99.9041.[5] Subject merchandise may also be classified under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. customs purposes only. The written description of the scope is dispositive.

A full description of the scope of the *Order* is contained in the Issues Decision Memorandum.

Analysis of Comments Received

We addressed all the issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results,* we selected Romania, rather than Bulgaria, as the primary surrogate country and corrected certain ministerial errors in our preliminary dumping margin calculations.[6]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Hebei and Luckyroc did not export or sell subject merchandise, nor did they have knowledge that their subject merchandise was entered into

[1] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 60647 (October 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the 2020–2021 Antidumping Duty Administrative Review,'' dated January 26, 2023.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Antidumping Duty Administrative Review of Certain Steel Racks and Parts Thereof from the People's Republic of China,'' (Issues and Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[4] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order,* 84 FR 48584 (September 16, 2019) (*Order*).

[5] On February 9, 2022, Commerce received a request from U.S. Customs and Border Protection (CBP) to update the ACE Case Reference File (CRF) for this proceeding. Specifically, CBP requested that Commerce add HTSUS number 9403.99.9041 to the CRF to reflect 2022 updates to the HTSUS. On May 4, 2022, Commerce added HTSUS number 9403.99.9041 to the CRF for this proceeding (A–570–088). *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File: Certain Steel Racks and Parts Thereof from the People's Republic of China (A–570–088, C–570–089),'' dated May 4, 2022.

[6] *See* Issues and Decision Memorandum.

the United States, during the POR.[7] Interested parties commented on Hebei's, but not Luckyroc's, no-shipments claim.[8] On November 14, 2022, we requested additional information from Hebei regarding its no-shipments claim.[9] After considering interested parties' comments and record evidence, Commerce continues to determine that Hebei and Luckyroc did not export, sell, or have knowledge of U.S. entries of subject merchandise during the POR.

Separate Rates

No parties commented on Commerce's preliminary separate rate determinations.[10] Because there is no basis to change the preliminary separate rate determinations, Commerce has continued to grant Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng), Nanjing Ironstone Storage Equipment Co., Ltd. (Ironstone), and Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd. (Kingmore), separate rate status. Additionally, Commerce has continued to deny separate rate status to each company listed in Appendix II.

Rate for Non-Examined Separate Rate Respondents

The statue and Commerce's regulations do not address what rate to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review.

Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins determined for individually-examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. When the rates determined for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

The final weighted-average dumping margins that we calculated for the mandatory respondents Dongsheng and Ironstone are not zero, *de minimis,* or based entirely on facts available. Therefore, we assigned a weighted-average dumping margin to the non-individually examined respondent to which we granted separate rate status equal to the weighted average, based on the publicly ranged value of sales by Dongsheng and Ironstone, of the weighted-average dumping margins that we calculated for Dongsheng and Ironstone, consistent with the guidance in section 735(c)(5)(A) of the Act.[11]

Final Results of Review

We are assigning the following weighted-average dumping margins to the companies listed below for the period September 1, 2020, through August 31, 2021:

Exporter	Weighted-average dumping margins (percent)
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	13.88
Nanjing Ironstone Storage Equipment Co., Ltd	3.13
Review-Specific Rate Applicable to the Non-Examined Company	
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd	10.18

Disclosure

Commerce intends to disclose to parties to the proceeding the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For the individually examined respondents whose weighted-average dumping margin is not zero or *de minimis,* we calculated importer-specific assessment rates in accordance with 19 CFR 351.212(b)(1).[12] Where the respondent reported reliable entered values, we calculated importer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total entered value of the merchandise sold to the importer.[13] Where the respondent did not report entered values, we calculated importer-specific per-unit assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total quantity of those sales. We also calculated an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis* (*i.e.,* 0.50 percent or less).[14]

Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's *ad valorem* weighted average dumping margin, or an importer-specific *ad valorem*

[7] *See Preliminary Results* PDM at 7–8.

[8] *See* Coalition for Fair Rack Imports' Letter, ''Comments on Commerce's No-Shipments Analysis for Hebei Minmetals Co., Ltd.,'' dated October 21, 2022.

[9] *See* Commerce's Letter, ''Supplemental questionnaire,'' dated November 14, 2022.

[10] *See Preliminary Results* PDM at 12–13.

[11] *See* Memorandum, ''Final Calculation of the Rate for the Separate Rate Respondent,'' dated concurrently with this notice.

[12] We applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[13] *See* 19 CFR 351.212(b)(1).

[14] *Id.*

assessment rate, is zero or *de minimis,* Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Where sales of subject merchandise exported by an individually examined respondent were not reported in the U.S. sales data submitted by the respondent, but the merchandise was entered into the United States during the POR under the CBP case number of the respondent, Commerce will instruct CBP to liquidate any entries of such merchandise at the weighted-average dumping margin for the China-wide entity (*i.e.,* 144.50 percent).[15] Additionally, where Commerce determines that an exporter under review made no shipments of subject merchandise during the POR, Commerce will instruct CBP to liquidate any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR at the weighted-average dumping margin for the China-wide entity.

The antidumping duty assessment rate for Kingmore, the company not individually examined in this administrative review that qualified for a separate rate, will be equal to the weighted-average dumping margin listed for Kingmore in the table above.

For companies not eligible for a separate rate which Commerce considered to be part of the China-wide entity, the assessment rate will be equal to the weighted-average dumping margin for the China-wide entity, *i.e.,* 144.50 percent.

Cash Deposit Requirements

The following cash deposit requirements will be in effect for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on, or after, the date of publication of this notice in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) for an exporter granted a separate rate in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin listed for the company in the table above; (2) for a previously investigated or reviewed exporter of subject merchandise not listed in the table above that has a separate rate, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (3) for all China exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin assigned to the China-wide entity, which is 144.50 percent; and (4) for a non-China exporter of subject merchandise that does not have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin applicable to the China exporter that supplied that non-China exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing these final results of administrative review and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h)(2) and 351.221(b)(5).

Dated: April 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

Companies Determined To Not Be Eligible for a Separate Rate

1. Ateel Display Industries (Xiamen) Co., Ltd.
2. CTC Universal (Zhangzhou) Industrial Co., Ltd.
3. David Metal Craft Manufactory Ltd.
4. Fujian Ever Glory Fixtures Co., Ltd.
5. Guangdong Wireking Housewares and Hardware Co., Ltd.
6. Hebei Wuxin Garden Products Co., Ltd.
7. Huanghua Xinxing Furniture Co., Ltd.
8. i-Lift Equipment Ltd.
9. Johnson (Suzhou) Metal Products Co., Ltd.
10. Master Trust (Xiamen) Import and Export Co., Ltd.
11. Ningbo Xinguang Rack Co., Ltd.
12. Redman Corporation
13. Redman Import & Export Limited
14. Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co. Ltd.
15. Tianjin Master Logistics Equipment Co., Ltd.
16. Xiamen Baihuide Manufacturing Co., Ltd.
17. Xiamen Ever Glory Fixtures Co., Ltd.
18. Xiamen Golden Trust Industry & Trade Co., Ltd.
19. Xiamen Kingfull Imp and Exp Co., Ltd. (d.b.a) Xiamen Kingfull Displays Co., Ltd.
20. Xiamen LianHong Industry and Trade Co., Ltd.
21. Xiamen Luckyroc Storage Equipment Manufacture Co., Ltd.
22. Xiamen Meitoushan Metal Products Co., Ltd.
23. Xiamen Power Metal Display Co., Ltd.
24. Xiamen XinHuiYuan Industrial & Trade Co., Ltd.
25. Xiamen Yiree Display Fixtures Co., Ltd.
26. Zhangjiagang Better Display Co., Ltd.

[FR Doc. 2023–07476 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to producers/exporters of forged steel fittings from the People's Republic of China (China) during the period of review (POR) January 1, 2020, through December 31, 2020.

DATES: Applicable April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Zachariah Hall or Shane Subler, 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) 482–6261 or (202) 482–6241, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on December 7, 2022, and invited interested parties to comment.[1] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The product covered by the *Order* is forged steel fittings from China. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided 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 *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the evidence on the record, we have not made any changes to the *Preliminary Results.* The reasons for this conclusion are explained in the Issues and Decision Memorandum. Accordingly, we made no changes to the countervailable subsidy rate calculations from the *Preliminary Results* for mandatory respondent Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well).[4] We also made no changes to the final subsidy rates for four non-selected companies under review.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

As stated above, there are four companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. For these non-selected companies, because the rate calculated for the only participating mandatory respondent in this review, Both-Well, was above *de minimis* and not based entirely on facts available, we are applying Both-Well's subsidy rate to the four non-selected companies. This methodology used to establish the rate for the non-selected companies is consistent with our practice regarding the calculation of the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Results of Administrative Review

We determine the countervailable subsidy rates for the mandatory and non-selected respondents under review for the period of January 1, 2020, through December 31, 2020, to be as follows:

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[1] *See Forged Steel Fittings from the People's Republic of China: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2020,* 87 FR 75037 (December 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020 Countervailing Duty Administrative Review of Forged Steel Fittings from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Forged Steel Fittings from the People's Republic of China: Countervailing Duty Order,* 83 FR 60396 (November 26, 2018) (*Order*).

[4] *See Preliminary Results,* 87 FR at 75038.

[5] *Id.* The four non-selected companies under review are Eaton Hydraulics (Ningbo) Co., Ltd.; Jinan Mech Piping Technology Co., Ltd.; Qingdao Bestflow Industrial Co., Ltd.; and Yingkou Guangming Pipeline Industry Co., Ltd.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution, section 771(5)(E) of the Act regarding benefit, and section 771(5A) of the Act regarding specificity.

Producer/exporter	Subsidy rate (percent ad valorem)
Both-Well (Taizhou) Steel Fittings Co., Ltd	13.42
Review-Specific Average Rate Applicable to the Following Companies	
Eaton Hydraulics (Ningbo) Co., Ltd	13.42
Jinan Mech Piping Technology Co., Ltd	13.42
Qingdao Bestflow Industrial Co., Ltd	13.42
Yingkou Guangming Pipeline Industry Co., Ltd	13.42

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. We intend to issue assessment instructions to CBP 35 days after the date of publication of the final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of the final results of review, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: April 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–07478 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648 XC905]

Marine Mammals; File No. 26767

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sarah Kienle, Ph.D., Baylor University, Waco, TX 76798, has applied in due form for a permit to conduct research on six species of pinnipeds.

DATES: Written, telefaxed, or email comments must be received on or before May 10, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26767 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26767 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and

importing of marine mammals (50 CFR part 216).

The applicant proposes to capture and sample six species of Southern Ocean pinnipeds across their geographic range (*i.e.,* Antarctica, subantarctic islands, South America, Australia, New Zealand, Africa). Target species include: leopard seals (*Hydrurga leptonyx*), Antarctic fur seals (*Arctocephalus gazella*), crabeater seals (*Lobodon carcinophaga*), Ross seals (*Ommatophoca rossii*), southern elephant seals (*Mirounga leonina*), and Weddell seals (*Leptonychotes weddellii*). Take activities will consist of one or more of the following methods based on location, sex, and age class of the animal: remote tissue sampling, physical capture, chemical immobilization, and aerial surveys. The applicant may collect morphometrics, tissues (*e.g.,* blood, hair, skin, vibrissae, blubber, milk), and opportunistic samples (*e.g.,* scat, carcasses); mark via flipper tag; collect ultrasound measurements; attach instruments; and measure via photogrammetry. For each species, the applicant proposes to capture and sample 30 adults, harass and sample 30 adults, and capture and sample 30 pups annually for 5 years. An additional 100–500 animals depending on the species may be taken annually by unintentional harassment. The applicant requests three leopard seal unintentional mortalities and two unintentional mortalities for all other species, annually. The applicant also requests authorization to import parts from each species of Antarctic pinniped from the Southern Ocean and other countries where these species are found to the U.S. and to export samples from the U.S. to collaborators abroad for analyses. The permit would be valid for 5 years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 5, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–07440 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC896]

Spring Meeting of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of the Advisory Committee 2023 spring meeting.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting, to be held April 27–28, 2023 in Miami, Florida.

DATES: The open sessions of the Committee meeting will be held on April 27, 2023, 8:30 a.m. to 2:30 p.m. and April 28, 2023, 9 a.m. to 3 p.m. Closed sessions will be held on April 27, 2023, 2:30 p.m. to 5:30 p.m. All times are Eastern Daylight Savings time.

ADDRESSES: The meeting will be held at the Courtyard by Marriott Miami Coconut Grove, 2649 South Bayshore Drive, Miami, Florida 33133.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, 202–897–9208 or at *bryan.keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on the outcomes of ICCAT's 2022 annual meeting and the U.S. implementation of ICCAT decisions; ICCAT intersessional meetings in 2023; relevant NMFS research and monitoring activities; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment during the meeting. An agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will meet in its Species Working Groups in closed session on the afternoon of April 27, 2023. These sessions are not open to the public, but the results of the Species Working Group discussions will be reported to the full Advisory Committee during the Committee's open session on April 28, 2023.

Special Accommodations

The virtual meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to Bryan Keller (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: April 5, 2023.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2023–07445 Filed 4–7–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Amendment of Selection Criteria and Extension of Application Deadline Date

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice; amendments.

SUMMARY: On February 10, 2023, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for fiscal year (FY) 2023 for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program, Assistance Listing Number 84.022A. We are amending selection criterion (b)(3) and the selection criteria point allocations in the NIA and extending the deadline date for transmittal of applications until April 28, 2023. All other information in the NIA remains the same.

DATES:

Applicable Date: These amendments are applicable on April 10, 2023.

Deadline for Transmittal of Applications: April 28, 2023.

FOR FURTHER INFORMATION CONTACT: Amy Marrion, U.S. Department of Education, 400 Maryland Avenue SW, Room 258–24, Washington, DC 20202. Telephone: (202) 453–5628. Email: *DDRA@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On February 10, 2023, we published the NIA for the 2023 DDRA competition in the **Federal Register** (88 FR 8832). This NIA established selection criteria for the

2023 competition in accordance with 34 CFR 662.21. Consistent with 34 CFR 662.21(c)(3), among these was selection criterion (b)(3), *Qualifications of the applicant.* Under selection criterion (b)(3), the Secretary would consider ''[t]he applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers'' for a total of 1 point.

On March 24, 2023, the Western District Court of Texas in the matter of *Lujan* v. *Cardona,* No. 3:22–CV–00158–DCG, ECF No. 37, granted in part a preliminary injunction, which ''vacates 34 CFR 662.21(c)(3) as to all 2023 Fulbright-Hays Fellowship applicants until the Court reaches a merits decision in this case or the U.S. Department of Education publishes a final rule amending 34 CFR 662.21(c)(3).'' Subsequently, on April 3, 2023, the Court amended its order to clarify ''that its injunction applies only insofar as the Foreign Language Criterion prohibited considering an applicant's native language skills'' *Lujan,* ECF No. 40. As a result, the Department is amending the selection criteria for the 2023 DDRA competition, such that selection criterion (b)(3) allows native speakers to receive points for conducting research projects in any language in which they have proficiency, other than English. Additionally, the Department is increasing the number of points associated with selection criterion (b)(3) from 1 point to 10 points, and the number of points allocated to selection criterion (b) from 26 points to 35 points.

In order to give all applicants the opportunity to apply under the amended NIA, the Department also extends the deadline date for transmittal of applications until April 28, 2023. All other information in the NIA remains the same.

Amendments

In FR Doc. 2023–02827 appearing on pages 8832–8837 of the **Federal Register** of February 10, 2023, we make the following amendments:

1. On page 8832, under **DATES** in the left column, after the heading ''Deadline for Transmittal of Applications,'' remove ''April 11, 2023'' and add, in its place, ''April 28, 2023''.

2. On page 8835, in the right column, in paragraph (b) introductory language, after the heading ''Qualifications of the Applicant,'' remove ''26 points'' and add, in its place, ''35 points''.

3. On page 8835, in the right column, in paragraph (b)(3):

A. Remove ''and the applicant's native language''.

B. Remove ''1 point'' and add, in its place, ''10 points''.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

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

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

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–07419 Filed 4–7–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0061]

Agency Information Collection Activities; Comment Request; ED–524 Budget Information Non-Construction Programs Form and Instructions

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 9, 2023.

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–2023–SCC–0061. 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, the Department 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 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 Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 4C210, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Cleveland Knight, (202) 987–0064.

SUPPLEMENTARY INFORMATION: The Department, 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. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department 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: ED–524 Budget Information Non-Construction Programs Form and Instructions.

OMB Control Number: 1894–0008.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 8,800.

Total Estimated Number of Annual Burden Hours: 154,000.

Abstract: The ED–524 form and instructions are included in U.S. Department of Education discretionary grant application packages and are needed for applicants to submit summary-level budget data by budget category, as well as a detailed budget narrative, to request and justify their proposed grant budgets which are part of their grant applications.

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. 2023–07427 Filed 4–7–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Ammonia Combustion Technology Group Meeting

AGENCY: National Energy Technology Laboratory, Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The National Energy Technology Laboratory (NETL) will host public meetings of the Ammonia Combustion Technology Group via WebEx approximately every (2) months. The purpose of the public meetings is to address challenges associated with ammonia combustion systems in power generation and industrial applications.

DATES: Public meetings will begin on Tuesday, May 2, 2022 and be held on the first Tuesday of the month, approximately every (2) months thereafter. The specific date and time will be shared prior to each meeting via the NETL events page (*https://netl.doe.gov/events*).

ADDRESSES: The public meetings will be held from 1–3 p.m. EST, via WebEx and hosted by NETL.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public meeting, please contact Clinton Bedick at NETL by telephone at (412) 386–5886, by email at *clinton.bedick@netl.doe.gov,* or by postal mail addressed to National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940. Please direct all media inquiries to the NETL Public Affairs Officer at (304) 285–0228.

SUPPLEMENTARY INFORMATION:

Instructions and Information on the Public Meeting

The public meetings will be held via WebEx. The specific date and time of each meeting will be shared approximately 1 month in advance via the NETL events page (*https://netl.doe.gov/events*). Interested parties may RSVP, to confirm their participation and receive login instructions, by emailing *clinton.bedick@netl.doe.gov.*

The objective of the Ammonia Combustion Technology Group is to promote a technical understanding, among all, on the subject of ammonia combustion for power and industry. This technical understanding shall be achieved through the sharing of information or viewpoints from individual participants to reduce risk and address challenges associated with developing the technology.

Ammonia has been proposed as a hydrogen carrier and carbon-free fuel in combustion applications, offering potential advantages over pure hydrogen in terms of storage, transport, and energy density. A 2019 report by the International Energy Agency (IEA) showed that it was cheaper to deliver hydrogen as ammonia by pipeline for distances below 3500 km, including distribution and reconversion. When eliminating the distribution and reconversion step, transport and storage of ammonia was cheaper overall compared to hydrogen, demonstrating the impetus for its direct utilization in combustion applications. A number of the world's largest gas turbine engine manufacturers have publicly expressed interest and/or have active projects involving ammonia combustion technologies, however as of today none offer a commercial product capable of operating on ammonia or ammonia-mix fuels. This is largely due to a number of technical challenges which must be overcome, including the low flammability of ammonia and a propensity for high nitrogen oxide (NO_X) emissions. Specific research challenges include chemical kinetics uncertainties, limited experimental validation data, combustor design and optimization, and scaling to practical flows and geometries, among others.

The format of the public meetings will facilitate equal opportunity for discussion among all participants; all participants will be welcome to speak. Following a detailed presentation by one volunteer participant regarding lessons learned from his or her area of research, other participants will be provided the opportunity to briefly share lessons learned from their own research. Public meetings are expected to take place every other month with a different volunteer presenting at each public meeting. Public meeting minutes will be published for those who are unable to attend.

The public meetings are considered ''open-to-the-public.'' The purpose of the public meetings has been examined during the planning stages, and NETL management has made specific determinations that affect attendance. All information presented at the public meetings must meet criteria for public sharing or be published and available in the public domain. Participants should not communicate information that is considered official use only, proprietary, sensitive, restricted or protected in any way. Foreign nationals, who may be present, have not been approved for access to Department of Energy information and technologies.

Signing Authority

This document of the Department of Energy was signed on March 31, 2023, by Brian Anderson, Ph.D., Director, National Energy Technology Laboratory, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 4, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–07401 Filed 4–7–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice for solicitation of members.

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Department of Energy is soliciting nomination for candidates to fill vacancies on the Environmental Management Advisory Board.

DATES: Deadline for member nominations is May 15, 2023.

ADDRESSES: The nominee's name, resume, biography, and any letters of support must be submitted via email to: *kelly.snyder@em.doe.gov.* Board website: *www.energy.gov/em/emab.*

SUPPLEMENTARY INFORMATION: The mission of the Environmental Management Advisory Board (EMAB) is to provide independent and external advice, information, and recommendations to the Assistant Secretary for Environmental Management (EM) on corporate issues relating to accelerated site cleanup and risk reduction.

The Board works to identify applicable private and public sector best management practices and provides counsel on how to integrate them into the EM program. The Board works with the private sector to identify barriers to the effective execution of the Assistant Secretary's program objectives and facilitates discussions between the department, private industry and the public for knowledge sharing. EMAB provides strategic management advice on where and how to focus the program's resources to achieve maximum impact and greatest risk reduction.

EMAB's activities are governed by the Federal Advisory Committee Act (FACA), which was enacted to ensure that the general public has access to advisory board deliberations and recommendations.

The membership of EMAB includes individuals from governmental and non-governmental entities, private industry, and scientific and academic communities. Members are sought in all professional fields related to Environmental Management programs and specifically groundwater remediation, soil remediation, and adaptive management.

Members are appointed for two-year terms. The Board typically meets twice a year in-person and as needed, virtually. Members serve on an uncompensated, volunteer basis. However, committee members are paid authorized travel and per diem for each meeting that requires travel. Each nominee must submit their resume and biography along with any letters of support by the deadline above. All nominees will be vetted before selection.

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.

Appointments to the Environmental Management Advisory Board will be made by the Secretary of Energy.

For further information on EMAB, please visit *www.energy.gov/em/emab.* For further information about DOE's Environmental Management program, please visit *www.energy.gov/em.*

Signed in Washington, DC, on April 5, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–07466 Filed 4–7–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Guidance and Application for Hydroelectric Production Incentives; Correction

AGENCY: Hydroelectric Incentives Program, Grid Deployment Office, Department of Energy.

ACTION: Notice of availability of guidance and open application period; correction.

SUMMARY: On March 22, 2023, the Department of Energy's Grid Deployment Office published a notice announcing the availability of guidance and open application period for the Hydroelectric Production Incentives in the **Federal Register**. This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Madden Sciubba, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, (240) 798–1195 or by email at *hydroelectricincentives@hq.doe.gov.* Additional information can be found in the guidance posted at *www.energy.gov/gdo/section-242-hydroelectric-production-incentive-program.* Electronic communications are recommended for correspondence.

SUPPLEMENTARY INFORMATION:

Correction

On March 22, 2023, the Department of Energy's Grid Deployment Office (GDO) published a notice announcing the availability of guidance and open application period for the Section 242 Hydroelectric Production Incentives in the **Federal Register**. 88 FR 17202. It has come to GDO's attention that there is a typo included under the **SUPPLEMENTARY INFORMATION** section in the first sentence on page 17203, second column, first paragraph, relating to the date referenced as part of the discussion of an existing dam or conduit included in the second column.

The sentence is corrected to read as follows:

''Additionally, Congress defined an existing dam or conduit to mean any dam or conduit constructed and completed before *November 15, 2021* and does not require any construction or enlargement of impoundment or diversion structures, other than repair or reconstruction, in connection with the installation of a turbine or other generating device.'' (Emphasis added).

This typo does not alter the information provided in the guidance document nor does it alter the solicitation period as announced in the original notice. Please consult the guidance for all application requirements and properly submit all application materials to the Clean Energy Infrastructure Funding Opportunity Exchange, *https://infrastructure-exchange.energy.gov,* by no later than 5 p.m. ET, May 8, 2023.

Reason for Correction: The change corrects the date referenced in the discussion of the definition of an existing dam or conduit.[1]

Signing Authority

This document of the Department of Energy was signed on April 4, 2023, by Maria Duaime Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 5, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–07455 Filed 4–7–23; 8:45 am]

BILLING CODE 6450–01–P

[1] *See* 42 U.S.C. 15881(b)(2).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–517–000.
Applicants: Rover Pipeline LLC.
Description: Rover Pipeline, LLC submits Response to FERC's March 29, 2023, Data Request.
Filed Date: 4/3/23.
Accession Number: 20230403–5297.
Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23–670–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46429 to Texla 56258) to be effective 4/1/2023.
Filed Date: 4/3/23.
Accession Number: 20230403–5183.
Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23–671–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements—Castleton 911826 and 911827 eff 4–1–23 to be effective 4/1/2023.
Filed Date: 4/3/23.
Accession Number: 20230403–5274.
Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23–672–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Vitol 911898 and 911899 eff 4–1–23 to be effective 4/1/2023.
Filed Date: 4/4/23.
Accession Number: 20230404–5030.
Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23–673–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Releases from Morg Stan 8947599 eff 4–1–23 to be effective 4/1/2023.
Filed Date: 4/4/23.
Accession Number: 20230404–5040.
Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23–674–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 4–4–23 to be effective 4/1/2023.
Filed Date: 4/4/23.
Accession Number: 20230404–5096.
Comment Date: 5 p.m. ET 4/17/23.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07447 Filed 4–7–23; 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: ER22–983–003.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England, Inc. submits a Compliance Filing with respect to additional filing requirements related to distributed energy resource aggregations' participation in the FCA18 and other markets as directed in 3/1/2023 Commission Order.
Filed Date: 3/31/23.
Accession Number: 20230331–5602.
Comment Date: 5 p.m. ET 4/21/23.

Docket Numbers: ER23–1557–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, Service Agreement No. 6212; Queue No. AG1–388 re: withdraw to be effective 5/27/2023.
Filed Date: 4/3/23.
Accession Number: 20230403–5250.
Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1558–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Coleman County EC-Golden Spread EC (Miles) FDA to be effective 3/15/2023.
Filed Date: 4/3/23.
Accession Number: 20230403–5255.
Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1559–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Section 12 Amendment to be effective 6/6/2023.
Filed Date: 4/4/23.
Accession Number: 20230404–5029.
Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: ER23–1560–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement between Pacific Gas and Electric Company and Sunrise Power Company, LLC under Service Agreement No. 45 under FERC Electric Tariff Volume No. 5.
Filed Date: 3/30/23.
Accession Number: 20230330–5337.
Comment Date: 5 p.m. ET 4/20/23.

Docket Numbers: ER23–1561–000.
Applicants: Public Service Company of New Mexico.
Description: Annual Filing of Post-Employment Benefits Other than Pensions for 2023 of Public Service Company of New Mexico.
Filed Date: 3/31/23.
Accession Number: 20230331–5606.
Comment Date: 5 p.m. ET 4/21/23.

Docket Numbers: ER23–1562–000.
Applicants: Public Service Company of Colorado.
Description: Formula Rate Charges and Transmission Formula Rate Charges for 2022 Post-Retirement Benefits Other than Pension of Public Service Company of Colorado.
Filed Date: 4/4/23.
Accession Number: 20230404–5075.
Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: ER23–1563–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Chilatchee 115A LGIA Filing to be effective 3/21/2023.
Filed Date: 4/4/23.
Accession Number: 20230404–5130.
Comment Date: 5 p.m. ET 4/25/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07448 Filed 4–7–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9379–013]

Renewable World Energies, LLC, Grenfell, LLC; Notice of Transfer of Exemption

1. On March 6, 2023, Renewable World Energies, LLC exemptee for the 280-kilowatt Belding Dam Hydroelectric Project No. 9379, filed a letter notifying the Commission that the project was transferred from Renewable World Energies, LLC to Grenfell, LLC. The exemption from licensing was originally issued on March 17, 1986.[1] The project is located on the Flat River, Ionia County, Michigan. The transfer of an exemption does not require Commission approval.

2. Grenfell, LLC is now the exemptee of the Belding Dam Hydroelectric Project No. 9379. All correspondence must be forwarded to Mr. Jason Kreuscher, Renewable World Energies Corporate Office, 100 S State Street, Neshkoro, WI 54960, Phone: 855–994–9376 ext. 102, Email: *jason@rwehydro.com.*

Dated: April 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07450 Filed 4–7–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Grenfell Hydroelectric Associates,* 34 FERC ¶ 62,524 (1986). Subsequently, on February 19, 2013, the project was transferred to Renewable World Energies, LLC.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2019–0287; FRL–10829–01–ORD]

Availability of the Draft IRIS Toxicological Review of Perfluorodecanoic Acid [PFDA, CASRN 335–76–2] and Related Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 60-day public comment period associated with release of the draft IRIS Toxicological Review of Perfluorodecanoic Acid (PFDA, CASRN 335–76–2) and Related Salts. The draft document was prepared by the Center for Public Health and Environmental Assessment (CPHEA) within EPA's Office of Research and Development (ORD).

EPA is releasing this draft IRIS assessment for public comment in advance of a contract-led peer review. Public comments received will be provided to the external peer reviewers. ERG, a contractor to EPA, will convene a public meeting to discuss the draft report with the public during Step 4 of the IRIS Process. The external peer reviewers will consider public comments submitted in response to this notice and comments provided at a future public peer review meeting. EPA will consider all comments received when revising the document post-peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent Agency policy or views.

DATES: The 60-day public comment period begins April 10, 2023 and ends June 9, 2023. Comments must be received on or before June 9, 2023.

ADDRESSES: The IRIS Toxicological Review of Perfluorodecanoic Acid [PFDA, CASRN 335–76–2] and Related Salts will be available via the internet on the *IRIS* website at *https://www.epa.gov/iris/iris-recent-additions* and in the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2019–0287.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the IRIS Toxicological Review of Perfluorodecanoic Acid (PFDA, CASRN 335–76–2) and Related Salts, contact Dr. Andrew Kraft, CPHEA; telephone: 202–564–0286; or email: *kraft.andrew@epa.gov.* The IRIS Program will provide updates through the IRIS website (*https://www.epa.gov/iris*) and via EPA's IRIS listserv. To register for the IRIS listserv, visit the IRIS website (*https://www.epa.gov/iris*) or visit *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect.*

For questions about the peer review, please contact: Laurie Waite, ERG, by email at *peerreview@erg.com* (subject line: EPA PFAS assessments peer review); or by phone: (781) 674–7362.

SUPPLEMENTARY INFORMATION:

How To Submit Technical Comments to the Docket at *https://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2019–0287 for the Perfluorodecanoic Acid IRIS Assessment, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.

For information on visiting the EPA Docket Center Public Reading Room, visit *https://www.epa.gov/dockets.* Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room may be closed to the public with limited exceptions. The telephone number for the Public Reading Room is 202–566–1744. The public can submit comments via *www.regulations.gov* or email.

Instructions: Direct your comments to docket number EPA–HQ–ORD–2019–0287 for Perfluorodecanoic Acid IRIS Assessment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do

not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2023–07435 Filed 4–7–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, April 18, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on April 19, 2023.

PLACE: 1050 First Street NE, Washington, DC and virtual (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–07609 Filed 4–6–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, April 6, 2023 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC and virtual (This meeting was a hybrid meeting.)

STATUS: This meeting was closed to the public.

MATTERS CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–07605 Filed 4–6–23; 4:15 pm]

BILLING CODE 6715–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MRB–2023–02; Docket No. GAPFAC 2022–0001; Sequence No. 2]

GSA Acquisition Policy Federal Advisory Committee; Notification of Upcoming Public Meeting

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is providing notice of a meeting of the GSA Acquisition Policy Federal Advisory Committee (hereinafter ''the Committee'' or ''the GAP FAC'') in accordance with the requirements of the Federal Advisory Committee Act (FACA). This meeting will be open to the public, accessible via webcast and in person. Information on attending and providing written public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The GAP FAC will hold a hybrid open public meeting on Thursday, May 4, 2023, from 9:30 a.m. to 12:30 p.m. Eastern Standard Time (EST).

ADDRESSES: This will be a hybrid meeting accessible via webcast and in person at GSA Headquarters, (Rooms: 1459, 1460, and 1461),1800 F Street NW, Washington, DC 20405. In person seating is limited.

FOR FURTHER INFORMATION CONTACT: Boris Arratia, Designated Federal Officer, Office of Government-wide Policy, 703–795–0816, or email: *boris.arratia@gsa.gov;* or Stephanie Hardison, Office of Government-wide Policy, 202–258–6823, or email: *stephanie.hardison@gsa.gov.* Additional information about the Committee, including meeting materials and agendas, will be available on-line at *https://gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.*

SUPPLEMENTARY INFORMATION: The Administrator of GSA established the GAP FAC as a discretionary advisory committee under agency authority in accordance with the provisions of the FACA, as amended (5 U.S.C. app 2).

As America's buyer, GSA is uniquely positioned to enable a modern, accessible, and streamlined acquisition ecosystem and a robust marketplace connecting buyers to the suppliers and businesses that meet their mission needs. The GAP FAC will assist GSA in this endeavor through expert advice on a broad range of innovative solutions to acquisition policy, workforce, and industry partnership challenges.

The GAP FAC will serve as an advisory body to GSA's Administrator on how GSA can use its acquisition tools and authorities to target the highest priority Federal acquisition challenges. The initial focus for the GAP FAC will be on driving regulatory, policy, and process changes required to embed climate and sustainability considerations in Federal acquisition. This includes examining and recommending steps GSA can take to support its workforce and industry partners in ensuring climate and

sustainability issues are fully considered in the acquisition process.

Purpose of the Meeting

The purpose of this meeting is for each of the three subcommittees (Policy and Practice, Industry Partnerships, and Acquisition Workforce) to present recommendations to the full Committee. The Committee will, in turn, deliberate and vote on GAP FAC recommendations to be delivered to the GSA Administrator.

Meeting Agenda

- Opening Remarks
- Acquisition Workforce Subcommittee Recommendations and Discussion
- Industry Partnerships Subcommittee Recommendations and Discussion
- Policy and Practices Subcommittee Recommendations and Discussion
- Vote on recommendations
- Closing Remarks and Adjourn

Meeting Registration

This hybrid meeting is open to the public and will be accessible by webcast and in person. Registration information is located on the GAP FAC website: *https://www.gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.* Public attendees who want to attend virtually will need to register no later than 5:00 p.m. EST, on Wednesday, May 3, 2023 to obtain the meeting webcast information. Pre-registration for attending the meeting in person is highly encouraged. In-person public attendance at the meeting is limited to the available space, and seating is available on a first come first serve basis. Due to security requirements, all non-US citizens or nationals who wish to attend in-person need to register no later than 5:00 p.m. EST, on Monday, May 1, 2023 in order to access the building.

All registrants will be asked to provide their name, affiliation, and email address. After registration, individuals will receive webcast access information or in-person attendance details via email.

Public Comments

Written public comments are being accepted via *http://www.regulations.gov,* the Federal eRulemaking portal throughout the life of the Committee and three Subcommittees. To submit a written public comment, go to *http://www.regulations.gov* and search for GAPFAC–2022–0001. Select the link ''Comment Now'' that corresponds with this notice. Follow the instructions provided on the screen. Please include your name, company name (if applicable), and ''GAPFAC–2022–0001, Notification of Upcoming Web-Based Public Meetings'' on your attached document (if applicable).

Special Accommodations

For information on services for individuals with disabilities, or to request accommodation of a disability, please contact the Designated Federal Officer at least 10 business days prior to the meeting to give GSA as much time as possible to process the request. Closed captioning and live American Sign Language (ASL) interpreter services will be available.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–07284 Filed 4–7–23; 8:45 am]

BILLING CODE 6820–RV–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10398 #37]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 24, 2023.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#7)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRAListing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collections

1. *Title of Information Collection:* Managed Care Rate Setting Guidance; *Type of Information Collection Request:* Revision of an existing generic information collection request; *Use:* In accordance with 42 CFR 438.7, states must submit to CMS for review and approval all rate certifications for managed care organizations (MCOs), prepaid inpatient health plans (PIHPs), and prepaid ambulatory health plans (PAHPs). The rate certification itself is prepared by a state's actuary who certifies the managed care program's capitation rates as actuarially sound for a specific time period, and documents the rate development process and final certified capitation rates.

Our Medicaid Managed Care Rate Development Guide (otherwise referred to as the ''rate guide'') outlines the rate development standards and CMS' expectations for documentation included in rate certifications such as descriptions of base data used, trend factors to base data, projected benefit and non-benefit costs, and any other considerations or adjustments used when setting capitation rates. The information outlined in the rate guide must be included within the rate certification in adequate detail to allow CMS to determine compliance with applicable provisions of 42 CFR part 438, including that the data, assumptions, and methodologies used for rate development are consistent with generally accepted actuarial principles and practices and that the capitation rates are appropriate for the populations and services to be covered. There is no required template that states' actuaries must utilize for the rate certification, but the guidance outlined in the rate guide serves as a resource for states and their actuaries. Adherence by states and their actuaries to the rate development standards and documentation expectations outlined in the rate guide, will aid in ensuring compliance with the regulations and support CMS's review and approval of actuarially sound capitation rates and associated federal financial participation. *Form Number:* CMS–10398 (#37) (OMB control number: 0938–1148); *Frequency:* Annual; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 46; *Total Annual Responses:* 135; *Total Annual Hours: 743.* For policy questions regarding this collection contact Rebecca Burch-Mack at 303–844–7355.

Dated: April 5, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–07473 Filed 4–7–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Data Reports: Demographic and Service Utilization, Grantee Performance Measures and Quarterly Performance Reports

AGENCY: Office of Early Childhood Development; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a new information collection for the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Tribal Home Visiting Program Data Reports: Demographic and Service Utilization, Grantee Performance Measures and Quarterly Performance Reports.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 511 of Title V of the Social Security Act created the MIECHV Program and authorizes the Secretary of the United States Department of Health and Human Services (HHS) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 6 percent of the total MIECHV program appropriation for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The ACF Office of Early Childhood Development (ECD), in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, awards grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs assessments, plan for and implement high-quality, culturally grounded, evidence-based home visiting programs in at-risk Tribal communities, and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

In Year 1 of the cooperative agreement, grantees must (1) conduct a comprehensive community needs and readiness assessment and (2) develop a plan to respond to identified needs. Following each year that Tribal MIECHV grantees implement home visiting services; they must comply with the requirement to submit demographic and service utilization data once they begin to provide services, and then on an annual basis. Grantees also begin to report quarterly on caseloads and family and staff retention and submit performance data in years 2–5 of their cooperative agreements. Tribal MIECHV Program data are used to help ACF better understand the population receiving services from Tribal MIECHV grantees, the degree to which they are using services, as well as staffing data to better understand the Tribal MIECHV workforce. This includes demographic and service utilization data on the number of newly enrolled and continuing participants, educational level and poverty status of participants, education level of staff, number of home visits and grantee caseload capacity and retention of families and staff. Performance reporting on the six legislatively mandated areas (referred to as ''benchmark areas'') will document grantee improvement in the benchmark areas over time and will allow new cohorts of grantees to reflect on their performance to make program improvements or to document implementation of services successfully that encompass the major goals of the program.

ACF will use Tribal Home Visiting Data Reports to:

- Collect demographic and service utilization that provides vital information on the families being served under the Tribal MIECHV Program;

• Collect the number of newly enrolled and continuing families being served;
• Number of home visits;
• Track and improve the quality of benchmark measures data submitted by the tribal grantees;
• Improve program monitoring and oversight;
• Improve rigorous data analyses that help to assess the effectiveness of the programs and enable ACF to better monitor projects;
• Ensure adequate and timely reporting of program data to relevant federal agencies and stakeholders including Congress and members of the public; and
• Collect data on caseload capacity, retention and attrition of enrolled families and the retention and attrition of program staff on a quarterly basis.

Overall, this information collection will provide valuable information to HHS that will guide understanding of the Tribal MIECHV Program and the provision of technical assistance to Tribal MIECHV Program grantees.

Respondents: Tribal MIECHV Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Tribal MIECHV Demographic and Service Utilization Data Form	55	1	317	17,435
Tribal MIECHV Performance Measures Form	55	1	288	15,840
Tribal MIECHV Quarterly Performance Report	55	4	2.5	550

Estimated Total Annual Burden Hours: 33,825.

Comments: HHS specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 511 of Title V of the Social Security Act

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–07462 Filed 4–7–23; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1157]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information which allows the submission of individual generic requests for obtaining qualitative data to support social and behavioral research for food, dietary supplements, cosmetics, and animal food and feed.

DATES: Either electronic or written comments on the collection of information must be submitted by June 9, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 9, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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–2023–N–1157 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic

Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed.'' Received comments, those filed in a timely manner (see **ADDRESSES**), 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, 240–402–7500.

• 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.govinfo.gov/content/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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

OMB Control Number 0910–0891—Extension

The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) has issued memoranda that provides an overview of administrative flexibilities available to assist agencies in complying with their statutory obligations under the PRA. Among these flexibilities is use of a generic clearance for certain information collection activities. A generic clearance may be appropriate when (1) the need for the data collection can be evaluated in advance, as part of the review of the proposed plan, but (2) the Agency cannot determine the details of the specific individual collections until a later time. Generic clearances cover collections that are voluntary, low-burden, and uncontroversial.

This generic clearance supports research intended to help CFSAN understand stakeholders' perceptions, attitudes, motivations, and behaviors. Understanding these perceptions, attitudes, motivations, and behaviors plays an important role in improving FDA's communications which impact these various stakeholders and assists in the development of quantitative study proposals to complement other important research efforts in the Agency.

To ensure that communications activities have the highest effect, we will conduct research and studies relating to the control and prevention of disease and the safety and health of the public. FDA is requesting OMB approval for the use of this generic collection of information that allows FDA to use qualitative social/behavioral science data collection techniques (*i.e.,* individual in-depth interviews (IDIs), small group discussions, focus groups, and observations) to better understand stakeholders' perceptions, attitudes, motivations, and behaviors regarding various issues associated with food and cosmetic products, dietary supplements, and animal food and feed. Understanding these consumers', manufacturers', and producers' perceptions, attitudes, motivations, and behaviors plays an important role in improving FDA's communications that impact these various stakeholders and in assisting in the development of quantitative study proposals, complementing other important research efforts in the Agency.

To obtain approval for an individual generic submission collection that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the interview or moderator guide, screening questionnaire).

Selection for potential respondents is done via a screening process to match the best possible respondent to each individual generic submission. Respondents to individual requests made under the generic clearance, once approved by OMB, may include a wide range of consumers and other FDA stakeholders, such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. Participation is voluntary.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of interview	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual In-Depth Interview Screening	4,800	1	4,800	.08 (5 minutes)	384
Individual In-Depth Interviews	400	1	400	1	400
Focus Group/Small Group Participant Screening	10,800	1	10,800	.08 (5 minutes)	864
Focus Groups/Small Group Discussion	3,600	1	3,600	1.5	5,400
Observation Screening	720	1	720	.08 (5 minutes)	58
Observations	144	1	144	2	288
Total			20,464		7,394

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The collections we have conducted under this generic collection of information have informed and helped us better understand stakeholder perceptions, attitudes, motivations, and behaviors to help us improve our communications to them.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: April 4, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07441 Filed 4–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0895]

Agency Information Collection Activities; Proposed Collection; Comment Request; Imports and Electronic Import Entries

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with our imports program.

DATES: Either electronic or written comments on the collection of information must be submitted by June 9, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 9, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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–2023–N–0895 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Imports and Electronic Import Entries.'' Received comments, those filed in a timely manner (see **ADDRESSES**), 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, 240–402–7500.

- 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.govinfo.gov/content/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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Imports and Electronic Import Entries

OMB Control Number 0910–0046—Revision

This information collection supports Agency regulations found in 21 CFR part 1, subparts D (21 CFR 1.70 through 1.81) and E (21 CFR 1.83 through 1.101), governing FDA import activities and related Agency guidance. Specifically, the regulations prescribe the required data elements that respondents must submit when importing, or offering for import, an FDA-regulated article into the United States. Review of the data elements allows FDA to continue to meet its responsibilities pertaining to current submission requirements established by the U.S. Customs and Border Protection (CBP) related to the submission of entry information in using its Automated Commercial Environment (ACE) system, or any CBP-authorized electronic data interchange system. The regulations were recently revised through rulemaking to include data elements associated with import entries for veterinary devices (RIN 0910–AH66).

Respondents (ACE filers) submit important and useful information about FDA-regulated products being imported or offered for import into the United States so that we may effectively and efficiently review products and determine their admissibility. In addition, and as set forth in the regulations, certain product types are subject to additional data elements (for example, 21 CFR 1.77 prescribes additional data elements for radiation-emitting products), as well as those data elements applicable to all products.

The information collection also includes our weekly entry filing program (WEF). More detailed information on Foreign Trade Zones (FTZ)/WEF, is available at *https://www.fda.gov/industry/import-basics/foreign-trade-zonesweekly-entry-filing.* The WEF program allows entry filers to file a single entry estimating the amount of merchandise anticipated to be removed from an FTZ and offered for U.S. consumption during a 7-day period. To participate, we recommend respondents who wish to file a weekly entry of FDA-regulated products with CBP to first request a preliminary assessment from FDA. As part of the assessment, we also recommend submitting specific data elements, as discussed in the assessment. The information helps us appropriately route submissions within the Agency. Information on whether a product is stored or manufactured in the zone is necessary for FDA to determine the applicable admissibility requirements. The FTZ and port information is necessary to ensure that basic requirements in 19 CFR part 146 are met. The importer of record (IOR) and manufacturer FDA establishment identification number information is requested by FDA to expedite the admissibility review. Requests to participate in the WEF process are submitted to the FDA Import Division Office covering the intended port of entry.

The information collection also includes our Import Trade Auxiliary Communication System (ITACS). The ITACS is used by the import trade community and was implemented to improve communication with FDA. By utilizing ITACS, respondents to the information collection have the ability to establish an account and electronically check the status of FDA-regulated entries and lines, submit entry documentation, submit the location of goods availability for those lines targeted for examination by FDA, and check the estimated laboratory analysis completion dates for lines that have been sampled. For further information regarding ITACS, please visit our website at *https://www.fda.gov/industry/import-systems/itacs.*

The information collection also includes burden associated with the use of Form FDA 766 entitled ''Application for Authorization to Relabel or Recondition Non-compliant Articles'' as the collection instrument for 21 CFR 1.95. Form FDA 766 facilitates collection of information associated with certain general enforcement provisions for importing FDA-regulated articles into the United States. The form is available at *https://www.fda.gov/industry/actions-enforcement/reconditioning.*

Relatedly, we are revising the information collection to include burden associated with the use of proposed electronic Form FDA 5054 entitled ''New Inquiry Form—Import Compliance Branch.'' Currently, general drug import inquiries are submitted by email in random format. We have developed Form FDA 5054 with accompanying instructions to facilitate responding to drug import inquiries, as well as to track receipts and responses. We have designed the form to interface with current Agency IT systems for optimal utility.

Finally, the information collection includes burden associated with recommendations found in the procedural Agency guidance entitled ''Pre-Launch Activities Importation

Requests (PLAIR),'' (March 2022). Historically, when applicants with a pending new drug application, abbreviated new drug application, or Center for Drug Evaluation and Research-regulated biologics licensing application (information collection associated with these submissions is currently approved under OMB control number 0910–0001) sought to import unapproved finished dosage form drug products into the United States in preparation for market launch, we considered such requests, informally referred to as ''PLAIRs,'' on a case-by-case basis. Since implementing the PLAIR program in 2013, interest continues to increase, so we have developed a more formalized process as discussed in the guidance document. The guidance is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/pre-launch-activities-importation-requests-plair* and was issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment on Agency guidance documents at any time. The guidance document instructs that PLAIR submissions should be made using the applicant's letterhead and submitted by email to *CDER-OC-PLAIR@fda.hhs.gov* in a file compatible with Portable Document Format (PDF).

Description of Respondents: Respondents to the information collection are domestic and foreign importers of FDA-regulated articles being imported or offered for import into the United States and entry filers who submit import entries on behalf of these importers.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]

21 CFR part 1, subpart D	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Importers submission of data elements (preparing the required information).	95,307	10.14	967,069	0.05576 (3.346 minutes)	53,924
Entry filers (unique lines only)	4,133	10,804	44,656,657	0.04466 (2.68 minutes)	1,994,336
WEF participants	10	1	10	0.87 (52 minutes)	9
ITACS; creation of new account	500	1	1	0.5 (30 minutes)	250
Form FDA 766 as required under 21 CFR 1.95	324	1	324	0.25 (15 minutes)	81
Form FDA 5054	1,000	1	1,000	.083 (5 minutes)	83
Submissions in accordance w/PLAIR	80	4	320	16	5,120
Total			45,625,381		2,053,803

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded to reflect electronic submission data.

Table 1, rows 1 and 2, reflects annual average filing submissions through December 31, 2022. An IOR may be the owner or purchaser of the article being imported or offered for import, or a customs broker licensed by CBP under 19 U.S.C. 1641 who has been designated by the owner, purchaser, or consignee to file the import entry. There is only one IOR per entry.

As reflected in table 1, row 3, we estimate 10 respondents will submit WEFs. Persons wishing to file weekly entries of FDA-regulated products are encouraged to provide the information identified so that FDA can conduct a preliminary admissibility assessment of the associated products and firms. This submission typically contains the information FDA requests for multiple products (*i.e.,* the respondent wishes to file weekly entries for multiple products and submits the information for each product together). Generally, submissions involving multiple products are significantly less burdensome on a per-product basis. Depending on the product and scale of submission, this estimated burden may fluctuate. Filers submitting in ACE typically use software that is developed to specifically automate and expedite the entry submission process and allows filers to automatically upload entry information. While the WEF submission includes an initial one-time submission burden, we expect reduced burden over a long term because filers can subsequently submit one entry covering multiple withdrawals from the FTZ in any given 7-day period.

As reflected in table 1, row 4, we estimate that 500 new ITACS accounts will be created annually. Since developing and implementing ITACS, we have adjusted this estimate downward to reflect the transition from initial program interest to average annual maintenance-level numbers.

As reflected in table 1, row 5, we estimate the submission of 324 Forms FDA 766 in conjunction with FDA-regulated products. This figure is based on Agency import data and our experience with the information collection. We assume it takes respondents 15 minutes to complete and submit Form FDA 766. Although current instructions communicate that four copies be submitted (one copy to be returned to respondent), we plan to update the form to reduce this number.

Based on inquiries already received and processed by FDA, we anticipate 1,000 respondents will annually submit Form 5054 pertaining to general drug import information, as reflected in table 1, row 6.

As shown in table 1, row 7, we estimate 80 respondents to the PLAIR program annually, an increase of 10 since our last evaluation of the information collection. At the same time, we estimate one fewer submission per respondent to correspond with a decrease in submissions received by FDA.

Cumulatively these changes and adjustments result in an increase of 3,067,493 responses and 137,719 hours annually.

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07442 Filed 4–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ryan White HIV/AIDS Program Parts A and B Unobligated Balances and Rebate Addendum Tables, OMB No. 0906–0047—Revision

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 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 May 10, 2023.

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 Samantha Miller, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 594–4394.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ryan White HIV/AIDS Program Parts A and B Unobligated Balances and Rebate Addendum Tables—OMB No. 0906–0047—Revision.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states and territories, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people diagnosed with HIV. Nearly two-thirds of RWHAP clients (patients) live at or below 100 percent of the federal poverty level and approximately three-quarters of RWHAP clients are racial and ethnic minorities. Since 1990, RWHAP has developed a comprehensive system of HIV service providers who deliver high quality direct health care and support services to over half a million people diagnosed with HIV—more than 50 percent of all people diagnosed with HIV in the United States.

Grant recipients funded under parts A and B of RWHAP (codified under title XXVI of the Public Health Service Act) are required to report financial data to HRSA annually in their Federal Financial Report (FFR SF–425). In addition to the FFR, RWHAP parts A and B grant recipients are required to identify and report the unobligated balance (UOB) by itemized subprogram/funding stream source (Formula, Minority AIDS Initiative (MAI), AIDS Drug Assistance Program (ADAP), etc.). As of April 22, 2021, grant recipients must submit the subprogram breakdown of the UOB on their FFR in the Payment Management System. Grant recipients are also required to specify RWHAP Rebate Funding received in the fiscal year in the UOB table. HRSA uses the UOB and rebate addendum financial information to determine formula funding as directed by the RWHAP statute. These data were previously collected when grant recipients submitted their annual FFR SF–425 in hard copy only to HRSA, which then combined the FFR SF–425 data with the UOB and rebate addendum tables that are submitted by recipients on a suggested format through the HRSA Electronic Handbook (EHBs). The purpose of this financial data collection is to streamline the process for the grant recipients by collecting financial information in the same location and at the same time. The FFR SF–425 is now completed in the Payment Management System and is exported automatically to the HRSA EHBs when the recipient completes the FFR. The UOB tables for RWHAP parts A and B will continue to collect the same information with the addition of one column on prior year (fiscal year (FY) 20XX) information. This one column will impact seven recipients out of 111 RWHAP part A and part B recipients in total, annually. Recipients that need to submit data to the added column need to complete one or several fields at the most. (See tables below for reference). The UOB and rebate addendum data tables will be collected in the HRSA EHBs below the FFR SF–425 control number and the Paperwork Burden Statement.

A 60-day notice published in the **Federal Register** on January 24, 2023, 88 FR 4190–4192. There were no public comments.

Need and Proposed Use of the Information: RWHAP part A and part B recipients complete the UOB and rebate addendum tables as a part of their FFR SF–425 submission. This process has decreased administrative burden, increased transparency, and improved the quality of data submitted to HRSA. These UOB and rebate addendum tables are essential for allowing HRSA to ensure that RWHAP recipients are meeting the goal of accountability to Congress, clients, advocacy groups, and the general public. Information provided in the UOB and rebate addendum tables is critical for HRSA, states and territories, local clinics, and individual providers to evaluate the effectiveness of these programs.

Likely Respondents: HRSA RWHAP parts A and B recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Part A UOB Table	52	1	52	0.5	26
Part B UOB Table	59	1	59	0.5	29.5
Total	111		111		55.5

Note: Beginning in July 2021, information related to prior year UOB was collected in addition to the existing data in the approved ICR. The additional information collected does not impact all 111 respondents; in FY 2020, seven respondents reported prior year UOB, which equates to only 6 percent of respondents impacted. The estimated burden to potentially impacted respondents is negligible. See the tables below for comparison of the added data point for prior year UOB. No changes were made to the approved ICR for the RWHAP part B rebate table.

2019 APPROVED ICR TABLE FOR RWHAP PART A

UOB of federal funds by subprogram			
Category	Federal funds authorized	Unexpended carryover	Current year (FY 20XX)
Part A Formula Part A Supplemental Part A MAI			

REVISED RWHAP PART A TABLE

UOB of federal funds by subprogram				
Category	Federal funds authorized	Unexpended carryover	Prior year (FY 20XX)	Current year (FY 20XX)
Part A Formula Part A Supplemental Part A MAI				

2019 APPROVED ICR TABLE FOR RWHAP PART B

UOB of federal funds by subprogram			
Category	Federal funds authorized	Unexpended carryover	Current year (FY 20XX)
Part B Base Part B ADAP Part B Emerging Communities Part B MAI Part B ADAP Supplemental Part A Transfer			

REVISED RWHAP PART B TABLE

UOB of federal funds by subprogram				
Category	Federal funds authorized	Unexpended carryover	Prior year (FY 20XX)	Current year (FY 20XX)
Part B Base Part B ADAP Part B Emerging Communities. Part B MAI Part B ADAP Supplemental. Part A Transfer				

RWHAP PART B REBATES TABLE

Ryan White rebate funding	
Total Rebates Available. Expended Rebate Amount Unexpended Rebate Expended Rebate Amount to be Used to Reduce UOB	

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–07410 Filed 4–7–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Population-based Research in Vector-borne Disease.

Date: April 17, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07404 Filed 4–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: May 2–3, 2023.

Closed: May 02, 2023, 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 620/630, 35 Convent Drive, Bethesda, MD 20892.

Closed: May 03, 2023, 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 620/630, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: John J. O'Shea, MD, Scientific Director of Intramural Research, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Bethesda, MD 20892, (301) 496–2612, *osheaj@mail.nih.gov.*

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* and the NIH testing and assessment web page at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/visitor-testing-requirement.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx.* Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up to date guidance as the meeting date approaches.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07403 Filed 4–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of this meeting will be closed to the public in accordance with

the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: May 9, 2023.

Closed: 10:00 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Open: 11:00 a.m. to 3:30 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Conference Rooms A, B & C, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Ranga V. Srinivas, Ph.D., Acting Executive Secretary, National Advisory Council, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism, National Cancer Advisory Board, and National Advisory Council on Drug Abuse.

Date: May 10, 2022.

Open: 10:00 a.m. to 3:30 p.m.

Agenda: Presentation of NIAAA, NCI, and NIDA Director's Update, Scientific Reports, and other topics within the scope of the Collaborative Research on Addiction at NIH (CRAN).

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Conference Rooms A, B & C, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Ranga V. Srinivas, Ph.D., Acting Executive Secretary, National Advisory Council, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@dea.nci.nih.gov.*

Susan Weiss, Ph.D., Director, Division of Extramural Research, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, NSC, Room 5274, Bethesda, MD 20892, 301–443–6487, *sweiss@nida.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://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/*. Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information, please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx*.) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up to date guidance as the meeting date approaches.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: April 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07439 Filed 4–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; 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 Board of Scientific Counselors Chairs Meeting, Office of the Director, National Institutes of Health.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Scientific Counselors Chairs Meeting, National Institutes of Health.

Date: May 12, 2023.

Time: 12:00 p.m. to 3:00 p.m., EST.

Agenda: The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work.

Place: National Institutes of Health, 1 Center Drive, Building 1, Room 160, Bethesda, MD 20892 (Zoom Meeting).

This meeting is a virtual meeting via Zoom and can be accessed at: *https://nih.zoomgov.com/j/1605138302?pwd=b0VTMUhtSnBzOE5kcTJuSTR5akpYQT09.*

Meeting ID: 160 513 8302.

Passcode: 183436.

One tap mobile

+16692545252,,1605138302#,,,,*183436# US (San Jose)

+16468287666,,1605138302#,,,,*183436# US (New York)

Dial by your location:

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

+1 551 285 1373 US

+1 669 216 1590 US (San Jose)

Meeting ID: 160 513 8302.

Passcode: 183436.

Find your local number: https://nih.zoomgov.com/u/acYh8huRe6.

Contact Person: Margaret McBurney, Management Analyst, Office of the Deputy Director for Intramural Research, National Institutes of Health, 1 Center Drive, Room 160, Bethesda, MD 20892–0140, (301) 496–1921, *mmcburney@od.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 Office of Intramural Research home page: *http://sourcebook.od.nih.gov/.*

Dated: April 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07464 Filed 4–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: 2023–2026 National Survey on Drug Use and Health: Methodological Field Tests (OMB No. 0930–0290)—Extension

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to provide estimates of substance use and mental illness at the national, state, and substate levels. NSDUH data also help to identify the extent of substance use and mental illness among different subgroups, estimate trends over time, and determine the need for treatment services. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

Methodological tests will continue to examine the feasibility, quality, and efficiency of new procedures or revisions to existing survey protocol. Specifically, the tests will measure the reliability and validity of certain questionnaire sections and items through multiple measurements on a set of respondents; assess new methods for gaining cooperation and participation of respondents with the goal of increasing response and decreasing potential bias in the survey estimates; and assess the impact of new sampling techniques and technologies on respondent behavior and reporting. Research will involve focus groups, cognitive laboratory testing, and field tests. Prior to each methodological test, a separate clearance memo (under this generic clearance) will be presented to OMB for review.

These methodological tests will continue to examine ways to increase data quality, lower operating costs, and gain a better understanding of sources and effects of non-sampling error on NSDUH estimates. Particular attention will be given to minimizing the impact of design changes so survey data can be comparable over time. If findings suggest changes that might lead to improvements to the study, current procedures or data collection instruments may be revised.

The number of respondents to be included in each field test will vary, depending on the nature of the subject being tested and the target population. However, the total estimated response burden is 14,801 hours. The exact number of subjects and burden hours for each test are unknown at this time, but will be clearly outlined in each individual submission. These estimated burden hours over three years are as follows:

ESTIMATED TOTAL BURDEN FOR NSDUH METHODOLOGICAL FIELD TESTS

Activity	Number of respondents	Responses per respondent	Total number of responses	Average burden per response	Total burden (hrs.)
a. Focus Groups	378	1	378	2.0 hrs	756
b. Respondent screening for a	473	1	473	0.083 hr	39
c. Cognitive testing	420	1	420	1.0 hr	420
d. Respondent screening for c	800	1	800	0.083 hr	66
e. Field Tests	12,000	1	12,000	1.0 hr	12,000
f. Household screening for e	16,200	1	16,200	0.083 hr	1,345
g. Screening Verification for e	804	1	804	0.067 hr	54
h. Interview Verification for e	1,800	1	1,800	0.067 hr	121
Total	32,875		32,875		14,801

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–07407 Filed 4–7–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention National Advisory Council; Correction

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a document in the **Federal Register** of April 5, 2023, announcing the meeting of the SAMHSA Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) of April 25, 2023. The document contained incorrect date in the **DATES** section.

FOR FURTHER INFORMATION CONTACT: Michelle Mcvay, *michelle.mcvay@samhsa.hhs.gov.* Telephone number (240) 276–0446.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 5, 2023, in FR Doc. 2023–07033, on page 20175, in the second column, correct the **DATES** caption to read:

DATES: April 25, 2023, 9:00 a.m. to approximately 4:00 p.m. EDT, Open

Dated: April 5, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023–07463 Filed 4–7–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0008]

Agency Information Collection Activities: Telecommunications Service Priority System

AGENCY: Emergency Communications Division, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension, 1670–0005.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on approved information collection request (ICR) OMB 1670–0005, Telecommunications Service Priority (TSP) System.

DATES: Comments are encouraged and will be accepted until June 9, 2023.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be sent to *tsp@cisa.dhs.gov.*

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # CISA–2022–0008. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: TSP is authorized by E.O. 13618 and 47 CFR part 64. The Emergency Communications Division (ECD) of the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA), uses the TSP Program to authorize national security and emergency preparedness organizations to receive priority treatment for vital voice and data circuits or other telecommunications service, under National Security or Emergency Preparedness telecommunications (NS/EP). The TSP Program provides service vendors a Federal Communications Commission (FCC) mandate to prioritize requests by identifying those services critical to national security and emergency preparedness. A TSP assignment ensures that it will receive priority attention by the service vendor before any non-TSP service.

Four broad categories serve as guidelines for determining whether a circuit or telecommunications service is eligible for priority provisioning or restoration. TSP service user organizations may be in the Federal, State, local, or tribal government, critical infrastructure sectors in industry, non-profit organizations that perform critical NS/EP functions, or foreign governments. Typical TSP service users are responsible for the command-and-control functions critical to management of and response to NS/EP situations, particularly during the first 24 to 72 hours following an event.

Information to request a priority, to obtain a sponsor for requesting a priority, and for other administrative requirements of the program is required from any person or organization having an NS/EP service for which they wish priority restoration from the vendor providing the service. Information is also required to allow immediate installation of a new service to support NS/EP requirements. Information is required from vendors to allow the ECD to track and identify the telecommunications services that are being provided priority treatment.

The forms used are the SF314 (Revalidation for Service Users), SF315 (TSP Request for Service Users), SF317 (TSP Action Appeal for Service Users), SF318 (TSP Service Confirmation for Service Vendors), and the SF319 (TSP Service Reconciliation for Service Vendors). The SF314 is for users to request that their existing TSP codes be revalidated for three more years. The SF315 is used to request restoration and/or provisioning for an organization's critical circuits. The SF317 is for organizations to appeal the denial of TSP restoration and/or provisioning. The SF318 is for service vendors to provide circuit ID information associated with TSP codes they've been given by their customers. The SF319 is for service vendors to provide data to the program office in order to reconcile their TSP data with the TSP database. Participants request TSP priorities via email in order to reduce the use of the paper forms. The paper forms will also be available for download via the CISA website.

There have been no changes to the information being collected. The annual government cost has increased due to increased wage rates/compensation factors and IT system security requirements. This is a renewal of an information collection.

The Office of Management and Budget is particularly interested in comments which:

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 estimate 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; and

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 submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Telecommunications Service Priority System.

OMB Number: 1670–0005.

Frequency: Information is required when an organization decides they want TSP priority on their critical circuits. These requests are situational and made at the discretion of the telecommunications user therefore the program office is not able to determine when or how often such requests will occur.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector.

Number of Respondents: 25,911.

Estimated Time per Respondent: 0.28 hours.

Total Annualized Burden Hours: 7,165 hours.

Total Annualized Respondent Opportunity Cost: $372,408.

Total Annualized Government Cost: $1,145,896.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2023–07457 Filed 4–7–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7076–N–09; OMB Control No. 2577–0229]

60-Day Notice of Proposed Information Collection: Application for Resident Opportunity and Self Sufficiency (ROSS) Grant Forms

AGENCY: Office of Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 9, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 for Colette (this is not a toll-free number) or email at *PaperworkReductionActOffice@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Leea Thornton, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202–402–6455. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for the Resident Opportunities and Self Sufficiency (ROSS) Program.

OMB Approval Number: 2577–0229.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52768.

Description of the Need for the Information and Proposed Use: The forms are used to evaluate capacity and eligibility of applicants to the ROSS program.

Respondents: 350.

Estimated Number of Respondents: 350.

Estimated Number of Responses: 350.

Frequency of Response: 1.

Average Hours per Response: 4.5.

Total Estimated Burdens: 1,575.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Steven Durham,

Acting Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2023–07424 Filed 4–7–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–06]

60-Day Notice of Proposed Information Collection: Youth Homelessness Demonstration Application; OMB Control No.: 2506–0210

AGENCY: The Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 9, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 for Colette (this is not a toll-free number) or email at *PaperworkReductionActOffice@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20410; email Norm Suchar at *Norman.a.suchar@hud.gov;* telephone 202–402–5015 This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call,

please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Youth Homelessness Demonstration Program.

OMB Approval Number: 2506–0210.

Type of Request: Revision of a currently approved collection.

Form Number: Youth Homelessness Demonstration Application (all parts), SF 424, HUD–2993, HUD–2880, SF–LLL.

Description of the need for the information and proposed use: The information to be collected will be used to rate applications, to determine eligibility for the Youth Homelessness Demonstration Program and establish grant amounts. Applicants, which must be state or local governments, or nonprofit organizations will respond to narrative prompts to demonstrate their experience and expertise in providing housing and services to youth experiencing homelessness and to describe their intended program design, that will address the needs for housing and services that will result in housing placement and sufficient income to ensure housing is maintained once assistance discontinues.

Respondents: Continuum of Care collaborative applicants, which can be States, local governments, private nonprofit organizations, public housing authorities, and community mental health associations that are public nonprofit organizations.

Estimated Number of Respondents: 150 applicants, 25 sites submitting project applications and plans.

Estimated Number of Responses: 150 site selection applications, 125 project applications, 25 coordinated community plans.

Frequency of Response: 1 site selection application per applicant, 5 project applications per site, 1 coordinated community plan per site.

Average Hours per Response: Each activity also has a unique associated number of hours of response, ranging from 15 minutes to 240 hours.

Total Estimated Burdens: The total number of hours needed for all reporting is 11,066.79 hours.

Submission documents / Information collection	Number of respondents	Responses frequency (average)	Total annual responses	Burden hours per response	Total hours	Hourly rate	Burden cost per instrument
Component 1. Site Selection							
YHDP Site Selection Narratives	150	1	150	24	3,600.00	$53.67	$193,212.00
SF–424- Application for Federal Assistance	150	1	150	0.5	75	53.67	4,025.25
OMB–SF–LLL-Disclosure of Lobbying Activities (where applicable)	10	1	10	0.17	1.7	53.67	91.24
Nonprofit Certification	150	1	150	0	0	53.67	0.00
Organizations Code of Conduct	150	1	150	0	0	53.67	0.00
Youth Action Board Participation Letter	150	1	150	0.5	75	53.67	4,025.25
Public Child Welfare Agency Commitment Letter	150	1	3	0.5	75	53.67	4,025.25
Acknowledgement of Application Receipt (HUD–2993) (only applicants granted waiver to submit a paper application)	10	1	2	0.17	0.34	53.67	18.25
Subtotal	150		150		3,827.04		205,397.24
Component 2. Project Application							
YHDP Project Application Questions	25	5	125	8	1,000.00	53.67	53,670.00
SF–424- Application for Federal Assistance	25	5	125	0.08	10	53.67	536.70
HUD–2880- Applicant/Recipient Disclosure/Update Report (2510–0011)	25	5	125	0.17	21.25	53.67	1,140.49
OMB–SF–LLL—Disclosure of Lobbying Activities (where applicable)	1	5	5	0.17	0.85	53.67	45.62
Subtotal	25		125		1,032.10		55,392.81
Component 3. Coordinated Community Plan							
YHDP Plan Narrative	25	1	25	240	6,000.00	53.67	322,020.00
Logic Model	25	1	25	8	200	53.67	10,734.00
Certification of Consistency with the Consolidated Plan (HUD–2991)	25	1	25	0.17	4.25	53.67	228.10
Subtotal	25	1	25	248.17	6,204.25		332,982.10
Total Application Collection	150		300		11,063.39		593,772.15

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2023–07421 Filed 4–7–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0056; FXIA16710900000–234–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by May 10, 2023.

ADDRESSES: *Obtaining Documents:* The applications, supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2023–0056.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2023–0056.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2023–0056; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Nashville Zoo at Grassmere, Nashville, TN; Permit No. PER1809890

The applicant requests a permit to export two male captive-bred blue-billed curassows (*Crax alberti*) to Assiniboine Park Zoo, Winnipeg, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Smithsonian National Zoo and Conservation Biology Institute, Washington DC; Permit No. PER1992989

The applicant requests a permit to import biological samples from salvaged specimens of roseate terns (*Sterna dougallii dougallii*) from Areia Branca, Sergipe, Brazil, for the purpose of scientific research. This notification is for a single import.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

- Arthur S. Newcombe, South Miami, FL; Permit No. 11665D
- Amy C. Evans, Madera, CA; Permit No. 33093D
- Ryan James Combs, Peoria, AZ; Permit No. PER2208121
- James Lee Combs, Peoria, AZ; Permit No. PER2209131
- Colter Lee Combs, Peoria, AZ; Permit No. PER2209279
- Jamie Marie Combs-Hunter, Peoria, AZ; Permit No. PER2209312

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2023–07443 Filed 4–7–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Pyramid Lake Paiute Tribe and the State of Nevada)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, and the State of Nevada.

DATES: The extension takes effect on April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation and the State of Nevada have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to February 23, 2025. This publication provides notice of the new expiration date of the compact.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2023–07416 Filed 4–7–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500170073; F–86061, F–16298, F–16299, F–16301, AA–61299, F–16304, F–85667, AA–61005, F–86064, F–85702, AA–66614]

Extension of the Opening Order in Public Land Order No. 7899 and Addressing Pending Public Land Orders in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended opening order.

SUMMARY: For orderly management of the public lands subject to Public Land Order 7899, published on January 19, 2021, extended by 60 days on February 18, 2021, and extended for two years on April 16, 2021, the lands described therein shall not be opened until August 31, 2024. This notice also clarifies that the BLM has not published opening orders for PLOs 7900, 7901, 7902, and 7903, and therefore they continue to have no effective date.

DATES: This Order takes effect on April 10, 2023.

FOR FURTHER INFORMATION CONTACT: David V. Mushovic, Bureau of Land Management (BLM) Alaska State Office, 222 West Seventh Avenue, Mailstop #13, Anchorage, AK 99513–7504; telephone: 907–271–4682; or email: *dmushovi@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Public Land Order (PLO) No. 7899, which would revoke withdrawals established under the Alaska Native Claims Settlement Act (ANCSA) section 17(d)(1) on lands in the Kobuk-Seward Peninsula planning area, was signed on January 11, 2021, and published in the **Federal Register** on January 19, 2021 (86 FR 5236). PLO Nos. 7900, 7901, 7902, and 7903, which would revoke withdrawals established under ANCSA section 17(d)(1) on lands in the Ring of Fire, Bay, Bering Sea-Western Interior, and East Alaska planning areas, respectively, were signed on January 15 and 16, 2021, but were never published in the **Federal Register** and therefore do not have an opening date. The Department of the Interior (Department) deferred the opening of the lands

described in PLO No. 7899 by 60 days on February 18, 2021, to provide an opportunity to review the decisions and ensure the orderly management of the public lands (86 FR 10131). Subsequently, the Department identified certain procedural and legal defects in the decision-making processes for PLO Nos. 7899, 7900, 7901, 7902, and 7903 (collectively, ''the PLOs''), including insufficient analysis under the National Environmental Policy Act (NEPA), failure to follow section 106 of the National Historic Preservation Act (NHPA), possible failure to adequately evaluate impacts under section 7 of the Endangered Species Act (ESA), and failure to secure consent from the Department of Defense (DOD) with regard to lands under DOD administration as required by section 204(i) of FLPMA (43 U.S.C. 1714(i)). Due to these identified deficiencies, on April 16, 2021, the Department—relying on its inherent authority to revisit decisions based on identified legal errors—deferred the opening of lands under PLO No. 7899 and the publication of PLO Nos. 7900, 7901, 7902, and 7903, in order to address the deficiencies in the decision-making processes that led to the PLOs (86 FR 20193).

Due to the five-year statutory limit on the application period for allotment selections by Alaska Native Vietnam-era Veterans under section 1119 of the Dingell Act, the BLM prioritized completion of an environmental assessment to ensure legal compliance for opening lands within the areas affected by PLO Nos. 7899, 7900, 7901, 7902, and 7903. The BLM completed its process on April 21, 2022, and the Secretary issued Public Land Order No. 7912 to open lands within PLO Nos. 7899, 7900, 7901, 7902, and 7903 to allotment selection under section 1119 of the Dingell Act on August 15, 2022 (87 FR 50202).

On August 18, 2022, the BLM published in the **Federal Register** a notice of intent to prepare an environmental impact statement to consider the impacts of opening lands subject to PLO Nos. 7899, 7900, 7901, 7902, and 7903 within the Bay, Bering Sea-Western Interior, East Alaska, Kobuk-Seward Peninsula, and Ring of Fire Planning Areas (87 FR 50875). This process is intended to address the remaining legal defects in the decision-making processes for PLO Nos. 7899, 7900, 7901, 7902, and 7903 and to ensure compliance with the requirements of NEPA, section 204(i) of FLPMA, section 106 of the NHPA, section 7 of the ESA, and section 810 of the Alaska National Interest Lands Conservation Act. Due to the scope and complexity of the issues being analyzed in the EIS, the BLM will not be ready to reach a decision by April 16, 2023 and, as a result, will defer the opening order to August 31, 2024 to allow the BLM to complete the analysis and consultation required to address the legal defects identified in the decision-making processes for PLO Nos. 7899, 7900, 7901, 7902, and 7903.

For the orderly administration of the public lands and in accordance with 43 CFR 2091.6, this Order amends the opening order contained in Paragraph 3 of PLO 7899 (86 FR 5236) as follows:

At 8 a.m. Alaska Time on August 31, 2024, the lands described in paragraph 1 of PLO 7899 (86 FR 5236) shall be open to all forms of appropriation under the general public land laws, including location and entry under the mining laws, leasing under the Mineral Leasing Act of February 25, 1920, as amended, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands referenced in paragraph 1 of PLO 7899 (86 FR 5236), under the general mining laws prior to the date and time of revocation remain unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2023–07420 Filed 4–7–23; 8:45 am]

BILLING CODE 4331–10–P

INTERIOR DEPARTMENT

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Ione Band of Miwok Indians of California Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On March 22, 2023, the Chairman of the National Indian Gaming Commission approved Ione Band of Miwok Indians of California Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at *info@nigc.gov.*

National Indian Gaming Commission.

Dated: April 4, 2023.

Rea Cisneros,

Acting General Counsel.

March 30, 2023
VIA EMAIL
Sara Dutschke
Chairperson, Ione Band of Miwok Indians of California
9252 Bush Street
Plymouth, California, 95669
Re: Ione Band of Miwok Indians of California Amended Gaming Ordinance

Dear Chairperson Dutschke:

This letter responds to the January 27, 2023 submission on behalf of the Ione Band of Miwok Indians (''Tribe'') informing the National Indian Gaming Commission that the Tribe amended its gaming ordinance. The amendments to the tribal gaming code were intended to eliminate the board of directors, thereby eliminating conflicts with a later enacted statute and to address the most recent NIGC regulations and reflect the compact that the Tribe entered into with the State in 2020. Thank you for bringing these amendments to our attention. The amended ordinance, as noted above, is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC's regulations. If you have any questions or require anything further, please contact Rachel Hill at (918) 581–6214.

Sincerely,

E. Sequoyah Simermeyer, Chairman

[FR Doc. 2023–07399 Filed 4–7–23; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Agricultural Recruitment System Forms Affecting Migratory Farm Workers

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, Agricultural Recruitment System Forms Affecting Migratory Farm Workers.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 9, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Laura Tramontana by telephone at 202-693–0383 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *NMA@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C 4510, 200 Constitution Avenue NW, Washington, DC 20210; by email: 202–693–0383; or by fax: 202–693–3890.

FOR FURTHER INFORMATION CONTACT: Laura Tramontana by telephone at 202–693–0383 (this is not a toll-free number) or by email at *NMA@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

State Workforce Agencies (SWAs) are required by Federal regulations at 20 CFR 653.500 to participate in the intrastate and interstate clearance system for the orderly recruitment and movement of agricultural workers. Regulations 653.501(a),(b),(c) and (d) enumerate the contents of these orders. The Employment and Training Administration (ETA) created the Agricultural Clearance Order (Form ETA–790) for the recruitment of workers beyond the local commuting area (20 CFR 653.501). Per 29 CFR 95.53(b), the record retention for Form ETA–790 is three years from the date of submission of the final expenditure report as authorized by DOL.

Under this ICR, ETA is proposing to renew the current Agricultural Clearance Order Form ETA–790 and the Agricultural Clearance Order Form ETA–790B, without changes. Employers and SWAs use these forms to process non-criteria clearance orders, which are not placed in connection with the H–2A visa program. Employers seeking to use non-criteria clearance orders to recruit U.S. workers to perform farmwork on a temporary, less than year-round basis must: (1) complete Form ETA–790; (2) complete Form ETA–790B; and (3) submit both forms to the SWA.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0134.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Agricultural Recruitment System Forms Affecting Migratory Farm Workers.

Form: ETA–790 and ETA–790B.

OMB Control Number: 1205–0134.

Affected Public: Individuals or Households; State, Local, and Tribal Governments; Private Sector.

Estimated Number of Respondents: 852.

Frequency: Varies.

Total Estimated Annual Responses: 852.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 2,981.84 hours.

Total Estimated Annual Other Cost Burden: $0.00.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–07430 Filed 4–7–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fidelity Bonding Issuance

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 10, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is authorized under Sections 169 and 185 of Title I of the Workforce Innovation and Opportunity Act (WIOA). The Federal Bonding Program provides fidelity bonds protecting employers who hire justice-involved individuals. Although the bonds have mainly been used for hires of individuals with criminal records, any job applicant is eligible for bonding services. This ICR contains the Fidelity Bonding Issuance Form that puts the bonding agreement into effect. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 21, 2022 (87 FR 57720).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Fidelity Bonding Issuance.

OMB Control Number: 1205–0541.

Affected Public: Individuals or Households; State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 8,000.

Total Estimated Number of Responses: 32,000.

Total Estimated Annual Time Burden: 2,400 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 4, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–07431 Filed 4–7–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Contingent Worker Supplement to the Current Population Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 10, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The proposed Contingent Work Supplement (CWS) to the Current Population Survey questions focus on contingent workers—those who do not expect their jobs to last or who report that their jobs are temporary—and workers in alternative employment arrangements, such as independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms. Although the CWS was fielded 5 times from 1995 to 2005 and then in May 2017, there have been no

comparable and reliable statistics in recent years to show how the number and characteristics of these workers are changing over time. The July 2023 CWS will allow researchers and policy makers to evaluate how the number and characteristics of these workers has evolved. BLS is proposing to add new questions and remove outdated questions to the CWS. New questions on task-based and app-based work are designed to provide insight into additional work arrangements like digital labor platform work. This new content replaces the 2017 items on electronically-mediated employment. The 2023 supplement will also ask about work arrangements on second jobs for multiple jobholders. For additional substantive information about this ICR see the related notice published in the **Federal Register** on December 23, 2022 (87 FR 78999).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–BLS.

Title of Collection: Contingent Worker Supplement to the Current Population Survey.

OMB Control Number: 1220–0153.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 47,000.

Total Estimated Number of Responses: 47,000.

Total Estimated Annual Time Burden: 4,700 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–07432 Filed 4–7–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Report on Occupational Employment and Wages

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 10, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Employment and Wage Statistics (OEWS) survey is a Federal/State establishment survey of wage and salary workers designed to produce data on current detailed occupational employment and wages for each Metropolitan Statistical Area and Metropolitan Division as well as by detailed industry classification. OEWS survey data assists in the development of employment and training programs established by the Perkins Vocational Education Act of 1998 and the Workforce Investment Act of 1998. Respondents include private establishment, schools, hospitals, State and Local Government. For additional substantive information about this ICR see the related notice published in the **Federal Register** on November 9, 2022 (87 FR 67716).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The current approval is scheduled to expire on May 31, 2023.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–BLS.

Title of Collection: Report on Occupational Employment and Wages.

OMB Control Number: 1220–0042.

Affected Public: State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits, Private Sector—Not-for-profit institutions.

Total Estimated Number of Respondents: 255,362.

Total Estimated Number of Responses: 255,362.

Total Estimated Annual Time Burden: 131,688 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–07429 Filed 4–7–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, April 27, 2023. This meeting will be held virtually.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from

various sectors of the U.S. economy, including the labor, business, research, academic, and government communities. The Committee advises on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The agenda for the meeting is as follows:

12:00 p.m. Commissioner's Welcome and Review of Agency Developments
12:30 p.m. Current Population Survey (CPS) Work Schedules
1:30 p.m. Break
1:45 p.m. Wage Record Pilots
2:45 p.m. Peeling back the layers: Understanding BLS price indexes below the headline numbers
3:45 p.m. Discussion of Future Topics and Concluding Remarks
4:00 p.m. Conclusion

The meeting is open to the public. Anyone planning to attend the meeting should contact Ebony Davis, Data Users Advisory Committee, at *Davis.Ebony@bls.gov.* Any questions about the meeting should be addressed to Mrs. Davis. Individuals who require special accommodations should contact Mrs. Davis at least two days prior to the meeting date.

Signed at Washington, DC, this 4th day of April 2023.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2023–07425 Filed 4–7–23; 8:45 am]

BILLING CODE 4510–24–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 23–CRB–0006–AU (Salem Media Group)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt from SoundExchange, Inc., of notice of intent to audit the 2020, 2021, and 2022 statements of account submitted by commercial webcaster licensee Salem Media Group concerning royalty payments it made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB at *https://app.crb.gov* and perform a case search for docket number 23–CRB–0006–AU (Salem Media Group).

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the right is limited by the statutory license in section 114 of the Copyright Act, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 of the Copyright Act allows a service to make necessary ephemeral reproductions to facilitate digital transmission of the sound recordings. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges (Judges). The rates and terms for the section 112 and 114 licenses are codified in 37 CFR parts 380 and 382–84.

As one of the terms for these licenses, the Judges designated SoundExchange, Inc., (SoundExchange) as the Collective, *i.e.,* the organization charged with collecting the royalty payments and statements of account submitted by licensees, including those that operate commercial webcaster services, preexisting satellite digital audio radio services, new subscription services, and those that make ephemeral copies for transmission to business establishments. The Collective is also charged with distributing royalties to copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See* 37 CFR 380.4(d)(1), 382.5(d)(1), 383.4(a), and 384.4(b)(1).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See* 37 CFR 380.6(b), 382.7(b), 383.4(a), and 384.6(b).

On April 4, 2023, SoundExchange filed with the Judges a notice of intent to audit Salem Media Group for the years 2020, 2021, and 2022.[1] The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.6(c) 382.7(c), 383.4(a), and 384.6(c). This notice fulfills that obligation with respect to SoundExchange's April 4, 2023 notice of intent to audit Salem Media Group for the years 2020, 2021, and 2022.

[1] The notice filed April 4 is a corrected version of a notice filed on March 14.

Dated: April 5, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–07472 Filed 4–7–23; 8:45 am]

BILLING CODE 1410–72–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 23–02]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on July 14, 2016. Its charter was most recently renewed for a fourth term on July 7, 2022. The MCC Advisory Council serves MCC solely in an advisory capacity and provides insight regarding innovations in infrastructure, technology, and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders and contributes to MCC's mission—to reduce poverty through sustainable, economic growth.

DATES: Tuesday, April 25, 2023, from 8:30 a.m.–12:00 p.m. EDT.

ADDRESSES: The meeting will be held in a hybrid format, both in-person at 1099 14th Street NW, Suite 700, Washington, DC 20005 and via conference call.

FOR FURTHER INFORMATION CONTACT: Email *MCCAdvisoryCouncil@mcc.gov,* contact Bahgi Berhane at (202) 521–7213, or visit *https://www.mcc.gov/about/org-unit/advisory-council* for more information.

SUPPLEMENTARY INFORMATION:

Agenda. During the Spring 2023 meeting of the MCC Advisory Council members will engage with MCC leadership. Additionally, Advisory Council members will discuss highlights from the Blended Finance/Energy and Climate subcommittee

meetings and provide advice on the compact development process related to MCC's investment strategy in Indonesia.

Public Participation. The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Friday, April 21, 2023, to *MCCAdvisoryCouncil@mcc.gov* to receive instructions on how to attend.

(Authority: Federal Advisory Committee Act, 5 U.S.C. app.)

Dated: April 4, 2023.

Gina Porto Spiro,

Acting Vice President, General Counsel, and Corporate Secretary.

[FR Doc. 2023–07406 Filed 4–7–23; 8:45 am]

BILLING CODE 9211–03–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 10, 17, 24, May 1, 8, 15, 2023. 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.*

PLACE: 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.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 10, 2023

There are no meetings scheduled for the week of April 10, 2023.

Week of April 17, 2023—Tentative

Thursday, April 20, 2023

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Kellee Jamerson: 301–415–7408)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 24, 2023—Tentative

There are no meetings scheduled for the week of April 24, 2023.

Week of May 1, 2023—Tentative

There are no meetings scheduled for the week of May 1, 2023.

Week of May 8, 2023—Tentative

There are no meetings scheduled for the week of May 8, 2023.

Week of May 15, 2023—Tentative

Tuesday, May 16, 2023

9:00 a.m. Update on 10 CFR part 53 Licensing and Regulation of Advanced Nuclear Reactors (Public Meeting) (Contact: Scott Tonsfeldt: 301–415–1783)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, May 18, 2023

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting) (Contact: Jeffrey Lynch: 301–415–5041)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 5, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–07516 Filed 4–6–23; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–130 and CP2023–133; MC2023–131 and CP2023–134]

New Postal Products

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:* April 12, 2023.

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).:* MC2023–130 and CP2023–133; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 112 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 4, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* April 12, 2023.

2. *Docket No(s).:* MC2023–131 and CP2023–134; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 113 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 4, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* April 12, 2023.

[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).

This Notice will be published in the **Federal Register**.

Mallory Richards,

Attorney-Advisor.

[FR Doc. 2023–07434 Filed 4–7–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97250; File No. SR–DTC–2023–004]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Administrative Updates to DTC's Rules, Organization Certificate, and Certain Service Guides

April 4, 2023.

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 March 28, 2023, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(3) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[5] would (i) update the Rules to reflect the change in address of DTC's principal office from 55 Water Street, New York, NY 10041 (''55 Water'') to 140 58th Street, Brooklyn, NY 11220 (''140 Brooklyn'') in DTC's Organization Certificate; (ii) update Rule 2 to remove a reference to 55 Water and provide an email address for Participants and Pledgees to send a copy of any notices to DTC; (iii) update the Important Legal Information disclaimers of DTC's ClaimConnect™ Service Guide, Custody Service Guide, Deposits Service Guide, and Settlement Service Guide to provide more appropriate URL addresses and remove references to DTCC Learning that are no longer applicable, and in the ClaimConnect Service Guide and Settlement Service Guide, delete an errant copyright mark at the end of the DTCC Learning reference; (iv) update DTC's Distributions Service Guide to correct a technical error in an address provided; and (v) update DTC's Deposits Service Guide to change the mailing address for assignments to Cede & Co. from Box 20, Bowling Green Station, New York, NY 10274 (''Bowling Green'') to 570 Washington Blvd., Jersey City, NJ 07310 (''570 Washington''), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would (i) update the Rules to reflect the change in address of DTC's principal office from 55 Water to 140 Brooklyn in DTC's Organization Certificate; (ii) update Rule 2 to remove a reference to 55 Water and provide an email address for Participants and Pledgees to send a copy of any notices to DTC; (iii) update the Important Legal Information disclaimers of DTC's ClaimConnect™ Service Guide, Custody Service Guide, Deposits Service Guide, and Settlement Service Guide to provide more appropriate URL addresses and remove references to DTCC Learning that are no longer applicable, and in the ClaimConnect Service Guide and Settlement Service Guide, delete an errant copyright mark at the end of the DTCC Learning reference; (iv) update DTC's Distributions Service Guide to correct a technical error in an address provided; and (v) update DTC's Deposits Service Guide to change the mailing address for assignments to Cede & Co. from Bowling Green to 570 Washington, as described in greater detail below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), ClaimConnect™ Service Guide, Custody Service Guide, Deposits Service Guide, Distributions Service Guide, and Settlement Service Guide, as applicable, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

Proposed Updates to the Rules

Organization Certificate

DTC proposes to update its Organization Certificate, which currently states that DTC's principal office is located at 55 Water. DTC is vacating 55 Water and relocating its principal office to 140 Brooklyn. As such, DTC would update its Organization Certificate to state 140 Brooklyn as the location of its new principal office.

Rule 2

DTC proposes to revise Section 4 of Rule 2 (Participants and Pledgees), which currently provides that any notice from a Participant or Pledgee to DTC, including any notice under any agreement between DTC and a Participant or Pledgee, shall be sufficiently served on DTC if the notice is in writing and delivered or mailed to DTC at 55 Water. DTC would update this provision by replacing 55 Water with ''its principal office,'' and adding an email address for sending a copy of notices to DTC's General Counsel's Office.

Proposed Updates to DTC Service Guides

ClaimConnect Service Guide, Custody Service Guide, Deposits Service Guide, and Settlement Service Guide

Currently, the Important Legal Information disclaimers at the beginning of the ClaimConnect Service Guide, Custody Service Guide, Deposit Service Guide, and Settlement Service Guide each provide, *inter alia,* information about where to access the applicable service guide (as well as DTC's other service guides) and DTC Important Notices. Those disclaimers also state that inquiries about DTC's service guides should be directed to DTCC Learning at 55 Water and provide a specific email address.

The proposed rule change would update the Important Legal Information disclaimers of each of those four service guides to provide more appropriate URL addresses for accessing the DTC service guides and Important Notices, and to remove references to contacting DTCC Learning because DTCC Learning is no longer a central resource for fielding general inquiries regarding the service guides themselves. Rather, inquiries regarding the services covered in the guides should be directed to the appropriate resources for the related services, as already identified throughout the service guides.

Additionally, in the ClaimConnect Service Guide and Settlement Service Guide, an errant copyright mark at the end of the DTCC Learning reference in the Important Legal Information disclaimer would be deleted.

Distributions Service Guide

Currently, the DTC Distributions Service Guide lists the address of DTC's Central Delivery Department as 570 Washington *Street,* Jersey City, NJ (emphasis added). However, ''Street'' is incorrect—it should be ''Boulevard.'' As such, the proposed rule change would update the address from ''Street'' to ''Blvd.'' and add the corresponding zip code of 07310.

Deposits Service Guide

Currently, the DTC Deposits Service Guide lists the address for assignments to Cede & Co. as Bowling Green. The proposed rule change would update the address from Bowling Green to 570 Washington.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions.[6] DTC believes the proposed rule change is consistent with the Section 17A(b)(3)(F) of the Act.

As described above, the proposed rule change would (i) update DTC's Organization Certificate to reflect the new location of DTC's principal office; (ii) update Rule 2 to remove a reference to 55 Water and to add an email address for sending copies of notices to DTC's General Counsel's Office; (iii) update the Important Legal Information disclaimers of the ClaimConnect Service Guide, Custody Service Guide, Deposits Service Guide, and Settlement Service Guide to provide more appropriate URL addresses for accessing DTC's service guides and Important Notices, and remove obsolete references to DTCC Learning, and in the ClaimConnect Service Guide and Settlement Service Guide, delete an errant copyright mark at the end of the DTCC Learning reference; (iv) update the Distributions Service Guide to make a technical correction to an address provided; and (v) update the Deposits Service Guide to provide the updated mailing address for assignments to Cede & Co.

Each of these proposed changes is intended to provide users of DTC's services with more current and accurate information, thus enabling users to be better informed on how and where they should engage DTC regarding their use of DTC services for securities transactions. Therefore, DTC believes that the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact or impose any burden on competition because, as described above, the proposed rule change simply updates certain contact and reference information and makes technical corrections, none of which should have any competitive impact on Participants or their use of DTC services.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, DTC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on *How to Submit Comments,* available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A).

(f)[8] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and 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–DTC–2023–004 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–DTC–2023–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2023–004 and should be submitted on or before May 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07413 Filed 4–7–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97249; File No. SR–NSCC–2023–004]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Administrative Updates to NSCC's Rules and Certificate of Incorporation

April 4, 2023.

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 March 30, 2023, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(3) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[5] would (i) revise NSCC's Certificate of Incorporation[6] to update NSCC's registered agent upon whom process against NSCC may be served and (ii) update the Rules to provide an email address for sending a copy of any notices to NSCC, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would (i) revise NSCC's Certificate of Incorporation to update NSCC's registered agent upon whom process against NSCC may be served and (ii) update the Rules to provide an email address for sending copies of any notice to NSCC, as described in greater detail below.

Proposed Updates to NSCC's Certificate of Incorporation

NSCC's Certificate of Incorporation currently states that the Secretary of State is NSCC's designated agent for service of process, and that copies of any process against NSCC shall be mailed to NSCC at 55 Water Street, New York, NY 10041 (''55 Water''). With NSCC's upcoming departure from 55 Water, NSCC would amend its Certificate of Incorporation to appoint C T Corporation System as its registered agent upon whom process against NSCC may be served, and provide C T Corporation System's address.

Proposed Updates to Rule 45

NSCC proposes to revise Section 2 of Rule 45 (Notices), which currently provides that any notice from an Interested Person to NSCC shall be sufficiently served on NSCC if the notice is in writing and delivered or mailed to NSCC at its principal place of business. NSCC would update this section to provide an email address for sending a copy of notices to NSCC's General Counsel's Office.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

[5] Capitalized terms not defined herein are defined in NSCC's Rules & Procedures (''Rules''), *available at https://www.dtcc.com/legal/rules-and-procedures.*

[6] NSCC's Certificate of Incorporation is *available at http://www.dtcc.com/legal/rules-and-procedures.*

clearance and settlement of securities transactions.[7] NSCC believes the proposed rule change is consistent with the Section 17A(b)(3)(F) of the Act.

As described above, the proposed rule change would update (i) the NSCC Certificate of Incorporation to change NSCC's registered agent for serving process on NSCC and (ii) Rule 45 to provide an email address for sending a copy of notices to NSCC's General Counsel's Office.

The proposed changes are intended to update information on NSCC's process agent and how to send notices to NSCC. With these changes, NSCC believes its members and the public would be better informed on how best to serve NSCC, which could help promote the prompt and accurate clearance and settlement of securities transactions of those members and the public, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact or impose any burden on competition because, as described above, the proposed rule change simply updates certain process and notice information and should not have any competitive impact on members or their use of NSCC services.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, NSCC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on *How to Submit Comments,* available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and paragraph (f)[9] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and 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–NSCC–2023–004 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–NSCC–2023–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2023–004 and should be submitted on or before May 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07412 Filed 4–7–23; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97247; File No. SR–FICC–2023–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of and Immediate Effectiveness of a Proposed Rule Change To Make Administrative Updates to FICC's GSD Rules, MBSD Rules, EPN Rules, and Restated Certificate of Incorporation

April 4, 2023.

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 March 30, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(3) thereunder.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change [5] would (i) revise FICC's Restated Certificate of Incorporation [6] to update FICC's registered agent upon whom process against FICC may be served and (ii) update the Rules to remove an option for sending notices by facsimile and provide an email address for sending a copy of any notices to FICC, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would (i) revise FICC's Restated Certificate of Incorporation to update FICC's registered agent upon whom process against FICC may be served and (ii) update the Rules to remove an option for sending notices by facsimile and provide an email address for sending a copy of any notices to FICC, as described in greater detail below.

Proposed Updates to FICC's Restated Certificate of Incorporation

FICC's Restated Certificate of Incorporation currently states that the Secretary of State is FICC's designated agent for service of process, and that copies of any process against FICC shall be mailed to FICC at 55 Water Street, New York, NY 10041 (''55 Water''). With FICC's upcoming departure from 55 Water, FICC would amend its Restated Certificate of Incorporation to appoint C T Corporation System as its registered agent upon whom process against FICC may be served, and provide C T Corporation System's address.

Proposed Updates to the Rules

FICC proposes to revise its Rules with respect to how an Interested Person may serve notice on FICC. The Rules currently provide an option for service via facsimile. FICC would revise the Rules to remove the facsimile option and provide for a copy of notices to be sent to FICC's General Counsel's Office via email.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions.[7] FICC believes the proposed rule change is consistent with the Section 17A(b)(3)(F) of the Act.

As described above, the proposed rule change would update (i) FICC's Restated Certificate of Incorporation to change FICC's registered agent for serving process on FICC and (ii) the Rules to remove an option to send notices to FICC via facsimile and provide an email address for sending a copy of notices to FICC's General Counsel's Office.

The proposed changes are intended to update information on FICC's process agent and how to send notices to FICC. With these changes, FICC believes its members and the public would be better informed on how best to serve FICC, which could help promote the prompt and accurate clearance and settlement of securities transactions of those members and the public, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition because, as described above, the proposed rule change simply updates certain process and notice information and should not have any competitive impact on members or their use of FICC services.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, FICC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Securities and Exchange Commission (''Commission'') does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on *How to Submit Comments,* available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [8] of the Act and paragraph (f) [9] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] Capitalized terms not otherwise defined herein are defined in the FICC Government Securities Division Rulebook (''GSD Rules''), the FICC Mortgage-Backed Securities Division Clearing Rules (''MBSD Rules''), and the FICC Mortgage-Backed Securities Division EPN Rules (''EPN Rules,'' and together with the GSD Rules and the MBSD Rules, the ''Rules''), as applicable, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[6] FICC's Restated Certificate of Incorporation is *available at http://www.dtcc.com/legal/rules-and-procedures.*

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

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–FICC–2023–005 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–FICC–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2023–005 and should be submitted on or before May 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07411 Filed 4–7–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97252; File No. SR–IEX–2023–04]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Several IEX Rules To Permit, and in Some Instances Require, Electronic Service and Filing of Documents in Disciplinary and Other Proceedings

April 4, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 3, 2023, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of Act,[4] the Exchange is filing with the Commission a proposed rule change to amend IEX Rules 9.132, 9.133, 9.135, 9.146, 9.321, 9.341, 9.349, 9.351, 9.522, 9.524, 9.525, 9.559 and 9.630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA'').

The Exchange has designated this proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [5] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[6]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rules 9.132, 9.133, 9.135, 9.146, 9.321, 9.341, 9.349, 9.351, 9.522, 9.524, 9.525, 9.559 and 9.630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals in conformity with recent changes by FINRA.[7]

Background

In 2020, following the outbreak of the Coronavirus Disease (''COVID–19''), FINRA temporarily amended certain of its rules, including rules related to the method of service and filing in disciplinary proceedings before the Office of Hearing Officers (''OHO'') and appeals before the National Adjudicatory Council, among other types of administrative proceedings (the ''temporary amendments'').[8] The temporary amendments allowed, and in some instances required, FINRA to serve certain documents on parties by electronic mail (''email'') and required parties to file or serve documents by

[7] *See* Securities Exchange Act Release Nos. 94654 (April 8, 2022), 87 FR 22264 (April 14, 2022) (SR–FINRA–2022–009) (''Electronic Service Amendments Filing'').

[8] *See* Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (SR–FINRA–2020–015) (Notice and immediate effectiveness of filing to temporarily amend certain timing, method of service and other procedural requirements in FINRA Rules during the outbreak of COVID–19). FINRA extended the temporary amendments several times before filing to make certain of the aforementioned amendments permanent. The temporary amendments included rule changes to permit the conduct of virtual hearings (*i.e.,* FINRA Rules 9261 and 9830), which rule changes are not being included in this proposal. Rather, the Exchange is solely copying a subset of rules covered by the temporary amendments as discussed herein.

email, unless the parties agreed to an alternative method of service.[9]

In support of its Electronic Service Amendments Filing, FINRA noted that advances in technology and its availability made filing and service permitted by the temporary amendments more efficient than under FINRA's ''original'' (non-amended) rules.[10] Moreover, FINRA determined that electronic service and filing is beneficial for parties, panelists and FINRA staff.[11] FINRA also noted that the Commission likewise amended its rules in November 2020 to require electronic filing and service of documents in its administrative proceedings.[12] For these reasons, FINRA determined that making permanent the temporary amendments would similarly improve and modernize FINRA's operations.[13] In 2022, the Commission approved FINRA's Electronic Service Amendments Filing, thereby making permanent the temporary amendments to FINRA's rules regarding electronic service and filing, with some modifications.[14]

Proposal

To likewise improve and modernize its rules, the Exchange proposes to modify certain of the rules in Chapter 9 of the IEX Rule Book to allow for electronic service and filing of documents in disciplinary and other proceedings in conformity with the Electronic Service Amendments.[15] IEX and FINRA are parties to a regulatory service agreement pursuant to which FINRA provides various regulatory services to and on behalf of IEX (''RSA'').[16] Among the services that FINRA provides are disciplinary and dispute resolution services involving IEX Members,[17] including adjudicating matters on IEX's behalf through FINRA's OHO.

Consistent with the Electronic Service Amendments, the Exchange proposes to amend certain of its disciplinary rules related to filing, service and other procedural requirements and appeals. The proposed rule change includes provisions to allow, and in some instances require, FINRA, acting on behalf of IEX, to serve certain documents on parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator.[18] In addition, to support the transition to email service and filing, the Exchange proposes to require parties in OHO proceedings to file and serve all parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.

The proposed rule change would permit service of documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending. The Exchange intends to elect email service whenever possible. If FINRA, acting on behalf of IEX, has knowledge that the address used for service is not current or not functional (*i.e.,* FINRA receives a bounce back or other message indicating that there was a failure to deliver the email), FINRA will use other permissible methods of service until it can verify the party's email address.[19] The Exchange notes that, in most cases, FINRA and the relevant party, or their counsel, will have already engaged in communications prior to the service of documents or other information. Accordingly, in most cases, FINRA will already have information regarding the relevant party, or their counsel's, preferred method of service.

FINRA Rule Series 9000 contains procedural requirements that apply to FINRA's own disciplinary and adjudicatory processes. Chapter 9 (Code of Procedure) of IEX's Rule Book contains filing, service and other procedural requirements that intentionally track the requirements in FINRA's Rule Series 9000 in order to facilitate FINRA acting on IEX's behalf when called upon to do so under the RSA. Due to the enactment of the Electronic Service Amendments, IEX's Chapter 9 rules are currently inconsistent with some of the rules in FINRA Rule Series 9000, which now allows, and in some instances requires, FINRA to serve certain documents on parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator. IEX is therefore proposing conforming changes to its rules to align them with the Electronic Service Amendments.

The proposed rule changes would permit IEX (and by extension FINRA, when acting on behalf of IEX) to serve documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending. The proposed amendments also contain provisions to ensure that parties who lack the ability to use or access email can request relief from the Adjudicator to use an alternative method of service upon a showing of good cause.[20]

Chapter 9 of IEX's Rule Book, among other things, sets forth the procedure for IEX proceedings for disciplining a member, associated person or formerly associated person. IEX Rule Series 9.130 is of general applicability to all proceedings set forth in Chapter 9, unless a rule specifically provides otherwise. IEX Rules 9.132(b),[21] 9.133(b),[22] and 9.146(l)[23] provide that the documents and other information governed by those rules be served pursuant to IEX Rule 9.134, which permits service on the parties using the following methods: (1) personal service, (2) mail, or (3) courier.[24] IEX Rule 9.134 does not permit service by email. The proposed rule change would amend IEX Rule 9.132(b) to allow IEX (or FINRA

[9] *See Id.*

[10] *See* Electronic Service Amendments Filing, *supra* note 7, 87 FR 22267.

[11] *See Id.*

[12] *See* Amendments to the Commission's Rules of Practice, Securities Exchange Act Release No. 90442 (November 17, 2020), 85 FR 86464 (File No. S7–18–15) (December 30, 2020) (codified at 17 CFR 201 (2020)).

[13] *See* Electronic Service Amendments Filing, *supra* note 7, 87 FR 22266–67.

[14] *See* Securities Exchange Act Release Nos. 95147 (June 23, 2022), 87 FR 38803 (June 29, 2022) (SR–FINRA–2022–009) (order approving change to certain FINRA rules to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals) (''Electronic Service Amendments Approval Order''). The Electronic Service Amendments Approval Order related to FINRA Rules 1012, 1015, 6490, 9132, 9133, 9135, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9559 and 9630 (collectively, ''the Electronic Service Amendments'').

[15] Consistent with the Electronic Service Amendments Approval Order, the Exchange is not proposing to permit electronic service of an initial complaint on a respondent due to heightened fair process concerns. As is the case today, the only permissible methods of serving the initial complaint are by hand, mail or courier. *See* IEX Rule 9.131(b) (requiring that service be pursuant to IEX Rule 9.134).

[16] *See* IEX Rule 9.001.

[17] *See* IEX Rule 1.160(s).

[18] To the extent that a party lacks the ability to use or access technology needed to file, serve or accept service by email, FINRA, as adjudicator, may order an alternative method of service upon a showing of good cause. *See* Electronic Service Amendments Filing, *supra* note 7, 87 FR 22265.

[19] As indicated in the proposed rule text, the Exchange will consider service by email complete upon sending of the relevant document or other information. This is consistent with service by mail under the current rules.

[20] *See supra* note 18.

[21] *See* IEX Rule 9.132(b) (Service of Orders, Notices, and Decisions by Adjudicator; How Served).

[22] *See* IEX Rule 9.133(b) (Service of Papers Other Than Complaints, Orders, Notices or Decisions; How Served).

[23] *See* IEX Rule 9.146(l) (Motions; General).

[24] *See* IEX Rule 9.134 (Methods of, Procedures for Service).

acting on behalf of IEX) to serve the relevant documents or information by email, and amend IEX Rules 9.133(b) and 9.146(l) to require parties to serve documents by email, unless an alternative method of service is ordered by the Adjudicator.

The proposed rule changes would also amend IEX Rule 9.135 to add paragraph (d), which would require parties in OHO proceedings to file and serve the parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.[25] As noted above, this will ensure that all parties have accurate electronic contact information for all other parties.

IEX Rule Series 9.300 sets forth the procedures for review of disciplinary proceedings by the IEX Board [26] and for applications for SEC review. IEX Rules 9.321, 9.341(c), 9.349(c), and 9.351(e) require IEX to serve documents in connection with those proceedings. IEX proposes to amend IEX Rules 9.321, 9.341(c), 9.349(c), and 9.351(e) to allow for email as a method of service.[27]

IEX Rule Series 9.520 sets forth the procedures for eligibility proceedings and review of those proceedings by the IEX Board. IEX Rules 9.522(a)(4),[28] 9.524(a)(3)(A) and (B),[29] 9.524(b)(3),[30] and 9.525(e) [31] require IEX to serve documents in connection with those proceedings, but do not allow for email as a method of service. The proposed rule change would amend those rules to allow for email as a method of service.[32] Further, under the proposed change to IEX Rule 9.524(a)(3)(A) and (B), the disqualified member or sponsoring member would be required to serve documents and the exhibit and witness lists by email unless an alternative method of service is ordered by the Adjudicator.[33] Additionally, IEX proposes to add new paragraph (d) to IEX Rule 9.524, which states that service by email shall be deemed complete upon sending the documents or decision.[34]

IEX Rule Series 9.550 sets forth the procedures for expedited proceedings [35] and the ability of the IEX Board to call for review a proposed decision prepared under IEX Rule Series 9.550. IEX Rule 9.559(h) (Transmission of Documents) sets forth the timing and method of service requirements for IEX (or FINRA acting on behalf of IEX) to provide documents considered in commencing the expedited proceeding [36] and for the parties to exchange proposed exhibit and witness lists [37] in advance of an expedited proceeding.[38] IEX Rule 9.559(h) does not allow for email as a method of service. IEX proposes to amend IEX Rules 9.559(h)(1) and (2) to allow for email service, unless an alternative method of service is ordered by the Adjudicator and to remove text from Rule 9559(h)(2) that requires that documents served by email must also be served by overnight courier or personal service.[39] IEX Rule 9.559(q)(2) [40] requires the IEX Board to serve its decision when it issues one, and IEX Rule 9.559(q)(5) [41] requires the IEX Board to serve the decision on the parties and all members with which the respondent is associated. IEX Rules 9.559(q)(2) and (5) also do not allow for email as a method of service. The proposed rule change would amend Rule 9.559(q)(2) and (5) to allow for email as a method of service. Further, IEX proposes to add new paragraph (s) to IEX Rule 9.559, which states that service by email shall be deemed complete upon sending the documents or decision.[42] Additionally, the proposed amendment also makes a non-substantive change to correct a typographical error in the rule's title (adding a period to ''9550'').

IEX Rule Series 9.600 sets forth the procedures for Members to seek exemptive relief from a variety of IEX rules, including appealing a decision of the Chief Regulatory Officer, made pursuant to IEX Rule 9.620. IEX Rules 9.630(e)(1) and (2) [43] require the IEX Board to serve its decision pursuant to IEX Rule 9.134, which does not allow for email as a method of service. The proposed rule change would amend IEX Rule 9.630(e) to allow for email as an alternative method of service.[44] Additionally, IEX proposes to add new paragraph (f) to IEX Rule 9.630, which states that service by email shall be deemed complete upon sending the documents or decision.[45]

IEX believes these proposed changes will modernize its rules and make service and filing more efficient and effective because it will align IEX's service and filing rules with those of FINRA. Email technology is widely available, and use of electronic methods of service and filing is common practice in the courts and other regulatory agencies, including the Commission.[46] At the same time, the proposal provides for alternative methods of service for parties who lack the ability to use or access technology needed to send or receive documents electronically.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[47] in general, and furthers the objectives of Section 6(b)(5) of the Act,[48] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent

[25] *See* proposed IEX Rule 9.135 (Filing of Papers with Adjudicator; Procedure)

[26] *See* IEX Rule 1.160(e).

[27] *See* proposed IEX Rules 9.321 (Transmission of Record); 9.341(c) (Oral Argument; Notice Regarding Oral Argument); 9.349(c) (IEX Appeals Committee Formal Consideration; Decision; Issuance of Decision after Expiration of Call for Review Period); 9.351(e) (Discretionary Review by IEX Board; Issuance of Decision After Expiration of Call for Review Period).

[28] *See* IEX Rule 9.522(a)(4) (Initiation of Eligibility Proceeding; Member Regulation Consideration; Service).

[29] *See* IEX Rule 9.524(a)(3)(A) and (B) (IEX Appeals Committee Consideration; Transmission of Documents).

[30] *See* IEX Rule 9.524(b)(3) (IEX Appeals Committee Consideration; Issuance of Decision After Expiration of Call for Review Period).

[31] *See* IEX Rule 9.525(e) (Discretionary Review by the IEX Board; Issuance of Decision).

[32] *See* proposed IEX Rules 9.522(a)(4); 9.524(a)(3)(A) and (B); 9.524(b)(3); and 9.525(e).

[33] *See* proposed IEX Rule 9.524(a)(3)(A) and (B).

[34] *See* proposed IEX Rule 9.524(c).

[35] Expedited proceedings are available in a subset of disciplinary proceedings set forth in IEX Rules 9.552 through 9.559. Examples include IEX Rule 9.552 (Failure to Provide Information or Keep Information Current) and IEX Rule 9.555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

[36] *See* IEX Rule 9.559(h)(1).

[37] *See* IEX Rule 9.559(h)(2).

[38] FINRA also amended its Rule 9559(h) to eliminate the requirements that, if the specified documents are served by facsimile or email, they must also be served by either overnight courier or personal delivery. IEX's amendment conforms IEX Rule 9.559(h)(1) and (2) to match FINRA's rule.

[39] *See* proposed IEX Rule 9.559(h)(2).

[40] *See* IEX Rule 9.559(q)(2).

[41] *See* IEX Rule 9.559(q)(5).

[42] *See* proposed IEX Rule 9.559(s).

[43] *See* IEX Rule 9.630(e) (Appeal; Decision).

[44] *See* proposed IEX Rule 9.630(e)(1) and (2).

[45] *See* proposed IEX Rule 9.630(f).

[46] *See supra* note 12.

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

with Sections 6(b)(7) and 6(d) of the Act.[49]

IEX believes that the proposed rule change protects investors and the public interest by requiring use of broadly available technology to make service and filing processes more efficient and effective. IEX's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons.

The proposed rule change promotes efficiency in these processes by aligning IEX's rules with FINRA's rules that permit electronic service and filing in most instances. To ensure that documents are effectively sent and received, IEX (in line with FINRA's requirements) is proposing to require parties to provide and update their contact information, including their email address, during the course of a proceeding. These amendments reduce the reliance on paper documents in favor of more efficient electronic formats. IEX concurs with the Commission and FINRA in the belief that adopting rules on electronic service and filing is especially important as hybrid and remote work become more common.

IEX believes as well that the proposed rule change includes important safeguards to ensure fairness. For example, there are procedures in place for persons who lack the ability to use or access technology necessary to send or receive documents electronically. Such parties will have the ability to request relief from the Adjudicator to file or serve documents by another method.[50] As discussed in the Purpose section, based on FINRA's representations about its experience of operating under its temporary amendments, which have permitted electronic service and filing since mid-2020, IEX anticipates that requests to use non-electronic methods of service will be rare. In addition, the proposed rule change balances the interests of fairness and efficiency. Service of the initial complaint will continue to occur by hand, mail or courier, rather than by electronic means, thus ensuring there is satisfactory notice and fair process. Thus, the proposed rule change represents a significant step toward modernizing the service and filing processes in a manner that will protect investors and the public interest by promoting efficiency while preserving fair process.

Additionally, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, as discussed in the Purpose section, this proposed rule change is based on FINRA rule changes approved by the Commission in 2022.[51] Therefore, IEX believes there is nothing in this proposal that is new or novel that has not been previously considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that proposed rule change reduces the burden on competition because it eliminates inconsistencies between IEX's Code of Procedure (Chapter 9 of the IEX Rule Book) and FINRA's rules governing the adjudication of disputes and disciplinary proceedings. Additionally, IEX notes that the proposed rule change is not intended to address competitive issues but is designed to modernize the service and filing process in harmonization with the approved FINRA Rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[52] of the Act and Rule 19b–4(f)(6)[53] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

The Exchange believes that this filing is non-controversial and eligible to become effective immediately because the proposal provides a more uniform standard for disciplinary rules across self-regulatory organizations and thereby enables the Exchange to modernize the service and filing process to conduct disciplinary hearings. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the proposed rule change is based on the approved FINRA Electronic Service Amendments.[54] As such, the IEX believes the proposal does not raise any new or novel issues not previously considered by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6)[55] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[56] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Additionally, the Exchange has given 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 states that this filing is non-controversial and eligible to become effective immediately because the proposal promotes uniformity in disciplinary rules across self-regulatory organizations and thereby enables the Exchange to modernize the service and filing process to conduct disciplinary hearings.[57] The Exchange further states that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the proposed rule

[49] 15 U.S.C. 78f(b)(5).

[50] *See supra* note 18.

[51] *See supra* note 14.

[52] 15 U.S.C. 78s(b)(3)(A).

[53] 17 CFR 240.19b–4(f)(6).

[54] *See generally* Electronic Service Amendments Approval Order, *supra* note 14.

[55] 17 CFR 240.19b–4(f)(6).

[56] 17 CFR 240.19b–4(f)(6)(iii).

[57] *See supra* Item II.

change is based on the approved FINRA Rules. After reviewing the filing, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. The proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[58]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [59] 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–IEX–2023–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2023–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–IEX–2023–04 and should be submitted on or before May 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07415 Filed 4–7–23; 8:45 am]

BILLING CODE 8011–01–P

[58] 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).

[59] 15 U.S.C. 78s(b)(2)(B).

[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97251; File No. SR–NYSE–2023–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.02 of the NYSE Listed Company Manual With Respect to the Qualification of Eligible Portfolio Companies of an Investment Management Entity for the Investment Management Entity Group Fee Discount

April 4, 2023.

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 March 29, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the ''Manual'') to amend the provisions with respect to the qualification of Eligible Portfolio Companies of an Investment Management Entity for the Investment Management Entity Group Fee Discount. In order to qualify for the Investment Management Entity Group Fee Discount in any calendar year, an issuer must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year that it meets the ownership requirements specified above. The Exchange proposes to extend the application of the Investment Management Entity Group Discount to the annual fees payable with respect to the first partial year of listing by any newly-listed company that is able to demonstrate at the time of listing that it qualifies as an Eligible Portfolio Company of an Investment Management Entity. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 902.02 of the Manual includes a subsection entitled ''Investment Management Entity Group Fee Discount.'' For purposes of this

subsection, an Investment Management Entity is a listed company that manages private investment vehicles not registered under the Investment Company Act. An ''Eligible Portfolio Company'' of an Investment Management Entity is a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing. The Exchange applies a fee discount applicable only to an Investment Management Entity and its Eligible Portfolio Companies (the ''Investment Management Entity Group Fee Discount''). In addition to benefiting from the Investment Management Entity Group Fee Discount, the Investment Management Entity and each of the Eligible Portfolio Companies continue to have its fees capped by the applicable company's individual Total Maximum Fee of $500,000. The Investment Management Entity Group Fee Discount (i) is limited to annual fees and (ii) represents a 50% discount on all annual fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has one or more Eligible Portfolio Companies. In order to qualify for the Investment Management Entity Group Fee Discount in any calendar year, an issuer must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year that it meets the ownership requirements specified above.

For the reasons set forth below under ''Statutory Basis,'' the Exchange proposes to extend the application of the Investment Management Entity Group Discount to the annual fees payable with respect to the first partial year of listing by any newly-listed company that is able to demonstrate at the time of listing that it qualifies as an Eligible Portfolio Company of an Investment Management Entity.

The Exchange also proposes to make some non-substantive changes to Section 902.02 to remove provisions that are no longer needed, as they do not apply by their terms to any calendar year starting on or after January 1, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange established the Investment Management Entity Group Fee Discount[6] because, among other reasons, in the Exchange's experience, an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from the NYSE's business and Regulation groups to assist them in navigating the initial and continued listing process. By comparison, the Exchange devotes significantly smaller staff resources to those companies on average than to the typical newly-listed company that is not controlled prior to listing by an Investment Management Entity. The Exchange believes it is reasonable to share some of the cost savings derived from its relationship with an Investment Management Entity with the Investment Management Entity and its listed portfolio companies. Because these cost savings also exist in the first partial year of listing of an Eligible Portfolio Company, the Exchange proposes to extend the application of the Investment Management Entity Group Fee Discount to the annual fees such companies are billed in their first partial year of listing, provided that the newly-listed company is able to demonstrate at the time of listing that it qualifies as an Eligible Portfolio Company of an Investment Management Entity.

The Exchange also proposes to make non-substantive changes to Section 902.02 to remove provisions that are no longer needed, as they do not apply by their terms to any calendar year starting on or after January 1, 2021.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee reduction will be applicable to all similarly situated issuers on the same basis.

The Exchange believes that the proposed fee limitation will not have any meaningful effect on the competition among issuers listed on the Exchange. The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable.

Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and 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:

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* Securities Exchange Act Release No. 79582 (December 16, 2016), 81 FR 93976 (December 22, 2016) (SR–NYSE–2016–70).

[7] 15 U.S.C. 78s(b)(3)(A).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2023–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2023–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2023–17 and should be submitted on or before May 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07414 Filed 4–7–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17844 and #17845; CALIFORNIA Disaster Number CA–00369]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/04/2023.

Incident: Mill Fire.

Incident Period: 09/02/2022 through 09/13/2022.

DATES: Issued on 04/04/2023.

Physical Loan Application Deadline Date: 06/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/04/2024.

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 Recovery & Resilience, 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 Administrator's disaster declaration, 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: Siskiyou.

Contiguous Counties:

California: Del Norte, Humboldt, Modoc, Shasta, Trinity.

Oregon: Jackson, Josephine, Klamath.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17844 5 and for economic injury is 17845 0.

The States which received an EIDL Declaration # are California, Oregon. (Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–07453 Filed 4–7–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17850 and #17851; CALIFORNIA Disaster Number CA–00372]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/04/2023.

Incident: Fork Fire.

Incident Period: 09/07/2022 through 09/13/2022.

DATES: Issued on 04/04/2023.

Physical Loan Application Deadline Date: 06/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/04/2024.

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 Recovery & Resilience, 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 Administrator's disaster declaration, 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: Madera.

Contiguous Counties:

California: Fresno, Mariposa, Merced, Mono, Tuolumne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17850 5 and for economic injury is 17851 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–07470 Filed 4–7–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17846 and #17847; CALIFORNIA Disaster Number CA–00370]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/04/2023.

Incident: Fairview Fire.

Incident Period: 09/05/2022 through 10/03/2022.

DATES: Issued on 04/04/2023.

Physical Loan Application Deadline Date: 06/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/04/2024.

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 Recovery & Resilience, 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 Administrator's disaster declaration, 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: Riverside.

Contiguous Counties:

California: Imperial, Orange, San Bernardino, San Diego.

Arizona: La Paz.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17846 5 and for economic injury is 17847 0.

The States which received an EIDL Declaration # are California, Arizona.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–07471 Filed 4–7–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17848 and #17849; CALIFORNIA Disaster Number CA–00371]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/04/2023.

Incident: Mosquito Fire.

Incident Period: 09/06/2022 through 10/27/2022.

DATES: Issued on 04/04/2023.

Physical Loan Application Deadline Date: 06/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/04/2024.

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 Recovery & Resilience, 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 Administrator's disaster declaration, 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: Placer.

Contiguous Counties:

California: El Dorado, Nevada, Sacramento, Sutter, Yuba.

Nevada: Washoe.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17848 5 and for economic injury is 17849 0.

The States which received an EIDL Declaration # are California, Nevada.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–07469 Filed 4–7–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 12040]

Overseas Schools Advisory Council Charter Renewal

ACTION: Notice of renewal of an advisory committee charter.

SUMMARY: The Secretary of State announces the renewal of the charter of the Overseas Schools Advisory Council in accordance with the Federal Advisory Committee Act. The main objectives of the Council are:

a. To advise the Department of State regarding matters of policy and funding for the overseas schools.

b. To provide advice to the Department on ways to ensure that overseas schools become showcases for excellence in education.

c. To provide advice to the Department on ways to make service abroad more attractive to American citizens who have school-age children, both in the business community and in Government.

d. To recommend ways to mitigate risks to American private sector interests worldwide.

FOR FURTHER INFORMATION CONTACT: Mark E. Ulfers, Director of the Office of Overseas Schools and Executive Secretary for the Committee, at (202) 261–8200 or *OverseasSchools@state.gov.*

Joyce L. Picado,

Administrative Officer, Office of Overseas Schools, Bureau of Administration, Department of State.

[FR Doc. 2023–07418 Filed 4–7–23; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 12039]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''Caravaggio's Judith and Holofernes'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''Caravaggio's Judith and Holofernes'' at the Minneapolis Institute of Art, Minneapolis, Minnesota, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–07433 Filed 4–7–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Update, Fort Lauderdale-Hollywood International Airport (FLL), Fort Lauderdale, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program (NCP) Update submitted by Broward County for the Fort Lauderdale-Hollywood International Airport (FLL). See **SUPPLEMENTARY INFORMATION** for details. On October 3, 2019, the FAA determined that the Noise Exposure Maps (NEMs) submitted by Broward County under Part 150 were in compliance with applicable requirements. On October 12, 2022, the FAA determined that it would be initiating final review of the noise compatibility program submitted by Broward County for approval or disapproval. On March 30, 2023, the FAA approved the Fort Lauderdale-Hollywood International Airport NCP Update. The NCP contained four noise abatement measures, six land use measures, and nine program management measures. Three of the four noise abatement measures proposed at FLL are related to new or revised flight procedures. Of the 19 measures proposed, 15 were approved, one was approved as voluntary, and three were disapproved for purposes of part 150.

APPLICABLE DATE: The effective date of the FAA's approval of the Fort Lauderdale-Hollywood International Airport NCP Update is March 30, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Green, Federal Aviation Administration, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, Florida 32819, (407) 487–7296. Documents reflecting this FAA action may be reviewed at this same location by appointment with the above contact.

SUPPLEMENTARY INFORMATION: This notice announces FAA's approval of the Noise Compatibility Program Update for the Fort Lauderdale-Hollywood International Airport (FLL), effective on March 30, 2023. Per United States Code section 47504 (49 U.S.C. 47504) and Title 14, Code of Federal Regulations (CFR) part 150, an airport sponsor who previously submitted a noise exposure map (NEM) may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport sponsor for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the NEMs. As required by 49 U.S.C. 47504, such programs must be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and the FAA. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA approval or disapproval of an airport sponsor's recommendations in their noise compatibility program are made in accordance with the requirements and standards pursuant to 49 U.S.C. 47504 and 14 CFR part 150, which is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of 14 CFR 150.23;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign

commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations of FAA's approval of NCPs are delineated in 14 CFR 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the noise compatibility program nor a determination that all measures covered by the NCP are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests must be submitted to the FAA Orlando Airports District Office at 8427 SouthPark Circle, Suite 524, Orlando, Florida 32819.

Broward County submitted the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study to the FAA and the FAA determined that the NEMs for FLL were in compliance with applicable requirements under 14 CFR 150, effective October 3, 2019 (Noise Exposure Map Notice for Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL, volume 84, **Federal Register**, pages 54942–3, October 11, 2019). The FAA formally received the NCP based on the accepted NEMs for FLL on December 20, 2021. The airport operator requested that the FAA review the submitted material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a NCP. The formal review period, limited by law to a maximum of 180 days, was initiated on October 12, 2022. Notice of the intent to review the NCP was published in the **Federal Register** on October 18, 2022 (Notice of Receipt of Noise Compatibility Program Update and Request for Review, volume 87, **Federal Register**, pages 63146–7, October 18, 2022). The **Federal Register** Notice also announced the start of a 60-day period of public review for the NCP documentation. The FAA received one comment from an interested party during the public review period and one comment after the comment period closed.

The FLL NCP is comprised of actions designed for phased implementation by airport management and adjacent jurisdictions within the next one to five years. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in 49 U.S.C. 47504. The FAA began its review of the program on October 12, 2022 and was required by a provision of 49 U.S.C. 47504 to approve or disapprove the program within 180 days, other than the use of new or modified flight procedures for noise control. Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained 19 proposed measures to minimize impacts of aviation noise on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the 49 U.S.C. 47504 and 14 CFR part 150 were satisfied. A Record of Approval for the overall program was issued by the FAA effective March 30, 2023.

The specific program elements and their individual determinations are as follows:

FLL Noise Abatement Measure 1 (NA–1): Continue Voluntary User Program for Runway 10R–28L—Approved as a Voluntary Measure.

FLL Noise Abatement Measure 2 (NA–2): Reduce Early Aircraft Departure Turns from FLL through Implementation of ELSO or ELSO-Equivalent Procedures During West-Flow Conditions—Disapproved for Purposes of Part 150.

FLL Noise Abatement Measure 3 (NA–3): Reduce Early Aircraft Departure Turns from FLL through Implementation of ELSO or ELSO-Equivalent Procedures during East-Flow Conditions—Disapproved for Purposes of Part 150.

FLL Noise Abatement Measure 4 (NA–4): Modify Aircraft Arrival Profiles to the West of FLL to Keep Aircraft Higher—Disapproved for Purposes of Part 150.

FLL Land Use Measure LU–1: Implement a Voluntary Acquisition Program for a Portion of the Ocean Waterway Mobile Home Park—Approved.

FLL Land Use Measure LU–2: Implement a Voluntary Acquisition Program for a Portion of the Everglades Lakes Mobile Home Park—Approved.

FLL Land Use Measure LU–3: Implement a Voluntary Residential Sound Insulation Program for Eligible Dwelling Units located in the Future Conditions (2023) DNL 65 and Higher Contours—Approved.

FLL Land Use Measure LU–4: Encourage Local Jurisdictions to Implement Real Estate Fair Disclosure Requirements that Address Potential for Aircraft-Related Noise—Approved.

FLL Land Use Measure LU–5: Encourage Local Jurisdictions to Incorporate Planning Actions in their Respective Comprehensive Plans related to Aircraft Noise that are Consistent with the Policies of the BrowardNEXT Plan—Approved.

FLL Land Use Measure LU–6: Encourage Local Jurisdictions Efforts to Incorporate Noise Overlay Zoning Ordinances to Regulate Sound Attenuation and Compatible Land Uses near the Airport—Approved.

FLL Program Management Measure 1 (PM–1): Maintain the Existing Noise Office and Information web page—Approved.

FLL Program Management Measure 2 (PM–2): Evaluate/Update the Existing Noise Monitoring and Flight Tracking System—Approved.

FLL Program Management Measure 3 (PM–3): Maintain Noise Complaint Management System—Approved.

FLL Program Management Measure 4 (PM–4): Conduct Community Outreach Activities—Approved.

FLL Program Management Measure 5 (PM–5): Evaluate the Composition of the ANAC—Approved.

FLL Program Management Measure 6 (PM–6): Install Runway Reminder Signs—Approved.

FLL Program Management Measure 7 (PM–7): Evaluate a Voluntary Fly Quiet Program—Approved.

FLL Program Management Measure 8 (PM–8): Update the Noise Exposure Maps—Approved.

FLL Program Management Measure 9 (PM–9): Update the Noise Compatibility Program—Approved.

These determinations are set forth in detail in the Record of Approval signed by the FAA Airports Southern Division Deputy Director on March 30, 2023. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above. The Record of Approval will also be available on the internet on the FAA's website at *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/* and Broward County's

FLL Part 150 Study website at *http://www.fllpart150.com.*

Issued in Orlando, FL, on April 4, 2023.

Bartholomew Vernace,

Manager, Airports District Office, Southern Region.

[FR Doc. 2023–07451 Filed 4–7–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Nos. FRA–2010–0044, and –2011–0104, and –2018–0012]

Railroads' Joint Request To Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on March 15, 2023, three host railroads submitted a joint request for amendment (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP). As this joint RFA involves requests for FRA's approval of updated onboard software that will materially modify their FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on railroads' joint RFA to their PTCSPs.

DATES: FRA will consider comments received by May 1, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed a joint RFA to their PTCSPs are cited above and in the **SUPPLEMENTARY INFORMATION** section of this notice. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that three host railroads' recent, joint RFA to their PTCSPs is available in their respective public PTC dockets, and this notice provides an opportunity for public comment.

On March 15, 2023, the following three host railroads jointly submitted an RFA to their respective PTCSPs for their Interoperable Electronic Train Management Systems (I–ETMS): Central Florida Rail Corridor, TEXRail, and Trinity Railway Express. Their joint RFA is available in Docket Numbers FRA–2010–0044, FRA–2011–0104, and FRA–2018–0012. The purpose of their joint RFA is to obtain FRA's approval of the following types of proposed modifications:

- Modifications to the PTC Development Plan for I–ETMS, specifically the Concept of Operations;
- Modifications to the I–ETMS safety-critical functions outlined in their Risk Assessment, including changes to the following functions:
  - Enforce Speed Limit for Reverse of Shoving Move,
  - Enforce Blanket Speed Limit Even When Not Fully Active,
  - Cab Signal Enforcement Criteria, and
  - Consist Sanity Check for Zero Isolated Locomotive, Trailing Tonnage, Car Count and Operative Brake Count.
- Modifications to the target safety levels identified in their Risk Assessment; and
- Modifications to the human-machine interface of I–ETMS, including modifications to the PTC Initialization Key and the MTEA Enable Max Speed Indication Display, which also requires amendments to the PTC training for their train crews.

Interested parties are invited to comment on this RFA by submitting written comments or data. During FRA's review of these railroads' joint RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny these railroads' joint RFA to their PTCSPs at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–07400 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects—Inglewood Transit Connector Project, and METRORapid Inner Katy Bus Rapid Transit Project

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding two projects: Inglewood

Transit Connector Project, City of Inglewood (City), Los Angeles County, California; and METRORapid Inner Katy Bus Rapid Transit Project West Valley, Houston, Harris County, Texas. The purpose of this notice is to publicly announce FTA's environmental decisions on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 705–1269, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.transit.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), Section 4(f) requirements (23 U.S.C. 138, 49 U.S.C. 303), Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), Endangered Species Act (16 U.S.C. 1531), Clean Water Act (33 U.S.C. 1251), Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601), and the Clean Air Act (42 U.S.C. 7401–7671q). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice follow:

1. *Project name and location:* Inglewood Transit Connector Project, City of Inglewood, Los Angeles County, California. *Project Sponsor:* The Los Angeles County Metropolitan Transportation Authority (LACMTA), Los Angeles, California. *Project description:* The Project includes construction of an approximately 1.6-mile long, fully elevated automated transit system (ATS), primarily located within the public right-of-way along Market Street, Manchester Boulevard, and Prairie Avenue. The elevated dual track guideway will include railroad switches for train crossover and other operational- and safety-related infrastructure improvements. The Project consists of construction of three center-platform stations, elevated pedestrian bridges, public parking lots and associated infrastructure improvements to address mobility and ADA compliance. The Project also involves construction of a maintenance and storage facility for maintenance of the ATS trains, operating equipment, and storage of the fleet as well as the construction of two power distribution system substations to run the train on the guideway and power for auxiliary and housekeeping needs.

Final agency actions: Section 4(f) *de minimis* impact determination, dated March 06, 2023; Section 106 No Adverse Effect determination, dated March 06, 2023; and Inglewood Transit Connector Project Finding of No Significant Impact (FONSI), dated March 16, 2023. *Supporting documentation:* The Inglewood Transit Connector Project Environmental Assessment (EA), dated October 14, 2022. The FONSI, EA and associated documents can be viewed and downloaded from: *https://envisioninglewood.org/transportation-solutions/itc/.*

2. *Project name and location:* METRORapid Inner Katy Bus Rapid Transit Project, Houston, Harris County, Texas. *Project Sponsor:* Metropolitan Transit Authority of Harris County (METRO), Houston, Texas. *Project description:* The project involves construction of a dedicated rapid transit route on the I-10 West Inner Katy corridor between I-610 and Downtown Houston. The project begins at Northwest Transit Center (NWTC) and continue east, south of I-10, on an approximately four-mile-long elevated guideway to Downtown Houston. Once in Downtown, the project will continue along the street pairings of Capitol and Rusk Streets to St. Emanuel Street. The project is divided into two segments: the Inner Katy Segment and Downtown Segment. The Inner Katy Segment will be grade-separated on new and existing structures. The Downtown Segment will be street-running. The project includes five new stations—three in the Inner Katy Segment and two in the Downtown Segment. In addition to the new stations, the project would also utilize the existing NWTC and three existing METRORail Green and Purple Lines stations along Capitol and Rusk Streets in Downtown.

Final agency actions: Section 4(f) No Use determination, dated January 23, 2023; Section 106 No Adverse Effect determination, dated October 17, 2022; and Determination of the applicability of a categorical exclusion pursuant to 23 CFR 771.118(d), dated January 23, 2023. *Supporting documentation:* Documented Categorical Exclusion (CE) and supporting materials, December 2022. The CE and associated documents can be viewed and downloaded from: *https://www.ridemetro.org/about/metronext/metrorapid/metrorapid-inner-katy-corridor-project.*

Authority: 23 U.S.C. 139(l)(1).

Megan Blum,

Acting Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2023–07465 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Office of the Assistant Secretary for Research and Technology

[Docket Number: RITA–2008–002]

Agency Information Collection Activity; Notice of Request for Public Comment and Submission to OMB for Information Collection: Confidential Close Call Transit Data for the Washington Metropolitan Area Transit Authority (WMATA)

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), Department of Transportation.

ACTION: Notice to continue to collect confidential close call transit data.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, BTS announces the intention of the Bureau of Transportation Statistics (BTS) to request the Office of Management and Budget (OMB) to use the approved OMB Number 2138–0044, and to continue to collect the following information: Confidential Close Call Transit Data for the Washington

Metropolitan Area Transit Authority (WMATA or the Authority), which includes but is not limited to the collection of data from Rail, Bus, Information Technology, and Command Center personnel. This data collection effort supports a multi-year program focused on improving the Authority in its entirety, by collecting and analyzing data and information on close calls and other unsafe occurrences within WMATA. The program is co-sponsored by WMATA and labor leadership including: the President/Business Agent of the Amalgamated Transit Union (ATU) Local 689, the International Brotherhood of Teamsters (IBT) Local 922 and Office & Professional Employees International Union (OPEIU) Local 2. The Close Call program is designed to identify safety issues and propose preventive actions based on voluntary reports of a close call submitted confidentially to BTS, an Agency within the U.S. Department of Transportation. This information collection is necessary for systematically analyzing data to identify root causes of potentially unsafe events. On January 23, 2023, BTS published **Federal Register** notice, allowing for a 60-day comment period on the ICR. The comment period closed on March 24, 2023. The agency received no comments. The purpose of this notice is to allow 30 days for public comment to OMB on this collection from all interested individuals and organizations.

DATES: Written comments should be submitted by May 10, 2023.

ADDRESSES: The agency seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: BTS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Demetra V. Collia, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation, Office of Safety Data and Analysis, RTS–31, E36–302, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; Phone No. (202) 366–1610; Fax No. (202) 366–3383; email: *demetra.collia@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

Data Confidentiality Provisions: The confidentiality of Close Call data is protected under the BTS confidentiality statute (49 U.S.C. 6307) and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018 (Pub. L. 115–435 Foundations for Evidence-Based Policymaking Act of 2018, Title III). In accordance with these confidentiality statutes, only statistical (aggregated) and non-identifying data will be made publicly available by BTS through reports. BTS will not release to WMATA or any other public or private entity any information that might reveal the identity of individuals who have submitted a report.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to continue an information collection activity. BTS is seeking OMB approval for the following BTS information collection activity:

Title: Confidential Close Call Transit Data.

OMB Control Number: 2138–0044.

Type of Review: Continue to Collect.

Respondents: WMATA employees.

Number of Respondents: 150 (per annum).

Estimated Time per Response: 1 hour.

Frequency: Intermittent for 3 years. (Reports are submitted when there is a qualifying event

Total Annual Burden: 150 hours.

Demetra V. Collia,

Office Director.

[FR Doc. 2023–07438 Filed 4–7–23; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one entity that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity are blocked, and U.S. persons are generally prohibited from engaging in transactions with it.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On April 5, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity are blocked under the relevant sanctions authority listed below.

Entity

1. GENESIS MARKET (a.k.a. ''GENESIS MARKETPLACE''; a.k.a. ''GENESIS STORE''), Russia; website genesis.market; alt. Website *G3n3sis.org*; alt. Website *genesis7zoveavupiiwnrycmaq6uro3kn5h2be3el7wdnbjti2ln2wid.onion*; alt. Website *g3n3sis.pro*; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201; Organization Established Date 01 Mar 2018 [CYBER2].

Designated pursuant to Section 1(a)(ii)(D) of Executive Order 13694 of April 1, 2015 ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' 80 FR 18077, 3 C.F.R, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' 82 FR 1, 3 C.F.R, 2016 Comp., p. 659 (E.O. 13694, as amended) for being responsible for or complicit in, or to have engaged in, directly or indirectly, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

Dated: April 5, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–07446 Filed 4–7–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On April 4, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. RAHME, Teddy Zina (Arabic: تيدي زينه رحمة) (a.k.a. RAHMEH, Teddy Samir Zina; a.k.a. ZINA, Teddy Samir (Arabic: تادي سمير زينا)), Lebanon; DOB 10 Dec 1963; POB Bsharri, Lebanon; nationality Lebanon; Gender Male; Passport LR0016427 (Lebanon) expires 08 Aug 2021 (individual) [LEBANON].

   Designated pursuant to section 1(a)(i)(A) of Executive Order 13441 of August 1, 2007, "Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions," 72 FR 43499 (E.O. 13441), for having taken, or posing a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, or contributing to the breakdown of the rule of law in Lebanon.

2. RAHME, Raymond Zina (Arabic: ريمون زينه رحمة) (a.k.a. RAHMEH, Raymond; a.k.a. ZINA, Raymond Samir (Arabic: ريمون سمير زينا)), Lebanon; DOB 01 Oct 1968; POB Mar Saba, Lebanon; nationality Lebanon; Gender Male; Passport LR0555055 (Lebanon) expires 24 Jun 2031 (individual) [LEBANON].

   Designated pursuant to section 1(a)(i)(A) of E.O. 13441 for having taken, or posing a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, or contributing to the breakdown of the rule of law in Lebanon.

Entities:

1. ZR ENERGY DMCC (Arabic: زد آر إنيرجي م.د.م.س), Unit No: 1305, Platinum Tower, Plot No: JLT-PH1-I2, Jumeirah Lakes Towers, Dubai, United Arab Emirates; Quai Du Mont-Blanc 4th Floor, 1201, Geneva, Switzerland; Website www.zrenergy.com; Organization Established Date 23 Jul 2013; License DMCC-33225 (United Arab Emirates) issued 23 Jul 2013 expires 22 Jul 2023; Legal Entity Number 213800TWK2R9AGIQXV07; Registration Number DMCC4189 (United Arab Emirates) issued 19 Jun 2013 [LEBANON].

   Designated pursuant to section 1(a)(i)(D) of E.O. 13441 for being owned or controlled, or acting or purporting to act for or on behalf of, directly or indirectly, TEDDY ZINA RAHME and RAYMOND ZINA RAHME, persons whose property and interests in property are blocked pursuant to E.O. 13441.

2. ZR GROUP SAL HOLDING (a.k.a. Z-R GROUP SAL HOLDING (Arabic: جموعة زي-ار□ القابضة ش م ل هولدنغ)), Al Maliya Street, Beirut, Lebanon; Nejmeh Square, Real Estate No. 1084 of the Port Real Estate District, Beirut, Lebanon; Website https://zr-group.net; Organization Established Date 17 Aug 2005; Commercial Registry Number 1900527 (Lebanon) [LEBANON].

   Designated pursuant to section 1(a)(i)(D) of E.O. 13441 for being owned or controlled, or acting or purporting to act for or on behalf of, directly or indirectly, TEDDY ZINA RAHME and RAYMOND ZINA RAHME, persons whose property and interests in property are

Dated: April 4, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–07461 Filed 4–7–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

Lindsay Kitzinger,

Acting International Tax Counsel (Tax Policy).

[FR Doc. 2023–07474 Filed 4–7–23; 8:45 am]

BILLING CODE 4810–AK–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: April 13, 2023, 1:30 p.m. to 5:00 p.m., Eastern Time.

PLACE: This meeting will take place at the Holiday Inn and Suites Biltmore Village, The Laurel Room, 186 Hendersonville Road, Asheville, NC 28803. This meeting will also be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 928 2739 8984, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJYlde6rpzMjEtCzNGAbe-bF3vkE-p3kiNFS.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') 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. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Board Action

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

➢ Board actions taken only in designated areas on agenda.

IV. Approval of Minutes of the January 19 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Board Action

Draft Minutes from the January 19, 2023 UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on relevant activity.

VI. Proposal To Send a Letter to All New US DOT Interstate Motor Carriers, Freight Forwarders, Leasing Companies, and Brokers From Non-Participating States and Rhode Island—UCR Executive Director and Seikosoft

For Discussion and Possible Board Action

The UCR Executive Director and a Seikosoft representative will present a proposal to the UCR Board to send a letter to all new USDOT interstate motor carriers, freight forwarders, leasing companies, and brokers from non-participating states and Rhode Island requesting that the entity register for UCR. The Board may consider and approve the cost of sending such a letter to all new USDOT interstate motor carriers, freight forwarders, leasing companies, and brokers from non-participating states and Rhode Island.

VII. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. Update on the Success of the First Audit Subcommittee Monthly Question and Answer Session for States Auditors—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair

The UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair will lead a discussion regarding the turnout for the first 60-minute virtual question and answer sessions.

B. Review States' Audit Compliance Snapshot for Registration Rates Audit Percentages for Years 2022 and 2023—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will review audit compliance rates for the states for registration years 2022 and 2023 and related compliance percentages for FARs, retreat audits and registration compliance percentages and open Bracket 5 and 6 motor carriers.

C. Review the Kansas Roadside Inspection Amendment Pilot—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will review the Roadside Inspection Amendment Pilot that began March 1, 2023. The pilot reviews all Should-Have-Beens (SHBs) for the previous day and then amends the roadside inspection to include the UCR 392.2 violation. It also includes a letter that puts the motor carrier on notice that if they are stopped again, they will be issued a $300 dollar civil fine each time going forward.

Finance Subcommittee—UCR Finance Subcommittee Chair

A. Allocation of Unspent 2022 UCR Administrative Funds and Interest Earned on UCR Administrative Funds—UCR Finance Subcommittee Chair

For Discussion and Possible Board Action

The UCR Finance Subcommittee Chair will lead a discussion on which reserve funds should receive allocations

of unspent 2022 administrative funds and interest earned on those funds and provide the Subcommittee's recommendation to the Board of Directors for possible adoption. The Board may consider and approve allocations of unspent 2022 administrative funds and interest earned on those funds to reserve funds.

B. Distribution From the UCR Depository for Under-Cap States—UCR Finance Subcommittee Chair and UCR Depository Manager

The UCR Finance Subcommittee Chair and the UCR Depository Manager will provide an update on the timing for a distribution of fees from the UCR Depository to states that have not yet reached their revenue entitlements for the 2023 registration year.

C. Discussion of UCR Investment Policy—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will provide the Board an overview of the market factors and account structures of UCR Funds and provide a summary of discussion from the Finance Subcommittee Meeting in March 2023.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

Update on Current and Future Training Initiatives—UCR Education and Training Subcommittee Chair

The Education and Training Subcommittee Chair will provide an update on current and planned future training initiatives and the E-Certificate program.

Industry Advisory Subcommittee—UCR Industry Advisory Subcommittee Chair

Update on Current Initiatives—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will provide an update on current and planned initiatives regarding motor carrier industry concerns.

Enforcement Subcommittee—UCR Enforcement Subcommittee Chair

Update on Current Initiatives—UCR Enforcement Subcommittee Chair

The UCR Enforcement Subcommittee Chair will provide an update on current and planned initiatives.

VIII. Contractor Reports—UCR Board Chair

- *UCR Executive Director's Report*

The UCR Executive Director will provide a report covering recent activity for the UCR Plan.

- *DSL Transportation Services, Inc.*

DSL Transportation Services, Inc. will report on the latest data from the Focused Anomaly Reviews (FARs) program, discuss motor carrier inspection results, pilot projects and other matters.

- *Seikosoft*

Seikosoft will provide an update on recent/new activity related to the National Registration System (NRS).

- *UCR Administrator Report (Kellen)*

The UCR Chief of Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

IX. Other Business—UCR Board Chair

The UCR Board Chair will call for any other business, old or new, from the floor.

X. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, April 5, 2023, 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. 2023–07572 Filed 4–6–23; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Geriatrics and Gerontology Advisory Committee

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Geriatrics and Gerontology Advisory Committee appointment.

SUMMARY: The Department of Veterans Affairs (VA), Office of Geriatrics and Extended Care, is seeking nominations of qualified candidates to be considered for appointment as a member of the Geriatrics and Gerontology Advisory Committee (herein-after in this section referred to as ''the Committee''). The Committee advises the VA Secretary and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology.

DATES: Nominations of qualified candidates are being sought to fill vacancies on the Committee. Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on May 15, 2023.

ADDRESSES: All nominations should be emailed to Marianne Shaughnessy, Ph.D., AGPCNP–BC, GS–C, FAAN, to *Marianne.Shaughnessy@va.gov.*

FOR FURTHER INFORMATION CONTACT: Marianne Shaughnessy, Ph.D., AGPCNP–BC, GS–C, FAAN, at 202–461–6750 or *Marianne.Shaughnessy@va.gov.* A copy of the Committee charter and list of the current membership can also be obtained by contacting Dr. Shaughnessy.

SUPPLEMENTARY INFORMATION: The Committee's areas of interest include but are not limited to: (1) assessing the capability of VA health care facilities to respond with the most effective and appropriate services possible to the medical, psychological and social needs of Veterans facing the consequences of aging, serious illness or disability; and (2) advancing scientific knowledge to meet those needs by enhancing geriatric care for older Veterans through geriatric and gerontology research, the training of health personnel in the provision of health care to older individuals, and the development of improved models of clinical services for older Veterans.

Membership Criteria and Qualifications: The Committee is comprised of 12 members in addition to ex officio members, each of whom have established interest and considerable vocation-related experiences bearing on health care for aging Veterans, including experience in areas such as: VA- and non-VA health systems, academic geriatric and gerontology programs, palliative medicine, home and community-based care, nursing home care, relevant policy issues, and grant-funded academic research.

The expertise required of GGAC members includes, but is not limited to, the following:

a. familiarity or experience with clinical and health policies concerning the elderly; and/or

b. familiarity or experience with the partnerships between VA and health sciences academic programs; and/or

c. familiarity with the history of geriatrics in VA and in the U.S., and the unique role that has been played in that evolution by VA's Geriatric Research,

Education, and Clinical Centers (GRECC).

Membership Requirements: The Committee holds at least one face-to-face meeting in Washington, DC, and conducts 4–5 site visits a year. The ideal candidate will be willing to travel 3–5 times per year to help the Committee fulfill its Chartered objectives.

The Committee's diverse membership is characterized by a range of backgrounds and knowledge sufficiently broad to provide adequate advice and guidance to the Secretary. VA strives to develop a Committee membership that includes diversity in military services, ranks, and deployments, working with Veterans, committee subject matter expertise, as well as diversity in race/ethnicity, gender, religion, disability, geographical background, and profession. We ask that nominations include information of this type so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Self-nominations are acceptable. Nomination package should include:

(1) A cover letter that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae; and

(4) letters of recommendation are accepted, but not required; and

(5) a statement confirming that the nominee is not a federally-registered lobbyist. Individuals selected for appointment to the Committee shall be invited to serve a 4-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented. In order to promote inclusion and balance of membership, cover letters may also include information regarding history of military service, race, color, religion, gender identity, national origin, age, disability or other factors that would give the nominee a unique perspective on older Veteran matters. Nominations must also state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership.

Dated: April 5, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–07467 Filed 4–7–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 68 April 10, 2023

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; FY 2024 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1783–P]

RIN 0938–AV06

Medicare Program; FY 2024 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPF), which include psychiatric hospitals and excluded psychiatric units of an acute care hospital or critical access hospital. These proposed changes would be effective for IPF discharges occurring during the Fiscal Year (FY) beginning October 1, 2023 through September 30, 2024 (FY 2024). In addition, this proposed rule discusses proposals on quality measures and reporting requirements under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program with proposed changes beginning with the FY 2024 payment determination through changes beginning with the FY 2028 payment determination.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by June 5, 2023.

ADDRESSES: In commenting, please refer to file code CMS–1783–P.

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 *https://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–1783–P, P.O. Box 8010, Baltimore, MD 21244–8010.

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–1783–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mollie Knight (410) 786–7948 or Bridget Dickensheets (410) 786–8670, for information regarding the market basket update or the labor-related share.

Nick Brock (410) 786–5148 or Theresa Bean (410) 786–2287, for information regarding the regulatory impact analysis.

Lauren Lowenstein-Turner, (410) 786–4507, for information regarding the inpatient psychiatric facilities quality reporting program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

Addendum A to this proposed rule summarizes the FY 2024 IPF PPS payment rates, outlier threshold, cost of living adjustment factors (COLA) for Alaska and Hawaii, national and upper limit cost-to-charge ratios, and adjustment factors. In addition, the B Addenda to this proposed rule shows the complete listing of ICD–10 Clinical Modification (CM) and Procedure Coding System (PCS) codes, the FY 2024 IPF PPS comorbidity adjustment, and electroconvulsive therapy (ECT) procedure codes. The A and B Addenda are available online at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

Tables setting forth the FY 2024 Wage Index for Urban Areas Based on Core Based Statistical Area (CBSA) Labor Market Areas and the FY 2024 Wage Index Based on CBSA Labor Market Areas for Rural Areas are available exclusively through the internet, on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/IPFPPS/WageIndex.html.*

I. Executive Summary

A. Purpose

This proposed rule would rebase and revise the market basket for the Inpatient Psychiatric Facility Prospective Payment System (IPF PPS) to reflect a 2021 base year, and update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPFs) for discharges occurring during Fiscal Year (FY) 2024, (beginning October 1, 2023 through September 30, 2024). This rule also includes a proposal to modify our regulations to make it easier for hospitals to open new excluded psychiatric units paid under the IPF PPS. In addition, this proposed rule includes a request for information to inform revisions to the IPF PPS adjustments for FY 2025, as required by the Consolidated Appropriations Act, 2023 (hereafter referred to as CAA, 2023) (Pub. L. 116–260). Lastly, this proposed rule discusses proposals on quality measures and reporting requirements under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program.

B. Summary of the Major Provisions

1. Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS)

For the IPF PPS, we propose to:

- Modify the regulations to allow the status of a hospital psychiatric unit to be changed from not excluded to excluded, and therefore paid under the IPF PPS at any time during a cost reporting period if certain requirements are met.
- Solicit comments to inform revisions to IPF PPS payments for FY 2025, as required by the CAA, 2023.
- Revise and rebase the IPF market basket to reflect a 2021 base year.
- Make technical rate setting updates: The IPF PPS payment rates would be adjusted annually for inflation, as well as statutory and other policy factors.

This rule proposes to update:

++ The IPF PPS Federal per diem base rate from $865.63 to $892.58.

++ The IPF PPS Federal per diem base rate for providers who failed to report quality data to $875.25.

++ The electroconvulsive therapy (ECT) payment per treatment from $372.67 to $384.27.

++ The ECT payment per treatment for providers who failed to report quality data to $376.81.

++ The labor-related share from 77.4 percent to 78.5 percent.

++ The wage index budget-neutrality factor to 1.0011.

++ The fixed dollar loss threshold amount from $24,630 to $34,750 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

2. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

For the IPFQR Program, we propose to:

• Adopt the Facility Commitment to Health Equity measure beginning with the FY 2026 payment determination;

• Adopt the Screening for Social Drivers of Health measure beginning with voluntary reporting of CY 2024 data and beginning with required reporting of CY 2025 data for the FY 2027 payment determination;

• Adopt the Screen Positive Rate for Social Drivers of Health measure beginning with voluntary reporting of CY 2024 data and beginning with required reporting of CY 2025 data for the FY 2027 payment determination;

• Adopt the Psychiatric Inpatient Experience (PIX) survey to measure patient experience of care in the IPF setting beginning with voluntary reporting of CY 2025 data and beginning with required reporting of CY 2026 data for the FY 2028 payment determination;

• Modify the Coronavirus disease 2019 (COVID–19) Vaccination Coverage Among Health Care Personnel (HCP) measure to apply the Centers for Disease Control and Prevention's (CDC's) definition of ''up-to-date'' for COVID–19 vaccination, incorporating booster doses, beginning with fourth quarter CY 2023 data for FY 2025 payment determination and, following this first single-quarter reporting period, reporting for full calendar year beginning with CY 2024 data for FY 2026 payment determination;

• Remove the following two measures beginning with the FY 2025 payment determination and subsequent years:

++ Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification (HBIPS–5); and

++ Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention Provided (TOB–2/2a) measure;

• Adopt a data validation pilot program starting with data submitted in CY 2025 and continuing until a full data validation program is proposed and adopted in future rulemaking; and

• Codify the IPFQR Program's procedural requirements related to statutory authority, participation and withdrawal, data submission, quality measure retention and removal, extraordinary circumstances exceptions, and public reporting at 42 CFR 412.433 Procedural requirements under the IPFQR Program.

C. Summary of Impacts

Provision description	Total transfers & cost reductions
FY 2024 IPF PPS payment update.	The overall economic impact of this proposed rule is an estimated $55 million in increased payments to IPFs during FY 2024.
FY 2024 IPFQR Program update.	The overall economic impact of the IPFQR Program proposals in this proposed rule is an estimated decrease of 505,247 hours in information collection burden resulting in a savings of $12,431,700.

II. Background

A. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department of Health and Human Services (the Secretary) develop a per diem payment perspective system (PPS) for inpatient hospital services furnished in psychiatric hospitals and excluded psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and excluded psychiatric units. ''Excluded psychiatric unit'' means a psychiatric unit of an acute care hospital or of a Critical Access Hospital (CAH), which is excluded from payment under the Inpatient Prospective Payment System (IPPS) or CAH payment system, respectively. These excluded psychiatric units will be paid under the IPF PPS.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to psychiatric distinct part units of CAHs.

Sections 3401(f) and 10322 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to jointly as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Social Security Act (the Act).

Section 1886(s)(1) of the Act titled, ''Reference to Establishment and Implementation of System,'' refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the rate year (RY) beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY.

Section 1886(s)(2)(A)(ii) of the Act required the application of an ''other adjustment'' that reduced any update to an IPF PPS base rate by a percentage point amount specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. As noted in the FY 2020 IPF PPS final rule, for the RY beginning in 2019, section 1886(s)(3)(E) of the Act required that the other adjustment reduction be equal to 0.75 percentage point; that was the final year the statute required the application of this adjustment. Because FY 2021 was a RY beginning in 2020, FY 2021 was the first-year section 1886(s)(2)(A)(ii) of the Act did not apply since its enactment.

Sections 1886(s)(4)(A) through (D) of the Act require that for RY 2014 and each subsequent RY, IPFs that fail to report required quality data with respect to such a RY will have their annual update to a standard Federal rate for discharges reduced by 2.0 percentage points. This may result in an annual update being less than 0.0 for a RY, and may result in payment rates for the upcoming RY being less than such payment rates for the preceding RY. Any reduction for failure to report required quality data will apply only to the RY involved, and the Secretary will not consider such reduction in

computing the payment amount for a subsequent RY. In addition, section 4125 of the CAA, 2023 requires that a patients' perspective of care quality measure be added to the IPFQR Program not later than for FY 2031. Additional information about the specifics of the current IPFQR Program is available in the FY 2022 IPF PPS and Quality Reporting Updates for FY Beginning October 1, 2021 final rule (86 FR 42624 through 42661).

Section 4125 of the CAA, 2023 also requires revisions to the Medicare prospective payment system (PPS) for psychiatric hospitals and psychiatric units. Specifically, section 4125(a) of the CAA, 2023 amends section 1886(s) of the Act by adding a new paragraph (5) that requires the Secretary to collect data and information beginning no later than October 1, 2023, as the Secretary determines appropriate, to inform revisions to IPF PPS payments. In addition, the Secretary is required to implement revisions to the methodology for determining the payment rates under the IPF PPS for FY 2025 as the Secretary determines appropriate.

To implement and periodically update the IPF PPS, we have published various proposed and final rules and notices in the **Federal Register**. For more information regarding these documents, see the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/.*

B. Overview of the IPF PPS

On November 15, 2004, we published the IPF PPS final rule in the **Federal Register** (69 FR 66922). The November 2004 IPF PPS final rule established the IPF PPS, as required by section 124 of the BBRA and codified at 42 CFR part 412, subpart N. The November 2004 IPF PPS final rule set forth the Federal per diem base rate for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described previously and certain patient- and facility-level payment adjustments for characteristics that were found in the regression analysis to be associated with statistically significant per diem cost differences; with statistical significance defined as p less than 0.05. A complete discussion of the regression analysis that established the IPF PPS adjustment factors can be found in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, and comorbidities, as well as adjustments to reflect higher per diem costs at the beginning of a patient's IPF stay and lower costs for later days of the stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for the presence of a qualifying emergency department (ED).

The IPF PPS has additional payment policies for outlier cases, interrupted stays, and a per treatment payment for patients who undergo ECT. During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended as of January 1, 2008, these payments are no longer available.

C. Annual Requirements for Updating the IPF PPS

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. In the November 2004 IPF PPS final rule (69 FR 66922), we implemented the IPF PPS using the following update strategy:

- Calculate the final Federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In developing the IPF PPS, and to ensure that the IPF PPS can account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. That regression analysis is described in detail in our November 28, 2003 IPF PPS proposed rule (68 FR 66923; 66928 through 66933) and our November 15, 2004 IPF PPS final rule (69 FR 66933 through 66960). For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In the November 2004 IPF PPS final rule, we explained the reasons for delaying an update to the adjustment factors, derived from the regression analysis, including waiting until we have IPF PPS data that yields as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We indicated that we did not intend to update the regression analysis and the patient-level and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (69 FR 66966).

On May 6, 2011, we published a final rule in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012)'' (76 FR 26432), which changed the payment rate update period to a RY that coincides with a FY update. Therefore, final rules are now published in the **Federal Register** in the summer to be effective on October 1st. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring and the final rule in the summer to be effective on October 1st. For a detailed list of updates to the IPF PPS, we refer readers to our regulations at 42 CFR 412.428.

The most recent IPF PPS annual update was published in a final rule on July 29, 2022 in the **Federal Register** titled, ''Medicare Program; FY 2023 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update and Quality Reporting—Request for Information'' (87 FR 46846), which updated the IPF PPS payment rates for FY 2023. That final rule updated the IPF PPS Federal per diem base rates that were published in the FY 2022 IPF PPS Rate Update final rule (86 FR 42608) in accordance with our established policies.

III. Provisions of the FY 2024 IPF PPS Payment Update

A. Proposed Rebasing and Revising of the Market Basket for the IPF PPS

1. Background

Originally, the input price index used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost reports for Medicare-participating inpatient rehabilitation facilities (IRFs), IPFs, long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the term ''market basket,'' as used in this document, refers to an input price index.

Since the IPF PPS inception, the market basket used to update IPF PPS payments has been rebased and revised to reflect more recent data on IPF cost structures. We last rebased and revised the market basket applicable to the IPF PPS in the FY 2020 IPF PPS final rule (84 FR 38426 through 38447), where we adopted a 2016-based IPF market basket. The 2016-based IPF market basket used Medicare cost report data for both Medicare-participating freestanding psychiatric hospitals and hospital-based psychiatric units. References to the historical market baskets used to update IPF PPS payments are listed in the FY 2016 IPF PPS final rule (80 FR 46656). For the FY 2024 IPF PPS proposed rule, we propose to rebase and revise the IPF market basket to reflect a 2021 base year.

2. Overview of the Proposed 2021-Based IPF Market Basket

The proposed 2021-based IPF market basket is a fixed-weight, Laspeyres-type price index. A Laspeyres price index measures the change in price, over time, of the same mix of goods and services purchased in the base period. Any changes in the quantity or mix of goods and services (that is, intensity) purchased over time relative to a base period are not measured.

The index itself is constructed in three steps. First, a base period is selected (in this proposed rule, we propose to use 2021 as the base period) and total base period costs are estimated for a set of mutually exclusive and exhaustive cost categories. Each category is calculated as a proportion of total costs. These proportions are called cost weights. Second, each cost category is matched to an appropriate price or wage variable, referred to as a price proxy. In nearly every instance, these price proxies are derived from publicly available statistical series that are published on a consistent schedule (preferably at least on a quarterly basis). Finally, the cost weight for each cost category is multiplied by the level of its respective price proxy. The sum of these products (that is, the cost weights multiplied by their price index levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that timeframe.

As noted, the market basket is described as a fixed-weight index because it represents the change in price over time of a constant mix (quantity and intensity) of goods and services needed to provide IPF services. The effects on total costs resulting from changes in the mix of goods and services purchased subsequent to the base period are not measured. For example, an IPF hiring more nurses after the base period to accommodate the needs of patients would increase the volume of goods and services purchased by the IPF, but would not be factored into the price change measured by a fixed-weight IPF market basket. Only when the index is rebased would changes in the quantity and intensity be captured, with those changes being reflected in the cost weights. Therefore, we rebase the market basket periodically so that the cost weights reflect recent changes in the mix of goods and services that IPFs purchase to furnish inpatient care between base periods.

3. Proposed Rebasing and Revising of the IPF PPS Market Basket

As discussed in the FY 2020 IPF PPS final rule (84 FR 38426 through 38447), the 2016-based IPF market basket reflects the Medicare cost reports for both freestanding and hospital-based IPFs. Beginning with FY 2024, we propose to rebase and revise the IPF market basket to a 2021 base year reflecting the 2021 Medicare cost report data submitted by both freestanding and hospital-based IPFs. We provide a detailed description of our proposed methodology used to develop the 2021-based IPF market basket below. This proposed methodology is generally similar to the methodology used to develop the 2016-based IPF market basket. We solicit public comment on our proposed methodology for developing the 2021-based IPF market basket.

a. Development of Cost Categories and Weights for the Proposed 2021-Based IPF Market Basket

(1) Use of Medicare Cost Report Data

We propose a 2021-based IPF market basket that consists of seven major cost categories and a residual derived from the 2021 Medicare cost reports (CMS Form 2552–10, OMB No. 0938–0050) for freestanding and hospital-based IPFs. The seven major cost categories are Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance (PLI), Home Office/Related Organization Contract Labor, and Capital. The cost reports include providers whose cost reporting period began on or after October 1, 2020 and before October 1, 2021. As noted previously, the current IPF market basket is based on 2016 Medicare cost reports and therefore, reflects the 2016 cost structure for IPFs. As described in the FY 2023 IPF PPS final rule (87 FR 46849), we received comments on the FY 2023 IPF PPS proposed rule (87 FR 19418 through 19419) where stakeholders expressed concern that the proposed market basket update inadequately reflected the input price inflation experienced by IPFs, particularly as a result of the COVID–19 PHE. These commenters stated that the PHE, along with inflation, has significantly driven up operating costs. Specifically, some commenters noted changes to labor markets that led to the use of more contract labor, a trend that we verified in analyzing the Medicare cost reports through 2021. Therefore, we believe it is appropriate to incorporate more recent data to reflect updated cost structures for IPFs, and so we propose to use 2021 as the base year because we believe that the Medicare cost reports for this year represent the most recent complete set of Medicare cost report data available for developing the proposed IPF market basket at the time of this rulemaking. Given the potential impact of the PHE on the Medicare cost report data, we will continue to monitor these data going forward and any changes to the IPF market basket would be proposed in future rulemaking.

Similar to the Medicare cost report data used to develop the 2016-based IPF market basket, the Medicare cost report data for 2021 show large differences between some providers' Medicare length of stay (LOS) and total facility LOS. Our goal has always been to measure cost weights that are reflective

of case mix and practice patterns associated with providing services to Medicare beneficiaries. Therefore, we propose to limit our selection of Medicare cost reports used in the proposed 2021-based IPF market basket to those facilities that had a Medicare LOS within a comparable range of their total facility average LOS. The Medicare average LOS for freestanding IPFs is calculated from data reported on line 14 of Worksheet S–3, part I. The Medicare average LOS for hospital-based IPFs is calculated from data reported on line 16 of Worksheet S–3, part I. To derive the proposed 2021-based IPF market basket, for those IPFs with an average facility LOS of greater than or equal to 15 days, we propose to include IPFs where the Medicare LOS is within 50 percent (higher or lower) of the average facility LOS. For those IPFs whose average facility LOS is less than 15 days, we propose to include IPFs where the Medicare LOS is within 95 percent (higher or lower) of the facility LOS. We propose to apply this LOS edit to the data for IPFs to exclude providers that serve a population whose LOS would indicate that the patients served are not consistent with a LOS of a typical Medicare patient. This is the same LOS edit applied to the 2016-based IPF market basket.

Applying these trims to the approximate 1,370 total cost reports (freestanding and hospital-based) resulted in roughly 1,250 IPF Medicare cost reports with an average Medicare LOS of 13 days, average facility LOS of 10 days, and Medicare utilization (as measured by Medicare inpatient IPF days as a percentage of total facility days) of 16 percent. Providers excluded from the proposed 2021-based IPF market basket (about 120 Medicare cost reports) had an average Medicare LOS of 21 days, average facility LOS of 41 days, and a Medicare utilization of 3 percent. Of those excluded, about 62 percent of these were freestanding providers; on the other hand, freestanding providers represent about 38 percent of all IPFs. We note that 70 percent of those excluded from the 2016-based IPF market basket using this LOS edit were freestanding providers.

We then propose to use the cost reports for IPFs that met this requirement to calculate the costs for the seven major cost categories (Wages and Salaries, Employee Benefits, Contract Labor, Professional Liability Insurance, Pharmaceuticals, Home Office/Related Organization Contract Labor, and Capital) for the market basket. These are the same categories used for the 2016-based IPF market basket. Also, as described in section III.A.3.a.(4) of this proposed rule, and as done for the 2016-based IPF market basket, we propose to use the Medicare cost report data to calculate the detailed capital cost weights for the Depreciation, Interest, Lease, and Other Capital-related cost categories. We also propose to rename the Home Office Contract Labor cost category to the Home Office/Related Organization Contract Labor cost category to be more consistent with the Medicare cost report instructions.

Similar to the 2016-based IPF market basket major cost weights, for the majority of the proposed 2021-based IPF market basket cost weights, we propose to divide the costs for each cost category by total Medicare allowable costs (routine, ancillary and capital)—costs that are eligible for payment through the IPF PPS (we note that we use total facility medical care costs as the denominator to derive both the PLI and Home Office/Related Organization Contract Labor cost weights). We next describe our proposed methodology for deriving the cost levels used to derive the proposed 2021-based IPF market basket.

(a) Total Medicare Allowable Costs

For freestanding IPFs, we propose that total Medicare allowable costs would be equal to the sum of total costs for the Medicare allowable cost centers as reported on Worksheet B, part I, column 26, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93.

For hospital-based IPFs, we propose that total Medicare allowable costs would be equal to the total costs for the IPF inpatient unit after the allocation of overhead costs (Worksheet B, part I, column 26, line 40) and a proportion of total ancillary costs reported on Worksheet B, part I, column 26, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93.

We propose to calculate total ancillary costs attributable to the hospital-based IPF by first deriving an ''IPF ancillary ratio'' for each ancillary cost center. The IPF ancillary ratio is defined as the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for hospital-based IPFs) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPSs [that is, IPPS, IRF, IPF and skilled nursing facility (SNF)]). For example, if hospital-based IPF Medicare laboratory costs represent about 2 percent of the total Medicare laboratory costs for the entire facility, then the IPF ancillary ratio for laboratory costs would be 2 percent. We believe it is appropriate to use only a portion of the ancillary costs in the market basket cost weight calculations since the hospital-based IPF only utilizes a portion of the facility's ancillary services. We believe the ratio of reported IPF Medicare costs to reported total Medicare costs provides a reasonable estimate of the ancillary services utilized, and costs incurred, by the hospital-based IPF. We propose that this IPF ancillary ratio for each cost center is also used to calculate Wages and Salaries, and Capital costs as described below.

Then, for each ancillary cost center, we propose to multiply the IPF ancillary ratio for the given cost center by the total facility ancillary costs for that specific cost center (as reported on Worksheet B, part I, column 26) to derive IPF ancillary costs. For example, the 2 percent IPF ancillary ratio for laboratory cost center would be multiplied by the total ancillary costs for laboratory (Worksheet B, part I, column 26, line 60). The IPF ancillary costs for each cost center are then added to total costs for the IPF inpatient unit after the allocation of overhead costs (Worksheet B, part I, column 26, line 40) to derive total Medicare allowable costs.

We propose to use these methods to derive levels of total Medicare allowable costs for IPF providers. This is the same methodology used for the 2016-based IPF market basket. We propose that these total Medicare allowable costs for the IPF will be the denominator for the cost weight calculations for the Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, and Capital cost weights. With this work complete, we then set about deriving cost levels for the seven major cost categories and then derive a residual cost weight reflecting all other costs not classified.

(b) Wages and Salaries Costs

For freestanding IPFs, we propose to derive Wages and Salaries costs as the sum of routine inpatient salaries (Worksheet A, column 1, lines 30 through 35), ancillary salaries (Worksheet A, column 1, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93), and a proportion of overhead (or general service cost centers in the Medicare cost reports) salaries. Since overhead salary costs are attributable to the entire IPF, we only include the proportion attributable to the Medicare allowable cost centers. We propose to estimate the proportion of overhead salaries that are attributed to Medicare allowable costs centers by multiplying the ratio of Medicare allowable area salaries (Worksheet A, column 1, lines 30 through 35, 50

through 76 (excluding 52 and 75), 90 through 91, and 93) to total non-overhead salaries (Worksheet A, column 1, line 200 less Worksheet A, column 1, lines 4 through 18) times total overhead salaries (Worksheet A, column 1, lines 4 through 18). This is a similar methodology as used in the 2016-based IPF market basket.

For hospital-based IPFs, we propose to derive Wages and Salaries costs as the sum of the following salaries attributable to the hospital-based IPF: Inpatient routine salary costs (Worksheet A, column 1, line 40); overhead salary costs; ancillary salary costs; and a portion of overhead salary costs attributable to the ancillary departments.

(i) Overhead Salary Costs

We propose to calculate the portion of overhead salary cost attributable to hospital-based IPFs by first calculating an IPF overhead salary ratio, which is equal to the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4–18) to total facility noncapital overhead costs (as reported on Worksheet A, column 1 and 2, lines 4–18). We then propose to multiply this IPF overhead salary ratio by total noncapital overhead costs (sum of Worksheet B, part I, columns 4 through 18, line 40, less Worksheet B, part II, columns 4 through 18, line 40). This methodology assumes the proportion of total costs related to salaries for the overhead cost center is similar for all inpatient units (that is, acute inpatient or inpatient psychiatric).

(ii) Ancillary Salary Costs

We propose to calculate hospital-based IPF ancillary salary costs for a specific cost center (Worksheet A, column 1, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93) as salary costs from Worksheet A, column 1, multiplied by the IPF ancillary ratio for each cost center as described in section III.A.3.a.(1)(a) of this proposed rule. The sum of these costs represents hospital-based IPF ancillary salary costs.

(iii) Overhead Salary Costs for Ancillary Cost Centers

We propose to calculate the portion of overhead salaries attributable to each ancillary department (lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93) by first calculating total noncapital overhead cost attributable to each specific ancillary department (sum of Worksheet B, part I, columns 4–18, less Worksheet B, part II, column 26). We then identify the portion of these total noncapital overhead cost for each ancillary department that is attributable to the hospital-based IPF by multiplying these costs by the IPF ancillary ratio as described in section III.A.3.a.(1)(a) of this proposed rule. We then sum these estimated IPF Medicare allowable noncapital overhead costs for all ancillary departments (cost centers 50 through 76, 90 through 91, and 93). Finally, we then identify the portion of these IPF Medicare allowable noncapital overhead cost that are attributable to Wages and Salaries by multiplying these costs by the IPF overhead salary ratio as described in section III.A.3.a.(1)(b)(i) of this proposed rule. This is the same methodology used to derive the 2016-based IPF market basket.

(c) Employee Benefits Costs

Effective with the implementation of CMS Form 2552–10, we began collecting Employee Benefits and Contract Labor data on Worksheet S–3, part V.

For the 2021 Medicare cost report data, the majority of IPF providers did not report data on Worksheet S–3, part V. Two percent of freestanding IPFs and roughly 48 percent of hospital-based IPFs reported Employee Benefits data on Worksheet S–3, part V. Two percent of freestanding IPFs and roughly 13 percent of hospital-based IPFs reported Contract Labor data on Worksheet S–3, part V. We continue to encourage all providers to report these data on the Medicare cost report.

For freestanding IPFs, we propose that Employee Benefits cost would be equal to the data reported on Worksheet S–3, part V, column 2, line 2. We note that while not required to do so, freestanding IPFs also may report Employee Benefits data on Worksheet S–3, part II, which is applicable to only IPPS providers. Similar to the method for the 2016-based IPF market basket, for those freestanding IPFs that report Worksheet S–3, part II, data, but not Worksheet S–3, part V, we propose to use the sum of Worksheet S–3, part II, lines 17, 18, 20, and 22, to derive Employee Benefits costs.

For hospital-based IPFs, we propose to calculate total benefit cost as the sum of inpatient unit benefit cost, a portion of ancillary departments benefit costs, and a portion of overhead benefits attributable to both the routine inpatient unit and the ancillary departments. For those hospital-based IPFs that report Worksheet S–3, part V data, we propose inpatient unit benefit costs be equal to Worksheet S–3, part V, column 2, line 3. Given the limited reporting on Worksheet S–3, part V, we propose that for those hospital-based IPFs that do not report these data, we calculate inpatient unit benefits cost using a portion of benefits cost reported for Excluded areas on Worksheet S–3, part II. We propose to calculate the ratio of inpatient unit salaries (Worksheet A, column 1, line 40) to total excluded area salaries (sum of Worksheet A, column 1, lines 20, 23, 40 through 42, 44, 45, 46, 94, 95, 98 through 101, 105 through 112, 114, 115 through 117, 190 through 194). We then propose to apply this ratio to Excluded area benefits (Worksheet S–3, part II, column 4, line 19) to derive inpatient unit benefits cost for those providers that do not report benefit costs on Worksheet S–3, part V.

We propose the ancillary departments benefits and overhead benefits (attributable to both the inpatient unit and ancillary departments) costs are derived by first calculating the sum of hospital-based IPF overhead salaries as described in section III.A.3.a.(1)(b)(i) of this proposed rule, hospital-based IPF ancillary salaries as described in section III.A.3.a.(1)(b)(ii) of this proposed rule and hospital-based IPF overhead salaries for ancillary cost centers as described in section III.A.3.a.(1)(b)(iii) of this proposed rule. This sum is then multiplied by the ratio of total facility benefits to total facility salaries, where total facility benefits is equal to the sum of Worksheet S–3, part II, column 4, lines 17–25, and total facility salaries is equal to Worksheet S–3, part II, column 4, line 1.

(d) Contract Labor Costs

Contract Labor costs are primarily associated with direct patient care services. Contract labor costs for other services such as accounting, billing, and legal are calculated separately using other government data sources as described in section III.A.3.a.(3) of this proposed rule. To derive contract labor costs using Worksheet S–3, part V, data for freestanding IPFs, we propose Contract Labor costs be equal to Worksheet S–3, part V, column 1, line 2. As we noted for Employee Benefits, freestanding IPFs also may report Contract Labor data on Worksheet S–3, part II, which is applicable to only IPPS providers. For those freestanding IPFs that report Worksheet S–3, part II data, but not Worksheet S–3, part V, we propose to use the sum of Worksheet S–3, part II, column 4, lines 11 and 13, to derive Contract Labor costs.

For hospital-based IPFs, we propose that Contract Labor costs be equal to Worksheet S–3, part V, column 1, line 3. Reporting of this data continues to be somewhat limited; therefore, we continue to encourage all providers to report these data on the Medicare cost report. Given the limited reporting on

Worksheet S–3, part V, we propose that for those hospital-based IPFs that do not report these data, we calculate Contract Labor costs using a portion of contract labor costs reported on Worksheet S–3, part II. We propose to calculate the ratio of contract labor costs (Worksheet S–3, part II, column 4, lines 11 and 13) to PPS salaries (Worksheet S–3, part II, column 4, line 1 less the sum of Worksheet S–3, part II, column 4, lines 3, 401, 5, 6, 7, 701, 8, 9, 10 less Worksheet A, column 1, line 20 and 23). We then propose to apply this ratio to total inpatient routine salary costs (Worksheet A, column 1, line 40) to derive contract labor costs for those providers that do not report contract labor costs on Worksheet S–3, part V.

(e) Pharmaceuticals Costs

For freestanding IPFs, we propose to calculate pharmaceuticals costs using non-salary costs reported on Worksheet A, column 7, less Worksheet A, column 1, for the pharmacy cost center (line 15) and drugs charged to patients cost center (line 73).

For hospital-based IPFs, we propose to calculate pharmaceuticals costs as the sum of a portion of the non-salary pharmacy costs and a portion of the non-salary drugs charged to patient costs reported for the total facility. We propose that non-salary pharmacy costs attributable to the hospital-based IPF would be calculated by multiplying total pharmacy costs attributable to the hospital-based IPF (as reported on Worksheet B, part I, column 15, line 40) by the ratio of total non-salary pharmacy costs (Worksheet A, column 2, line 15) to total pharmacy costs (sum of Worksheet A, columns 1 and 2 for line 15) for the total facility. We propose that non-salary drugs charged to patient costs attributable to the hospital-based IPF would be calculated by multiplying total non-salary drugs charged to patient costs (Worksheet B, part I, column 0, line 73 plus Worksheet B, part I, column 15, line 73 less Worksheet A, column 1, line 73) for the total facility by the ratio of Medicare drugs charged to patient ancillary costs for the IPF unit (as reported on Worksheet D–3 for hospital-based IPFs, column 3, line 73) to total Medicare drugs charged to patient ancillary costs for the total facility (equal to the sum of Worksheet D–3, column 3, line 73 for all relevant PPS [that is, IPPS, IRF, IPF and SNF]).

(f) Professional Liability Insurance Costs

For freestanding and hospital-based IPFs, we propose that Professional Liability Insurance (PLI) costs (often referred to as malpractice costs) would be equal to premiums, paid losses and self-insurance costs reported on Worksheet S–2, columns 1 through 3, line 118—the same data used for the 2016-based IPF market basket. For hospital-based IPFs, we propose to assume that the PLI weight for the total facility is similar to the hospital-based IPF unit since the only data reported on this worksheet is for the entire facility, as we currently have no means to identify the proportion of total PLI costs that are only attributable to the hospital-based IPF. However, when we derive the cost weight for PLI for both hospital-based and freestanding IPFs, we use the total facility medical care costs as the denominator as opposed to total Medicare allowable costs. For freestanding IPFs and hospital-based IPFs, we propose to derive total facility medical care costs as the sum of total costs (Worksheet B, part I, column 26, line 202) less non-reimbursable costs (Worksheet B, part I, column 26, lines 190 through 201). Our assumption is that the same proportion of expenses are used among each unit of the hospital.

(g) Home Office/Related Organization Contract Labor Costs

For hospital-based IPFs, we propose to calculate the Home Office/Related Organization Contract Labor costs using data reported on Worksheet S–3, part II, column 4, lines 1401, 1402, 2550, and 2551. Similar to the PLI costs, these costs are for the entire facility. Therefore, when we derive the cost weight for home office/related organization contract labor costs, we use the total facility medical care costs as the denominator (reflecting the total facility costs (Worksheet B, part I, column 26, line 202) less the nonreimbursable costs reported on lines 190 through 201).

(h) Capital Costs

For freestanding IPFs, we propose that capital costs would be equal to Medicare allowable capital costs as reported on Worksheet B, part II, column 26, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93.

For hospital-based IPFs, we propose that capital costs would be equal to IPF inpatient capital costs (as reported on Worksheet B, part II, column 26, line 40) and a portion of IPF ancillary capital costs. We calculate the portion of ancillary capital costs attributable to the hospital-based IPF for a given cost center by multiplying total facility ancillary capital costs for the specific ancillary cost center (as reported on Worksheet B, part II, column 26) by the IPF ancillary ratio as described in section III.A.3.a.(1)(a) of this proposed rule.

(2) Final Major Cost Category Computation

After we derive costs for each of the major cost categories and total Medicare allowable costs for each provider using the Medicare cost report data as previously described, we propose to address data outliers using the following steps. First, for the Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, and Capital cost weights, we first divide the costs for each of these five categories by total Medicare allowable costs calculated for the provider to obtain cost weights for the universe of IPF providers. We then propose to trim the data to remove outliers (a standard statistical process) by: (1) requiring that major expenses (such as Wages and Salaries costs) and total Medicare allowable operating costs be greater than zero; and (2) excluding the top and bottom 5 percent of the major cost weight (for example, Wages and Salaries costs as a percent of total Medicare allowable operating costs). We note that missing values are assumed to be zero consistent with the methodology for how missing values were treated in the 2016-based IPF market basket. After these outliers have been excluded, we sum the costs for each category across all remaining providers. We then divide this by the sum of total Medicare allowable costs across all remaining providers to obtain a cost weight for the proposed 2021-based IPF market basket for the given category.

The proposed trimming methodology for the Home Office/Related Organization Contract Labor and PLI cost weights are slightly different than the proposed trimming methodology for the other five cost categories as described above. For these cost weights, since we are using total facility medical care costs rather than Medicare allowable costs associated with IPF services, we propose to trim the freestanding and hospital-based IPF cost weights separately.

For the PLI cost weight, for each of the providers, we first divide the PLI costs by total facility medical care costs to obtain a PLI cost weight for the universe of IPF providers. We then propose to trim the data to remove outliers by: (1) requiring that PLI costs are greater than zero and are less than total facility medical care costs; and (2) excluding the top and bottom 5 percent of the major cost weight trimming freestanding and hospital-based providers separately. After removing these outliers, we are left with a trimmed data set for both freestanding

and hospital-based providers. We propose to separately sum the costs for each category (freestanding and hospital-based) across all remaining providers. We next divide this by the sum of total facility medical care costs across all remaining providers to obtain both a freestanding cost weight and hospital-based cost weight. Lastly, we propose to weight these two cost weights together using the Medicare allowable costs from the sample of freestanding and hospital-based IPFs that passed the PLI trim (63 percent for hospital-based and 37 percent for freestanding IPFs) to derive a PLI cost weight for the proposed 2021-based IPF market basket.

For the Home Office/Related Organization Contract Labor cost weight, for each of the providers, we first divide the home office/related organization contract labor costs by total facility medical care costs to obtain a Home Office/Related Organization Contract Labor cost weight for the universe of IPF providers. Similar to the other market basket costs weights, we propose to trim the Home Office/Related Organization Contract Labor cost weight to remove outliers. Since not all hospital-based IPFs will have home office/related organization contract labor costs (approximately 80 percent of hospital-based IPFs report having a home office), we propose to trim the top one percent of the Home Office/Related Organization Contract Labor cost weight. Using this proposed methodology, we calculate a Home Office/Related Organization Contract Labor cost weight for hospital-based IPFs of 5.1 percent.

Freestanding IPFs are not required to complete Worksheet S–3, part II. Therefore, to estimate the Home Office/Related Organization Contract Labor cost weight for freestanding IPFs, we propose the following methodology:

Step 1: Using hospital-based IPFs with a home office and also passing the 1 percent trim as described, we calculate the ratio of the Home Office/Related Organization Contract Labor cost weight to the Medicare allowable non-salary, non-capital cost weight (Medicare allowable non-salary, non-capital costs as a percent of total Medicare allowable costs).

Step 2: We identify freestanding IPFs that report a home office on Worksheet S–2, line 140—roughly 87 percent of freestanding IPFs. We propose to calculate a Home Office/Related Organization Contract Labor cost weight for these freestanding IPFs by multiplying the ratio calculated in Step 1 by the Medicare allowable non-salary, noncapital cost weight for those freestanding IPFs with a home office.

Step 3: We then calculate the freestanding IPF cost weight by multiplying the Home Office/Related Organization Contract Labor cost weight in Step 2 by the total Medicare allowable costs for freestanding IPFs with a home office as a percent of total Medicare allowable costs for all freestanding IPFs (87 percent), which derives a freestanding Home Office/Related Organization Contract Labor cost weight of 4.2 percent.

To calculate the overall Home Office/Related Organization Contract Labor cost weight for the proposed 2021-based IPF market basket, we propose to weight together the freestanding Home Office/Related Organization Contract Labor cost weight (4.2 percent) and the hospital-based Home Office Contract Labor/Related Organization cost weight (5.1 percent) using total Medicare allowable costs from the sample of hospital-based IPFs that passed the one percent trim and the universe of freestanding IPFs. The resulting overall cost weight for Home Office/Related Organization Contract Labor is 4.7 percent (4.2 percent × 44 percent + 5.1 percent × 56 percent). This is the same methodology used to calculate the Home Office/Related Organization Contract Labor cost weight in the 2016-based IPF market basket.

Finally, we propose to calculate the residual ''All Other'' cost weight that reflects all remaining costs that are not captured in the seven cost categories listed. See Table 1 for the resulting cost weights for these major cost categories that we obtain from the Medicare cost reports.

TABLE 1—MAJOR COST CATEGORIES AS DERIVED FROM MEDICARE COST REPORTS

Major cost categories	Proposed 2021-Based IPF market basket (percent)	2016-Based IPF market basket (percent)
Wages and Salaries	50.4	51.2
Employee Benefits	13.7	13.5
Contract Labor	2.8	1.3
Professional Liability Insurance (Malpractice)	1.0	0.9
Pharmaceuticals	3.6	4.7
Home Office/Related Organization Contract Labor	4.7	3.5
Capital	7.2	7.1
All Other	16.7	17.9

As we did for the 2016-based IPF market basket, we propose to allocate the Contract Labor cost weight to the Wages and Salaries and Employee Benefits cost weights based on their relative proportions under the assumption that contract labor costs are comprised of both wages and salaries, and employee benefits. The Contract Labor allocation proportion for Wages and Salaries is equal to the Wages and Salaries cost weight as a percent of the sum of the Wages and Salaries cost weight and the Employee Benefits cost weight. For this proposed rule, this rounded percentage is 79 percent; therefore, we propose to allocate 79 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 21 percent to the Employee Benefits cost weight. This allocation was 81/19 in the 2016-based IPF market basket (84 FR 38430). Table 2 shows the Wages and Salaries and Employee Benefit cost weights after Contract Labor cost weight allocation for both the proposed 2021-based IPF market basket and 2016-based IPF market basket.

TABLE 2—WAGES AND SALARIES AND EMPLOYEE BENEFITS COST WEIGHTS AFTER CONTRACT LABOR ALLOCATION

Major cost categories	Proposed 2021-Based IPF market basket	2016-Based IPF market basket
Wages and Salaries	52.6	52.2
Employee Benefits	14.3	13.8

(3) Derivation of the Detailed Operating Cost Weights

To further divide the ''All Other'' residual cost weight estimated from the 2021 Medicare cost report data into more detailed cost categories, we propose to use the 2012 Benchmark Input-Output (I–O) ''Use Tables/Before Redefinitions/Purchaser Value'' for North American Industry Classification System (NAICS) 622000, Hospitals, published by the Bureau of Economic Analysis (BEA). This data is publicly available at *http://www.bea.gov/industry/io_annual.htmhttp://www.bea.gov/industry/io_annual.htm.* For the 2016-based IPF market basket, we also used the 2012 Benchmark I–O data, the most recent data available at the time (84 FR 38431).

The BEA Benchmark I–O data are scheduled for publication every 5 years with the most recent data available for 2012. The 2012 Benchmark I–O data are derived from the 2012 Economic Census and are the building blocks for BEA's economic accounts. Thus, they represent the most comprehensive and complete set of data on the economic processes or mechanisms by which output is produced and distributed.[1] BEA also produces Annual I–O estimates; however, while based on a similar methodology, these estimates reflect less comprehensive and less detailed data sources and are subject to revision when benchmark data becomes available. Instead of using the less detailed Annual I–O data, we propose to inflate the 2012 Benchmark I–O data forward to 2021 by applying the annual price changes from the respective price proxies to the appropriate market basket cost categories that are obtained from the 2012 Benchmark I–O data. We repeat this practice for each year. We then propose to calculate the cost shares that each cost category represents of the inflated 2012 data. These resulting 2021 cost shares are applied to the All Other residual cost weight to obtain the detailed cost weights for the proposed 2021-based IPF market basket. For example, the cost for Food: Direct Purchases represents 5.0 percent of the sum of the ''All Other'' 2012 Benchmark I–O Hospital Expenditures inflated to 2021; therefore, the Food: Direct Purchases cost weight represents 5.0 percent of the proposed 2021-based IPF market basket's ''All Other'' cost category (16.7 percent), yielding a ''final'' Food: Direct Purchases cost weight of 0.8 percent in the proposed 2021-based IPF market basket (0.05 * 16.7 percent = 0.8 percent).

Using this methodology, we propose to derive seventeen detailed IPF market basket cost category weights from the proposed 2021-based IPF market basket residual cost weight (16.7 percent). These categories are: (1) Electricity and Other Non-Fuel Utilities; (2) Fuel: Oil and Gas; (3) Food: Direct Purchases; (4) Food: Contract Services; (5) Chemicals; (6) Medical Instruments; (7) Rubber and Plastics; (8) Paper and Printing Products; (9) Miscellaneous Products; (10) Professional Fees: Labor-related; (11) Administrative and Facilities Support Services; (12) Installation, Maintenance, and Repair Services; (13) All Other Labor-related Services; (14) Professional Fees: Nonlabor-related; (15) Financial Services; (16) Telephone Services; and (17) All Other Nonlabor-related Services.

(4) Derivation of the Detailed Capital Cost Weights

As described in section III.A.3.a.(2) of this proposed rule, we propose a Capital-Related cost weight of 7.2 percent as obtained from the 2021 Medicare cost reports for freestanding and hospital-based IPF providers. We propose to then separate this total Capital-Related cost weight into more detailed cost categories.

Using 2021 Medicare cost reports, we are able to group Capital-Related costs into the following categories: Depreciation, Interest, Lease, and Other Capital-Related costs. For each of these categories, we propose to determine separately for hospital-based IPFs and freestanding IPFs what proportion of total capital-related costs the category represents.

For freestanding IPFs, using Medicare Cost Report data on Worksheet A–7 part III, we propose to derive the proportions for Depreciation (column 9), Interest (column 11), Lease (column 10), and Other Capital-related costs (column 12 through 14), which is similar to the methodology used for the 2016-based IPF market basket.

For hospital-based IPFs, data for these four categories are not reported separately for the hospital-based IPF; therefore, we propose to derive these proportions using data reported on Worksheet A–7 for the total facility. We are assuming the cost shares for the overall hospital are representative for the hospital-based IPF unit. For example, if depreciation costs make up 60 percent of total capital costs for the entire facility, we believe it is reasonable to assume that the hospital-based IPF would also have a 60 percent proportion because it is a unit contained within the total facility. This is the same methodology used for the 2016-based IPF market basket (84 FR 38431).

To combine each detailed capital cost weight for freestanding and hospital-based IPFs into a single capital cost weight for the proposed 2021-based IPF market basket, we propose to weight together the shares for each of the categories (Depreciation, Interest, Lease, and Other Capital-related costs) based on the share of total capital costs each provider type represents of the total capital costs for all IPFs for 2021. Applying this methodology results in proportions of total capital-related costs for Depreciation, Interest, Lease and Other Capital-related costs that are representative of the universe of IPF providers. This is the same methodology used for the 2016-based IPF market basket (84 FR 38432).

Lease costs are unique in that they are not broken out as a separate cost category in the proposed 2021-based IPF market basket. Rather, we propose to proportionally distribute these costs among the cost categories of Depreciation, Interest, and Other Capital-Related costs, reflecting the assumption that the underlying cost structure of leases is similar to that of capital-related costs in general. As was done under the 2016-based IPF market basket, we propose to assume that 10 percent of the lease costs as a proportion of total capital-related costs represents overhead and assign those costs to the

[1] *http://www.bea.gov/papers/pdf/IOmanual_092906.pdf.*

Other Capital-Related cost category accordingly. We propose to distribute the remaining lease costs proportionally across the three cost categories (Depreciation, Interest, and Other Capital-Related) based on the proportion that these categories comprise of the sum of the Depreciation, Interest, and Other Capital-related cost categories (excluding lease expenses). This would result in three primary capital-related cost categories in the proposed 2021-based IPF market basket: Depreciation, Interest, and Other Capital-Related costs. This is the same methodology used for the 2016-based IPF market basket (84 FR 38432). The allocation of these lease expenses is shown in Table 3.

Finally, we propose to further divide the Depreciation and Interest cost categories. We propose to separate Depreciation into the following two categories: (1) Building and Fixed Equipment; and (2) Movable Equipment. We propose to separate Interest into the following two categories: (1) Government/Nonprofit; and (2) For-profit.

To disaggregate the Depreciation cost weight, we need to determine the percent of total Depreciation costs for IPFs that is attributable to Building and Fixed Equipment, which we hereafter refer to as the ''fixed percentage.'' For the proposed 2021-based IPF market basket, we propose to use slightly different methods to obtain the fixed percentages for hospital-based IPFs compared to freestanding IPFs.

For freestanding IPFs, we propose to use depreciation data from Worksheet A–7 of the 2021 Medicare cost reports. However, for hospital-based IPFs, we determined that the fixed percentage for the entire facility may not be representative of the hospital-based IPF unit due to the entire facility likely employing more sophisticated movable assets that are not utilized by the hospital-based IPF. Therefore, for hospital-based IPFs, we propose to calculate a fixed percentage using: (1) building and fixture capital costs allocated to the hospital-based IPF unit as reported on Worksheet B, part I, column 1, line 40; and (2) building and fixture capital costs for the top five ancillary cost centers utilized by hospital-based IPFs accounting for 82 percent of hospital-based IPF ancillary total costs: Clinic (Worksheet B, part I, column 1, line 90), Drugs Charged to Patients (Worksheet B, part I, column 1, line 73), Emergency (Worksheet B, part I, column 1, line 91), Laboratory (Worksheet B, part I, column 1, line 60) and Radiology—Diagnostic (Worksheet B, part I, column 1, line 54). We propose to weight these two fixed percentages (inpatient and ancillary) using the proportion that each capital cost type represents of total capital costs in the proposed 2021-based IPF market basket. We propose to then weight the fixed percentages for hospital-based and freestanding IPFs together using the proportion of total capital costs each provider type represents. For both freestanding and hospital-based IPFs, this is the same methodology used for the 2016-based IPF market basket (84 FR 38432).

To disaggregate the Interest cost weight, we determined the percent of total interest costs for IPFs that are attributable to government and nonprofit facilities, which is hereafter referred to as the ''nonprofit percentage,'' as price pressures associated with these types of interest costs tend to differ from those for for-profit facilities. For the 2021-based IPF market basket, we propose to use interest costs data from Worksheet A–7 of the 2021 Medicare cost reports for both freestanding and hospital-based IPFs. We propose to determine the percent of total interest costs that are attributed to government and nonprofit IPFs separately for hospital-based and freestanding IPFs. We then propose to weight the nonprofit percentages for hospital-based and freestanding IPFs together using the proportion of total capital costs that each provider type represents.

Table 3 provides the proposed detailed capital cost share composition estimated from the 2021 IPF Medicare cost reports. These detailed capital cost share composition percentages are applied to the total Capital-Related cost weight of 7.2 percent explained in detail in sections III.A.3.a.(1)(h) and III.A.3.a.(2) of this proposed rule.

TABLE 3—CAPITAL COST SHARE COMPOSITION FOR THE PROPOSED 2021-BASED IPF MARKET BASKET

	Capital cost share composition before lease expense allocation (percent)	Capital cost share composition after lease expense allocation (percent)
Depreciation	55	68
Building and Fixed Equipment	40	48
Movable Equipment	16	19
Interest	17	21
Government/Nonprofit	11	13
For Profit	6	7
Lease	20	.....
Other Capital-related costs	8	12

* Detail may not add to total due to rounding.

(5) Proposed 2021-Based IPF Market Basket Cost Categories and Weights

Table 4 compares the cost categories and weights for the proposed 2021-based IPF market basket compared to the 2016-based IPF market basket.

TABLE 4—PROPOSED 2021-BASED IPF MARKET BASKET COST WEIGHTS COMPARED TO 2016-BASED IPF MARKET BASKET COST WEIGHTS

Cost category	Proposed 2021-based IPF market basket cost weight	2016-based IPF market basket cost weight
Total	100.0	100.0
Compensation	66.9	66.0
Wages and Salaries	52.6	52.2
Employee Benefits	14.3	13.8
Utilities	1.2	1.1
Electricity and Other Non-Fuel Utilities	0.7	0.8
Fuel: Oil and Gas	0.4	0.3
Professional Liability Insurance	1.0	0.9
All Other Products and Services	23.8	24.9
All Other Products	9.1	10.7
Pharmaceuticals	3.6	4.7
Food: Direct Purchases	0.8	0.9
Food: Contract Services	1.0	1.0
Chemicals	0.3	0.3
Medical Instruments	2.0	2.3
Rubber and Plastics	0.3	0.3
Paper and Printing Products	0.5	0.5
Miscellaneous Products	0.6	0.7
All Other Services	14.7	14.2
Labor-Related Services	7.9	7.7
Professional Fees: Labor-related	4.7	4.4
Administrative and Facilities Support Services	0.6	0.6
Installation, Maintenance, and Repair Services	1.2	1.3
All Other: Labor-related Services	1.4	1.4
Nonlabor-Related Services	6.8	6.5
Professional Fees: Nonlabor-related	4.9	4.5
Financial Services	0.7	0.8
Telephone Services	0.2	0.3
All Other: Nonlabor-related Services	0.9	1.0
Capital-Related Costs	7.2	7.1
Depreciation	4.9	5.3
Building and Fixed Equipment	3.5	3.7
Movable Equipment	1.4	1.5
Interest Costs	1.5	1.2
Government/Nonprofit	1.0	0.9
For Profit	0.5	0.3
Other Capital-Related Costs	0.8	0.7

* Detail may not add to total due to rounding.

b. Selection of Price Proxies

After developing the cost weights for the proposed 2021-based IPF market basket, we select the most appropriate wage and price proxies currently available to represent the rate of price change for each expenditure category. For the majority of the cost weights, we base the price proxies on Bureau of Labor Statistics (BLS) data and grouped them into one of the following BLS categories:

- *Employment Cost Indexes (ECIs):* measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. ECIs are superior to Average Hourly Earnings (AHE) as price proxies for input price indexes because they are not affected by shifts in occupation or industry mix, and because they measure pure price change and are available by both occupational group and by industry. The industry ECIs are based on the NAICS and the occupational ECIs are based on the Standard Occupational Classification System (SOC).
- *Producer Price Indexes (PPI):* measure the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services (*https://www.bls.gov/ppi/*).
- *Consumer Price Indexes (CPIs):* measure the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services (*https://www.bls.gov/cpi/*). CPIs are only used when the purchases are similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate PPIs are available.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance:

- *Reliability:* indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because only a sample was surveyed rather than the entire population.)
- *Timeliness:* implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and, therefore, it is important for the underlying price proxies to be up-to-date, reflecting the

most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps to ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently, because we believe that this is an optimal way to stay abreast of the most current data available.

- *Availability:* means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis.
- *Relevance:* means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs that we selected to propose in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

Table 13 lists all price proxies that we propose to use for the 2021-based IPF market basket. A detailed explanation of the price proxies we propose for each cost category weight is provided below.

(1) Price Proxies for the Operating Portion of the Proposed 2021-Based IPF Market Basket

(a) Wages and Salaries

There is not a published wage proxy that we believe represents the occupational distribution of workers in IPFs. To measure wage price growth in the proposed 2021-based IPF market basket, we propose to apply a proxy blend based on six occupational subcategories within the Wages and Salaries category, which would reflect the IPF occupational mix, as was done for the 2016-based IPF market basket.

We propose to use the National Industry-Specific Occupational Employment and Wage estimates for NAICS 622200, Psychiatric & Substance Abuse Hospitals, published by the BLS Occupational Employment and Wage Statistics (OEWS) program, as the data source for the wage cost shares in the wage proxy blend. We note that in the spring of 2021, the Occupational Employment Statistics (OES) program began using the name Occupational Employment and Wage Statistics (OEWS) to better reflect the range of data available from the program. Data released on or after March 31, 2021 reflect the new program name. We propose to use May 2021 OEWS data. Detailed information on the methodology for the national industry-specific occupational employment and wage estimates survey can be found at *http://www.bls.gov/oes/current/oes_tec.htm.* For the 2016-based IPF market basket, we used May 2016 OES data.

Based on the OEWS data, there are six wage subcategories: Management; NonHealth Professional and Technical; Health Professional and Technical; Health Service; NonHealth Service; and Clerical. Table 5 lists the 2021 occupational assignments for the six wage subcategories; these are the same occupational groups used in the 2016-based IPF market basket.

TABLE 5—2021 OCCUPATIONAL ASSIGNMENTS FOR IPF WAGE BLEND

[2021 Occupational Groupings]

Group 1	Management
11–0000	Management Occupations.
Group 2	**NonHealth Professional & Technical**
13–0000	Business and Financial Operations Occupations.
15–0000	Computer and Mathematical Occupations.
19–0000	Life, Physical, and Social Science Occupations.
23–0000	Legal Occupations.
25–0000	Educational Instruction and Library Occupations.
27–0000	Arts, Design, Entertainment, Sports, and Media Occupations.
Group 3	**Health Professional & Technical**
29–1021	Dentists, General.
29–1031	Dietitians and Nutritionists.
29–1051	Pharmacists.
29–1071	Physician Assistants.
29–1122	Occupational Therapists.
29–1123	Physical Therapists.
29–1125	Recreational Therapists.
29–1126	Respiratory Therapists.
29–1127	Speech-Language Pathologists.
29–1129	Therapists, All Other.
29–1141	Registered Nurses.
29–1171	Nurse Practitioners.
29–1215	Family Medicine Physicians.
29–1216	General Internal Medicine Physicians.
29–1223	Psychiatrists.
29–1229	Physicians, All Other.
29–1292	Dental Hygienists.
29–1299	Healthcare Diagnosing or Treating Practitioners, All Other.
Group 4	**Health Service**
21–0000	Community and Social Service Occupations.
29–2010	Clinical Laboratory Technologists and Technicians.
29–2034	Radiologic Technologists and Technicians.
29–2042	Emergency Medical Technicians.
29–2051	Dietetic Technicians.

TABLE 5—2021 OCCUPATIONAL ASSIGNMENTS FOR IPF WAGE BLEND—Continued

[2021 Occupational Groupings]

Group 1	Management
29–2052	Pharmacy Technicians.
29–2053	Psychiatric Technicians.
29–2061	Licensed Practical and Licensed Vocational Nurses.
29–2072	Medical Records Specialists.
29–2099	Health Technologists and Technicians, All Other.
29–9021	Health Information Technologists and Medical Registrars.
29–9099	Healthcare Practitioners and Technical Workers, All Other.
31–0000	Healthcare Support Occupations.
Group 5	NonHealth Service
33–0000	Protective Service Occupations.
35–0000	Food Preparation and Serving Related Occupations.
37–0000	Building and Grounds Cleaning and Maintenance Occupations.
39–0000	Personal Care and Service Occupations.
41–0000	Sales and Related Occupations.
47–0000	Construction and Extraction Occupations.
49–0000	Installation, Maintenance, and Repair Occupations.
51–0000	Production Occupations.
53–0000	Transportation and Material Moving Occupations.
Group 6	Clerical
43–0000	Office and Administrative Support Occupations.

Total expenditures by occupation (that is, occupational assignment) were calculated by taking the OEWS number of employees multiplied by the OEWS annual average salary. These expenditures were aggregated based on the six groups in Table 5. We next calculated the proportion of each group's expenditures relative to the total expenditures of all six groups. These proportions, listed in Table 6, represent the weights used in the wage proxy blend. We then propose to use the published wage proxies in Table 6 for each of the six groups (that is, wage subcategories) as we believe these six price proxies are the most technically appropriate indices available to measure the price growth of the Wages and Salaries cost category. These are the same price proxies used in the 2016-based IPF market basket (84 FR 38437).

TABLE 6—PROPOSED 2021-BASED IPF MARKET BASKET WAGE PROXY BLEND

Wage sub-category	Proposed 2021-based wage blend weights (percent)	2016-based wage blend weights (percent)	Price proxy	BLS Series ID
Healthcare Professional and Technical.	36.9	34.9	ECI for Wages and Salaries for All Civilian workers in Hospitals	CIU10262200000001.
Healthcare Service.	34.4	36.3	ECI for Wages and Salaries for All Civilian workers in Healthcare and Social Assistance.	CIU10262000000001.
NonHealthcare Service.	7.5	8.9	ECI for Wages and Salaries for Private Industry workers in Service Occupations.	CIU20200003000001.
NonHealthcare Professional and Technical.	7.3	7.0	ECI for Wages and Salaries for Private Industry workers in Professional, Scientific, and Technical Services.	CIU20254000000001.
Management	7.8	6.8	ECI for Wages and Salaries for Private industry workers in Management, Business, and Financial.	CIU20200001100001.
Administrative Support and Clerical.	6.1	6.1	ECI for Wages and Salaries for Private Industry workers in Office and Administrative Support.	CIU20200002200001.
Total	100.0	100.0		

A comparison of the yearly changes from FY 2021 to FY 2024 for the proposed 2021-based IPF wage blend and the 2016-based IPF wage blend is shown in Table 7. The average annual growth rate is the same for both price proxies over 2021–2024.

TABLE 7—FISCAL YEAR GROWTH IN THE PROPOSED 2021-BASED IPF WAGE PROXY BLEND AND 2016-BASED IPF WAGE PROXY BLEND

	2021	2022	2023	2024	Average 2021–2024
Proposed 2021-based IPF Wage Proxy Blend	3.0	5.6	5.1	3.7	4.4
2016-based IPF Wage Proxy Blend	3.1	5.6	5.2	3.7	4.4

** Source: IHS Global Inc., 4th Quarter 2022 forecast with historical data through 3rd Quarter 2022.

(b) Employee Benefits

To measure benefits price growth in the proposed 2021-based IPF market basket, we propose to apply a benefits proxy blend based on the same six subcategories and the same six blend weights for the wage proxy blend. These subcategories and blend weights are listed in Table 8.

The benefit ECIs, listed in Table 8, are not publicly available. Therefore, an ''ECIs for Total Benefits'' is calculated using publicly available ''ECIs for Total Compensation'' for each subcategory and the relative importance of wages within that subcategory's total compensation. This is the same benefits ECI methodology that we implemented in our 2016-based IPF market basket as well as used in the IPPS, SNF, Home Health Agency (HHA), IRF, LTCH, and End-Stage Renal Disease (ESRD) market baskets. We believe that the six price proxies listed in Table 8 are the most technically appropriate indices to measure the price growth of the Employee Benefits cost category in the proposed 2021-based HHA IPF market basket.

TABLE 8—PROPOSED 2021-BASED IPF MARKET BASKET BENEFITS PROXY BLEND AND 2016-BASED IPF BENEFIT PROXY BLEND

Wage subcategory	Proposed 2021-based benefit blend weight (percent)	2016-based benefit blend weight (percent)	Price proxy
Healthcare Professional and Technical.	36.9	34.9	ECI for Total Benefits for All Civilian workers in Hospitals.
Healthcare Service	34.4	36.3	ECI for Total Benefits for All Civilian workers in Healthcare and Social Assistance.
NonHealthcare Service	7.5	8.9	ECI for Total Benefits for Private Industry workers in Service Occupations.
NonHealthcare Professional and Technical.	7.3	7.0	ECI for Total Benefits for Private Industry workers in Professional, Scientific, and Technical Services.
Management	7.8	6.8	ECI for Total Benefits for Private industry workers in Management, Business, and Financial.
Administrative Support and Clerical	6.1	6.1	ECI for Total Benefits for Private Industry workers in Office and Administrative Support.
Total	100.0	100.0	

A comparison of the yearly changes from FY 2021 to FY 2024 for the proposed 2021-based IPF benefit proxy blend and the 2016-based IPF benefit proxy is shown in Table 9. The average annual growth rate is the same for both price proxies over 2021 through 2024.

TABLE 9—FISCAL YEAR GROWTH IN THE PROPOSED 2021-BASED IPF BENEFIT PROXY BLEND AND 2016-BASED IPF BENEFIT PROXY BLEND

	2021	2022	2023	2024	Average 2021–2024
Proposed 2021-based IPF Benefit Proxy Blend	2.4	4.4	4.4	3.6	3.7
2016-based IPF Benefit Proxy Blend	2.4	4.4	4.4	3.6	3.7

Source: IHS Global Inc., 4th Quarter 2022 forecast with historical data through 3rd Quarter 2022.

(c) Electricity and Other Non-Fuel Utilities

We propose to use the PPI Commodity Index for Commercial Electric Power (BLS series code WPU0542) to measure the price growth of this cost category (which we propose to rename from Electricity to Electricity and Other Non-Fuel Utilities). This is the same price proxy used in the 2016-based IPF market basket (84 FR 38438).

(d) Fuel: Oil and Gas

Similar to the 2016-based IPF market basket, for the 2021-based IPF market basket, we propose to use a blend of the PPI for Petroleum Refineries and the PPI Commodity for Natural Gas. Our analysis of the Bureau of Economic Analysis' 2012 Benchmark Input-Output data (use table before redefinitions, purchaser's value for NAICS 622000

[Hospitals]), shows that Petroleum Refineries expenses account for approximately 90 percent and Natural Gas expenses account for approximately 10 percent of Hospitals' (NAICS 622000) total Fuel: Oil and Gas expenses. Therefore, we propose to use a blend of 90 percent of the PPI for Petroleum Refineries (BLS series code PCU324110324110) and 10 percent of the PPI Commodity Index for Natural Gas (BLS series code WPU0531) as the price proxy for this cost category. This is the same blend that was used for the 2016-based IPF market basket (84 FR 38438).

(e) Professional Liability Insurance

We propose to use the CMS Hospital Professional Liability Index to measure changes in PLI premiums. To generate this index, we collect commercial insurance premiums for a fixed level of coverage while holding non-price factors constant (such as a change in the level of coverage). This is the same proxy used in the 2016-based IPF market basket (84 FR 38438).

(f) Pharmaceuticals

We propose to use the PPI for Pharmaceuticals for Human Use, Prescription (BLS series code WPUSI07003) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38438).

(g) Food: Direct Purchases

We propose to use the PPI for Processed Foods and Feeds (BLS series code WPU02) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38438).

(h) Food: Contract Purchases

We propose to use the CPI for Food Away From Home (BLS series code CUUR0000SEFV) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38438).

(i) Chemicals

Similar to the 2016-based IPF market basket, we propose to use a four-part blended PPI as the proxy for the chemical cost category in the proposed 2021-based IPF market basket. The proposed blend is composed of the PPI for Industrial Gas Manufacturing, Primary Products (BLS series code PCU325120325120P), the PPI for Other Basic Inorganic Chemical Manufacturing (BLS series code PCU32518–32518-), the PPI for Other Basic Organic Chemical Manufacturing (BLS series code PCU32519–32519-), and the PPI for Other Miscellaneous Chemical Product Manufacturing (BLS series code PCU325998325998). For the proposed 2021-based IPF market basket, we propose to derive the weights for the PPIs using the 2012 Benchmark I–O data.

Table 10 shows the weights for each of the four PPIs used to create the proposed blended Chemical proxy for the proposed 2021-based IPF market basket. This is the same blend that was used for the 2016-based IPF market basket (84 FR 38439).

TABLE 10—BLENDED CHEMICAL PPI WEIGHTS

Name	Proposed 2021-based IPF weights (percent)	NAICS
PPI for Industrial Gas Manufacturing	19	325120
PPI for Other Basic Inorganic Chemical Manufacturing	13	325180
PPI for Other Basic Organic Chemical Manufacturing	60	325190
PPI for Other Miscellaneous Chemical Product Manufacturing	8	325998

(j) Medical Instruments

We propose to use a blended price proxy for the Medical Instruments category, as shown in Table 11. The 2012 Benchmark I–O data shows the majority of medical instruments and supply costs are for NAICS 339112—Surgical and medical instrument manufacturing costs (approximately 56 percent) and NAICS 339113—Surgical appliance and supplies manufacturing costs (approximately 43 percent). Therefore, we propose to use a blend of these two price proxies. To proxy the price changes associated with NAICS 339112, we propose to use the PPI for Surgical and medical instruments (BLS series code WPU1562). This is the same price proxy we used in the 2016-based IPF market basket. To proxy the price changes associated with NAICS 339113, we propose to use a 50/50 blend of the PPI for Medical and surgical appliances and supplies (BLS series code WPU1563) and the PPI for Miscellaneous products, Personal safety equipment and clothing (BLS series code WPU1571). We propose to include the latter price proxy as it would reflect personal protective equipment including but not limited to face shields and protective clothing. The 2012 Benchmark I–O data does not provide specific expenses for these products; however, we recognize that this category reflects costs faced by IPFs.

TABLE 11—BLENDED MEDICAL INSTRUMENTS PPI WEIGHTS

Name	Proposed 2021-based IPF weights (percent)	NAICS
PPI—Commodity—Surgical and medical instruments	56	339112
PPI—Commodity—Medical and surgical appliances and supplies	22	.....
PPI—Commodity—Miscellaneous products-Personal safety equipment and clothing	22	339113

(k) Rubber and Plastics

We propose to use the PPI for Rubber and Plastic Products (BLS series code WPU07) to measure price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(l) Paper and Printing Products

We propose to use the PPI for Converted Paper and Paperboard Products (BLS series code WPU0915) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(m) Miscellaneous Products

We propose to use the PPI for Finished Goods Less Food and Energy (BLS series code WPUFD4131) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(n) Professional Fees: Labor-Related

We propose to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(o) Administrative and Facilities Support Services

We propose to use the ECI for Total Compensation for Private Industry workers in Office and Administrative Support (BLS series code CIU2010000220000I) to measure the price growth of this category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(p) Installation, Maintenance, and Repair Services

We propose to use the ECI for Total Compensation for Civilian workers in Installation, Maintenance, and Repair (BLS series code CIU1010000430000I) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(q) All Other: Labor-Related Services

We propose to use the ECI for Total Compensation for Private Industry workers in Service Occupations (BLS series code CIU2010000300000I) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(r) Professional Fees: Nonlabor-Related

We propose to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(s) Financial Services

We propose to use the ECI for Total Compensation for Private Industry workers in Financial Activities (BLS series code CIU201520A000000I) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(t) Telephone Services

We propose to use the CPI for Telephone Services (BLS series code CUUR0000SEED) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(u) All Other: Nonlabor-Related Services

We propose to use the CPI for All Items Less Food and Energy (BLS series code CUUR0000SA0L1E) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IPF market basket (84 FR 38439).

(2) Price Proxies for the Capital Portion of the Proposed 2021-Based IPF Market Basket

(a) Capital Price Proxies Prior to Vintage Weighting

We propose to use the same price proxies for the capital-related cost categories in the proposed 2021-based IPF market basket as were used in the 2016-based IPF market basket, which are provided in Table 13 and described below. Specifically, we propose to proxy:

- *Depreciation*: Building and Fixed Equipment cost category by BEA's Chained Price Index for Nonresidential Construction for Hospitals and Special Care Facilities (BEA Table 5.4.4. Price Indexes for Private Fixed Investment in Structures by Type).
- *Depreciation:* Movable Equipment cost category by the PPI for Machinery and Equipment (BLS series code WPU11).
- Nonprofit Interest cost category by the average yield on domestic municipal bonds (Bond Buyer 20-bond index).
- For-profit Interest cost category by the iBoxx AAA Corporate Bond Yield index
- Other Capital-Related cost category by the CPI–U for Rent of Primary Residence (BLS series code CUUS0000SEHA).

We believe these are the most appropriate proxies for IPF capital-related costs that meet our selection criteria of relevance, timeliness, availability, and reliability. We also propose to vintage weight the capital price proxies for Depreciation and Interest to capture the long-term consumption of capital. This vintage weighting method is similar to the method used for the 2016-based IPF market basket (84 FR 38440) and is described below.

(b) Vintage Weights for Price Proxies

Because capital is acquired and paid for over time, capital-related expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital-related portion of the proposed 2021-based IPF market basket is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the proportion of capital-related purchases attributable to each year of the expected life of building and fixed equipment, movable equipment, and interest. We propose to use vintage weights to compute vintage-weighted price changes associated with depreciation and interest expenses.

Capital-related costs are inherently complicated and are determined by complex capital-related purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. By accounting for the vintage nature of capital, we are able to provide an accurate and stable annual measure of price changes. Annual non-vintage price changes for capital are unstable due to the volatility of interest rate changes, and therefore, do not reflect the actual annual price changes for IPF capital-related costs. The capital-related component of the proposed 2021-based IPF market basket reflects the underlying stability of the capital-related acquisition process.

The methodology used to calculate the vintage weights for the proposed 2021-based IPF market basket is the same as that used for the 2016-based IPF market basket (84 FR 38439 through 38441) with the only difference being the inclusion of more recent data. To calculate the vintage weights for depreciation and interest expenses, we first need a time series of capital-related purchases for building and fixed equipment and movable equipment. We found no single source that provides an appropriate time series of capital-related purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital-related data to meet this need. Data we obtained from the American Hospital Association (AHA) do not include annual capital-

related purchases. However, we are able to obtain data on total expenses back to 1963 from the AHA. Consequently, we propose to use data from the AHA Panel Survey and the AHA Annual Survey to obtain a time series of total expenses for hospitals. We then propose to use data from the AHA Panel Survey supplemented with the ratio of depreciation to total hospital expenses obtained from the Medicare cost reports to derive a trend of annual depreciation expenses for 1963 through 2020, which is the latest year of AHA data available. We propose to separate these depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation as determined earlier. From these annual depreciation amounts, we derive annual end-of-year book values for building and fixed equipment and movable equipment using the expected life for each type of asset category. While data is not available that is specific to IPFs, we believe this information for all hospitals serves as a reasonable alternative for the pattern of depreciation for IPFs.

To continue to calculate the vintage weights for depreciation and interest expenses, we also need to account for the expected lives for Building and Fixed Equipment, Movable Equipment, and Interest for the proposed 2021-based IPF market basket. We propose to calculate the expected lives using Medicare cost report data from freestanding and hospital-based IPFs. The expected life of any asset can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated expected life of an asset if the rates of depreciation were to continue at current year levels, assuming straight-line depreciation. We propose to determine the expected life of building and fixed equipment separately for hospital-based IPFs and freestanding IPFs, and then weight these expected lives using the percent of total capital costs each provider type represents. We propose to apply a similar method for movable equipment. Using these proposed methods, we determined the average expected life of building and fixed equipment to be equal to 25 years, and the average expected life of movable equipment to be equal to 12 years. For the expected life of interest, we believe vintage weights for interest should represent the average expected life of building and fixed equipment because, based on previous research described in the FY 1997 IPPS final rule (61 FR 46198), the expected life of hospital debt instruments and the expected life of buildings and fixed equipment are similar. We note that for the 2016-based IPF market basket, the expected life of building and fixed equipment is 22 years, and the expected life of movable equipment is 11 years (84 FR 38441).

Multiplying these expected lives by the annual depreciation amounts results in annual year-end asset costs for building and fixed equipment and movable equipment. We then calculate a time series, beginning in 1964, of annual capital purchases by subtracting the previous year's asset costs from the current year's asset costs.

For the building and fixed equipment and movable equipment vintage weights, we propose to use the real annual capital-related purchase amounts for each asset type to capture the actual amount of the physical acquisition, net of the effect of price inflation. These real annual capital-related purchase amounts are produced by deflating the nominal annual purchase amount by the associated price proxy as provided earlier in this proposed rule. For the interest vintage weights, we propose to use the total nominal annual capital-related purchase amounts to capture the value of the debt instrument (including, but not limited to, mortgages and bonds). Using these capital-related purchase time series specific to each asset type, we propose to calculate the vintage weights for building and fixed equipment, for movable equipment, and for interest.

The vintage weights for each asset type are deemed to represent the average purchase pattern of the asset over its expected life (in the case of building and fixed equipment and interest, 25 years, and in the case of movable equipment, 12 years). For each asset type, we used the time series of annual capital-related purchase amounts available from 2020 back to 1964. These data allow us to derive thirty-three 25-year periods of capital-related purchases for building and fixed equipment and interest, and forty-six 12-year periods of capital-related purchases for movable equipment. For each 25-year period for building and fixed equipment and interest, or 12-year period for movable equipment, we calculate annual vintage weights by dividing the capital-related purchase amount in any given year by the total amount of purchases over the entire 25-year or 12-year period. This calculation is done for each year in the 25-year or 12-year period and for each of the periods for which we have data. We then calculate the average vintage weight for a given year of the expected life by taking the average of these vintage weights across the multiple periods of data. The vintage weights for the capital-related portion of the proposed 2021-based IPF market basket and the 2016-based IPF market basket are presented in Table 12.

TABLE 12—PROPOSED 2021-BASED IPF MARKET BASKET AND 2016-BASED IPF MARKET BASKET VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year*	Building and fixed equipment		Movable equipment		Interest	
	2021-based 25 years	2016-based 22 years	2021-based 12 years	2016-based 11 years	2021-based 25 years	2016-based 22 years
1	0.031	0.035	0.066	0.071	0.018	0.021
2	0.032	0.036	0.068	0.075	0.019	0.023
3	0.033	0.038	0.071	0.080	0.021	0.025
4	0.034	0.038	0.076	0.085	0.023	0.026
5	0.035	0.040	0.080	0.087	0.024	0.029
6	0.036	0.042	0.082	0.091	0.026	0.031
7	0.035	0.042	0.084	0.095	0.026	0.033
8	0.036	0.041	0.088	0.099	0.028	0.033
9	0.036	0.042	0.091	0.102	0.029	0.036
10	0.039	0.043	0.094	0.105	0.033	0.038
11	0.040	0.046	0.098	0.110	0.035	0.042
12	0.040	0.047	0.101	.....	0.037	0.045
13	0.042	0.048	.....	.....	0.040	0.048
14	0.042	0.049	.....	.....	0.042	0.052

TABLE 12—PROPOSED 2021-BASED IPF MARKET BASKET AND 2016-BASED IPF MARKET BASKET VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES—Continued

Year*	Building and fixed equipment		Movable equipment		Interest	
	2021-based 25 years	2016-based 22 years	2021-based 12 years	2016-based 11 years	2021-based 25 years	2016-based 22 years
15	0.042	0.050			0.044	0.055
16	0.043	0.050			0.046	0.057
17	0.044	0.051			0.049	0.060
18	0.045	0.053			0.052	0.065
19	0.045	0.053			0.054	0.068
20	0.045	0.053			0.055	0.069
21	0.045	0.052			0.057	0.070
22	0.045	0.052			0.058	0.072
23	0.045				0.060	
24	0.045				0.061	
25	0.044				0.062	
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: Numbers may not add to total due to rounding.
*Year 25 is applied to the most recent data point when creating the vintage-weighted price proxies.

The process of creating vintage-weighted price proxies requires applying the vintage weights to the price proxy index where the last applied vintage weight in Table 12 is applied to the most recent data point. We have provided on the CMS website an example of how the vintage weighting price proxies are calculated, using example vintage weights and example price indices. The example can be found at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html* in the zip file titled ''Weight Calculations as described in the IPPS FY 2010 Proposed Rule.''

(3) Summary of Price Proxies of the Proposed 2021-Based IPF Market Basket

Table 13 shows both the operating and capital price proxies for the proposed 2021-based IPF market basket.

TABLE 13—PRICE PROXIES FOR THE PROPOSED 2021-BASED IPF MARKET BASKET

Cost description	Price proxies	Weight
Total		100.0
Compensation		66.9
Wages and Salaries	Blended Wages and Salaries Price Proxy	52.6
Employee Benefits	Blended Employee Benefits Price Proxy	14.3
Utilities		1.2
Electricity and Other Non-Fuel Utilities.	PPI for Commercial Electric Power	0.7
Fuel: Oil and Gas	Blend of PPIs*	0.4
Professional Liability Insurance		1.0
Malpractice	CMS Hospital Professional Liability Insurance Premium Index	1.0
All Other Products and Services		23.8
All Other Products		9.1
Pharmaceuticals	PPI for Pharmaceuticals for Human Use, Prescription	3.6
Food: Direct Purchases	PPI for Processed Foods and Feeds	0.8
Food: Contract Services	CPI–U for Food Away From Home	1.0
Chemicals	Blend of PPIs*	0.3
Medical Instruments	Blend of PPIs*	2.0
Rubber and Plastics	PPI for Rubber and Plastic Products	0.3
Paper and Printing Products	PPI for Converted Paper and Paperboard Products	0.5
Miscellaneous Products	PPI for Finished Goods Less Food and Energy	0.6
All Other Services		14.7
Labor-Related Services		7.9
Professional Fees: Labor-related	ECI for Total compensation for Private industry workers in Professional and related	4.7
Administrative and Facilities Support Services.	ECI for Total compensation for Private industry workers in Office and administrative support.	0.6
Installation, Maintenance & Repair Services.	ECI for Total compensation for Civilian workers in Installation, maintenance, and repair.	1.2
All Other: Labor-related Services	ECI for Total compensation for Private industry workers in Service occupations	1.4
Nonlabor-Related Services		6.8
Professional Fees: Nonlabor-related	ECI for Total compensation for Private industry workers in Professional and related	4.9
Financial Services	ECI for Total compensation for Private industry workers in Financial activities	0.7
Telephone Services	CPI–U for Telephone Services	0.2
All Other: Nonlabor-related Services	CPI–U for All Items Less Food and Energy	0.9
Capital-Related Costs		7.2
Depreciation		4.9

TABLE 13—PRICE PROXIES FOR THE PROPOSED 2021-BASED IPF MARKET BASKET—Continued

Cost description	Price proxies	Weight
Building and Fixed Equipment	BEA chained price index for nonresidential construction for hospitals and special care facilities—vintage weighted (25 years).	3.5
Movable Equipment	PPI for machinery and equipment—vintage weighted (12 years)	1.4
Interest Costs		1.5
Government/Nonprofit	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)—vintage weighted (25 years).	1.0
For Profit	Average Yield on iBoxx AAA Corporate Bonds—vintage weighted (25 years)	0.5
Other Capital-Related Costs	CPI–U for Rent of primary residence	0.8

Note: Totals may not sum to 100.0 percent due to rounding.
* Details on the series and weight for each price proxy used in the PPI blends is provided in section III.A.3.b.

We invite public comment on our proposal to rebase and revise the IPF market basket to reflect a 2021 base year.

4. Proposed FY 2024 Market Basket Update and Productivity Adjustment

a. Proposed FY 2024 Market Basket Update

For FY 2024 (that is, beginning October 1, 2023 and ending September 30, 2024), we propose to use an estimate of the proposed 2021-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we estimate the market basket update for the IPF PPS based on IHS Global Inc.'s (IGI) forecast. IGI is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets.

Using IGI's fourth quarter 2022 forecast with historical data through the third quarter of 2022, the projected proposed 2021-based IPF market basket increase factor for FY 2024 is 3.2 percent. We propose that if more recent data are subsequently available (for example, a more recent estimate of the market basket increase factor) we would use such data, to determine the FY 2024 update in the final rule. For comparison, the current 2016-based IPF market basket is also projected to increase by 3.2 percent in FY 2024 based on IGI's fourth quarter 2022 forecast. Table 14 compares the proposed 2021-based IPF market basket and the 2016-based IPF market basket percent changes.

TABLE 14—PROPOSED 2021-BASED IPF MARKET BASKET AND 2016-BASED IPF MARKET BASKET PERCENT CHANGES, FY 2019 THROUGH FY 2026

Fiscal year (FY)	Proposed 2021-based IPF market basket index percent change	2016-based IPF market basket index percent change
Historical data:		
FY 2019	2.4	2.5
FY 2020	2.1	2.2
FY 2021	2.8	2.9
FY 2022	5.3	5.3
Average 2019–2022	3.2	3.2
Forecast:		
FY 2023	4.6	4.6
FY 2024	3.2	3.2
FY 2025	2.8	2.8
FY 2026	2.7	2.8
Average 2023–2026	3.3	3.4

Note: These market basket percent changes do not include any further adjustments as may be statutorily required. Source: IHS Global Inc. 4th quarter 2022 forecast.

b. Proposed Productivity Adjustment

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''productivity adjustment''). The United States Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the United States economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act, was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term multifactor productivity (MFP) with total factor productivity (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is now published by BLS as private nonfarm business total factor productivity. However, as mentioned above, the data and methods are

unchanged. We refer readers to *www.bls.gov* for the BLS historical published TFP data. A complete description of IGI's TFP projection methodology is available on the CMS website at *https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/marketbasketresearch*. In addition, in the FY 2022 IPF final rule (86 FR 42611), we noted that effective with FY 2022 and forward, CMS changed the name of this adjustment to refer to it as the productivity adjustment rather than the MFP adjustment.

Using IGI's fourth quarter 2022 forecast, the 10-year moving average growth of TFP for FY 2024 is projected to be 0.2 percent. Thus, in accordance with section 1886(s)(2)(A)(i) of the Act, we propose to calculate the FY 2024 market basket update, which is used to determine the applicable percentage increase for the IPF payments, using IGI's fourth quarter 2022 forecast of the proposed 2021-based IPF market basket. We proposed to then reduce this percentage increase by the estimated productivity adjustment for FY 2024 of 0.2 percentage point (the 10-year moving average growth of TFP for the period ending FY 2024 based on IGI's fourth quarter 2022 forecast). Therefore, the proposed FY 2024 IPF update is equal to 3.0 percent (3.2 percent market basket update reduced by the 0.2 percentage point productivity adjustment). Furthermore, we propose that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket increase factor and/or productivity adjustment), we would use such data, if appropriate, to determine the FY 2024 market basket update and productivity adjustment in the final rule.

We invite public comment on our proposals for the FY 2024 market basket update and productivity adjustment.

5. Proposed Labor-Related Share for FY 2024

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the Federal per diem base rate (hereafter referred to as the labor-related share). The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We propose to continue to classify a cost category as labor-related if the costs are labor intensive and vary with the local labor market.

We propose to include in the labor-related share the sum of the relative importance of the following cost categories: Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2021-based IPF market basket. These are the same categories as the 2016-based IPF market basket.

Similar to the 2016-based IPF market basket, the proposed 2021-based IPF market basket includes two cost categories for nonmedical Professional fees (including but not limited to, expenses for legal, accounting, and engineering services). These are Professional Fees: Labor-related and Professional Fees: Nonlabor-related. For the proposed 2021-based IPF market basket, we propose to estimate the labor-related percentage of non-medical professional fees (and assign these expenses to the Professional Fees: Labor-related services cost category) based on the same method that was used to determine the labor-related percentage of professional fees in the 2016-based IPF market basket.

As was done in the 2016-based IPF market basket, we propose to determine the proportion of legal, accounting and auditing, engineering, and management consulting services that meet our definition of labor-related services based on a survey of hospitals conducted by CMS in 2008. We notified the public of our intent to conduct this survey on December 9, 2005 (70 FR 73250) and did not receive any public comments in response to the notice (71 FR 8588). A discussion of the composition of the survey and post-stratification can be found in the FY 2010 IPPS/LTCH PPS final rule (74 FR 43850 through 43856). Based on the weighted results of the survey, we determined that hospitals purchase, on average, the following portions of contracted professional services outside of their local labor market:

- 34 percent of accounting and auditing services.
- 30 percent of engineering services.
- 33 percent of legal services.
- 42 percent of management consulting services.

We propose to apply each of these percentages to the respective 2012 Benchmark I–O cost category underlying the professional fees cost category to determine the Professional Fees: Nonlabor-related costs. The Professional Fees: Labor-related costs were determined to be the difference between the total costs for each Benchmark I–O category and the Professional Fees: Nonlabor-related costs. This is the same methodology that we used to separate the 2016-based IPF market basket professional fees category into Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories (84 FR 38445).

Effective for transmittal 18, (*https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Transmittals/r18p240i*) the hospital Medicare cost report (CMS Form 2552–10, OMB No. 0938–0050) is collecting information on whether a hospital purchased professional services (for example, legal, accounting, tax preparation, bookkeeping, payroll, advertising, and/or management/consulting services) from an unrelated organization and if the majority of these expenses were purchased from unrelated organizations located outside of the main hospital's local area labor market. We encourage all providers to provide this information so we can potentially use these data in future rulemaking to determine the labor-related share.

In the proposed 2021-based IPF market basket, nonmedical professional fees that were subject to allocation based on these survey results represent 3.3 percent of total costs (and are limited to those fees related to Accounting & Auditing, Legal, Engineering, and Management Consulting services). Based on our survey results, we proposed to apportion 2.1 percentage points of the 3.3 percentage point figure into the Professional Fees: Labor-related share cost category and designate the remaining 1.2 percentage point into the Professional Fees: Nonlabor-related cost category.

In addition to the professional services listed, for the proposed 2021-based IPF market basket, we propose to allocate a proportion of the Home Office/Related Organization Contract Labor cost weight, calculated using the Medicare cost reports, into the Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories. We propose to classify these expenses as labor-related and nonlabor-related as many facilities are not located in the same geographic area as their home office and, therefore, do not meet our definition for the labor-related share that requires the services to be purchased in the local labor market.

Similar to the 2016-based IPF market basket, we propose for the 2021-based

IPF market basket to use the Medicare cost reports for both freestanding IPF providers and hospital-based IPF providers to determine the home office labor-related percentages. The Medicare cost report requires a hospital to report information regarding their home office provider. Using information on the Medicare cost report, we then compare the location of the IPF with the location of the IPF's home office. We propose to classify an IPF with a home office located in their respective labor market if the IPF and its home office are located in the same metropolitan statistical area (MSA). We then determine the proportion of the Home Office/Related Organization Contract Labor cost weight that should be allocated to the labor-related share based on the percent of total Medicare allowable costs for those IPFs that had home offices located in their respective local labor markets of total Medicare allowable costs for IPFs with a home office. We determined an IPF's and its home office's MSA using their zip code information from the Medicare cost report. Using this methodology, we determined that 46 percent of IPFs' Medicare allowable costs were for home offices located in their respective local labor markets. Therefore, we are allocating 46 percent of the Home Office/Related Organization Contract Labor cost weight (2.1 percentage points = 4.7 percent times 46 percent) to the Professional Fees: Labor-related cost weight and 54 percent of the Home Office/Related Organization Contract Labor cost weight to the Professional Fees: Nonlabor-related cost weight (2.5 percentage points = 4.7 percent times 54 percent). The same methodology was used for the 2016-based IPF market basket (84 FR 38445).

In summary, we apportioned 2.1 percentage points of the non-medical professional fees and 2.1 percentage points of the Home Office/Related Organization Contract Labor cost weight into the Professional Fees: Labor-Related cost category. This amount was added to the portion of professional fees that we already identified as labor-related using the I–O data such as contracted advertising and marketing costs (approximately 0.5 percentage point of total costs) resulting in a Professional Fees: Labor-Related cost weight of 4.7 percent.

As stated, we propose to include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2021-based IPF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (2021) and FY 2024. Based on IHS Global Inc. 4th quarter 2022 forecast of the proposed 2021-based IPF market basket, the sum of the FY 2024 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services is 75.4 percent. The portion of Capital costs that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the 2016-based IPF market basket. Since the relative importance for Capital is 6.8 percent of the proposed 2021-based IPF market basket in FY 2024, we took 46 percent of 6.8 percent to determine the proposed labor-related share of Capital for FY 2024 of 3.1 percent. Therefore, we propose a total labor-related share for FY 2024 of 78.5 percent (the sum of 75.4 percent for the operating cost and 3.1 percent for the labor-related share of Capital). Table 15 shows the FY 2024 labor-related share using the proposed 2021-based IPF market basket relative importance and the FY 2023 labor-related share using the 2016-based IPF market basket.

TABLE 15—PROPOSED FY 2024 IPF LABOR-RELATED SHARE AND FY 2023 IPF LABOR-RELATED SHARE

	FY 2024 Labor-related share based on proposed 2021-based IPF market basket [1]	FY 2023 Final labor-related share based on 2016-based IPF market basket [2]
Wages and Salaries	53.3	53.2
Employee Benefits	14.2	13.5
Professional Fees: Labor-related [3]	4.7	4.3
Administrative and Facilities Support Services	0.6	0.6
Installation, Maintenance and Repair Services	1.2	1.3
All Other: Labor-related Services	1.4	1.5
Subtotal	75.4	74.4
Labor-related portion of capital (46%)	3.1	3.0
Total LRS	78.5	77.4

[1] IHS Global Inc. 4th quarter 2022 forecast.
[2] Based on IHS Global Inc. 2nd quarter 2022 forecast as published in the **Federal Register** (87 FR 46851).
[3] Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office/related organization contract labor costs.

The FY 2024 labor-related share using the proposed 2021-based IPF market basket is about 1.0 percentage point higher than the FY 2023 labor-related share using the 2016-based IPF market basket. This higher labor-related share is primarily due to the incorporation of the 2021 Medicare cost report data, which increased the Compensation cost weight by 0.9 percentage point compared to the 2016-based IPF market basket as shown in Table 1 and Table 2 in section III.A.3.a.(2) of this proposed rule. We invite public comment on the proposed labor-related share for FY 2024.

B. Proposed Updates to the IPF PPS Rates for FY Beginning October 1, 2023

The IPF PPS is based on a standardized Federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Determining the Standardized Budget-Neutral Federal per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the Tax Equity and Fiscal Responsibility Act (TEFRA) payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS Federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized Federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the RY 2007 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral Federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be $575.95.

The Federal per diem base rate has been updated in accordance with applicable statutory requirements and § 412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral Federal per diem base rate and the ECT payment per treatment appears in the FY 2014 IPF PPS update notice (78 FR 46738 through 46740). These documents are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html.*

IPFs must include a valid procedure code for ECT services provided to IPF beneficiaries in order to bill for ECT services, as described in our Medicare Claims Processing Manual, Chapter 3, Section 190.7.3 (available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf.*) There were no changes to the ECT procedure codes used on IPF claims as a result of the final update to the ICD–10–PCS code set for FY 2024. Addendum B to this proposed rule shows the ECT procedure codes for FY 2024 and is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

2. Proposed Update of the Federal per Diem Base Rate and Electroconvulsive Therapy Payment per Treatment

The current (FY 2023) Federal per diem base rate is $865.63 and the ECT payment per treatment is $372.67. For the proposed FY 2024 Federal per diem base rate, we applied the payment rate update of 3.0 percent—that is, the 2021-based IPF market basket increase for FY 2024 of 3.2 percent less the productivity adjustment of 0.2 percentage point—and the wage index budget-neutrality factor of 1.0011 (as discussed in section IV.D.1 of this proposed rule) to the FY 2023 Federal per diem base rate of $865.63, yielding a proposed Federal per diem base rate of $892.58 for FY 2024. Similarly, we applied the proposed 3.0 percent payment rate update and the 1.0011 wage index budget-neutrality factor to the FY 2023 ECT payment per treatment of $372.67, yielding a proposed ECT payment per treatment of $384.27 for FY 2024.

Section 1886(s)(4)(A)(i) of the Act requires that for RY 2014 and each subsequent RY, in the case of an IPF that fails to report required quality data with respect to such RY, the Secretary will reduce any annual update to a standard Federal rate for discharges during the RY by 2.0 percentage points. Therefore, we propose to apply a 2.0 percentage points reduction to the Federal per diem base rate and the ECT payment per treatment as follows:

- For IPFs that fail requirements under the IPFQR Program, we would apply a proposed 1.0 percent payment rate update—that is, the proposed IPF market basket increase for FY 2024 of 3.2 percent less the proposed productivity adjustment of 0.2 percentage point for a proposed update of 3.0 percent, and further reduced by 2.0 percentage points in accordance with section 1886(s)(4)(A)(i) of the Act—and the proposed wage index budget-neutrality factor of 1.0011 to the FY 2024 Federal per diem base rate of $892.58, yielding a proposed Federal per diem base rate of $875.25 for FY 2024.
- For IPFs that fail to meet requirements under the IPFQR Program, we would apply the proposed 1.0 percent annual payment rate update and the proposed 1.0011 wage index budget-neutrality factor to the FY 2024 ECT payment per treatment of $384.27 yielding a proposed ECT payment per treatment of $376.81 for FY 2024.

Lastly, we propose that if more recent data become available, we would use such data, if appropriate, to determine the FY 2024 Federal per diem base rate

and ECT payment per treatment for the final rule.

C. Proposed Updates to the IPF PPS Patient-Level Adjustment Factors

1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 Medicare Provider and Analysis Review (MedPAR) data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). We propose to use the existing regression-derived adjustment factors established in 2005 for FY 2024. However, we have used more recent claims data to simulate payments to finalize the outlier fixed dollar loss threshold amount and to assess the impact of the IPF PPS updates.

2. IPF PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

a. Proposed Update to MS–DRG Assignment

We believe it is important to maintain for IPFs the same diagnostic coding and Diagnosis Related Group (DRG) classification used under the IPPS for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD–9–CM) and DRG patient classification system (MS–DRGs) that were utilized at the time under the IPPS. In the RY 2009 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the RY 2009 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS–DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the RY 2009 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis discussed in detail in the November 28, 2003 IPF proposed rule (68 FR 66923; 66928 through 66933) and the November 15, 2004 IPF final rule (69 FR 66933 through 66960). Mapping the DRGs to the MS–DRGs resulted in the current 17 IPF MS–DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. For FY 2024, we are not proposing any changes to the IPF MS–DRG adjustment factors and are retaining the existing IPF MS–DRG adjustment factors.

In the FY 2015 IPF PPS final rule published August 6, 2014 in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for FY Beginning October 1, 2014 (FY 2015)'' (79 FR 45945 through 45947), we finalized conversions of the ICD–9–CM-based MS–DRGs to ICD–10–CM/PCS-based MS–DRGs, which were implemented on October 1, 2015. As discussed in the FY 2015 IPF PPS proposed rule (79 FR 26047) in more detail, every year, changes to the ICD–10–CM and the ICD–10–PCS coding system are addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. In accordance with § 412.428(e), the IPF PPS has always incorporated ICD–10–CM and ICD–10–PCS coding changes made in the annual IPPS update and will continue to do so. We will continue to publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. The coding changes relevant to the IPF PPS are also published in the IPF PPS proposed and final rules, or in IPF PPS update notices. Further information on the ICD–10–CM/PCS MS–DRG conversion project can be found on the CMS ICD–10–CM website at *https://www.cms.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

For FY 2024, we propose to continue making the existing payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF MS–DRGs listed in Addendum A. Addendum A is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.* Psychiatric principal diagnoses that do not group to one of the 17 designated MS–DRGs will still receive the Federal per diem base rate and all other applicable adjustments, but the payment will not include an MS–DRG adjustment.

The diagnoses for each IPF MS–DRG will be updated as of October 1, 2023, using the final FY 2024 IPPS ICD–10–CM/PCS code sets. The FY 2024 IPPS/LTCH PPS final rule will include tables of the changes to the ICD–10–CM/PCS code sets, which underlie the FY 2024 IPF MS–DRGs. Both the FY 2024 IPPS final rule and the tables of final changes to the ICD–10–CM/PCS code sets, which underlie the FY 2024 MS–DRGs, will be available on the CMS IPPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.*

Code First

As discussed in the ICD–10–CM Official Guidelines for Coding and Reporting, certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD–10–CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a ''use additional code'' note at the etiology code, and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes (etiology followed by manifestation). In accordance with the ICD–10–CM Official Guidelines for Coding and Reporting, when a primary (psychiatric) diagnosis code has a ''code first'' note, the provider will follow the instructions in the ICD–10–CM Tabular List. The submitted claim goes through the CMS processing system, which will identify the principal diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

For more information on the code first policy, we refer our readers to the November 2004 IPF PPS final rule (69 FR 66945), and see sections I.A.13 and I.B.7 of the FY 2020 ICD–10–CM Coding Guidelines, available at *https://www.cdc.gov/nchs/data/icd/10cmguidelines-FY2020_final.pdf.* In the FY 2015 IPF PPS final rule, we provided a code first table for reference that highlights the same or similar manifestation codes where the code first instructions apply in ICD–10–CM that

were present in ICD–10–CM (79 FR 46009). In FY 2018, FY 2019 and FY 2020, there were no changes to the final ICD–10–CM codes in the IPF Code First table. For FY 2021 and FY 2022, there were 18 ICD–10–CM codes deleted from the final IPF Code First table. For FY 2023, there were 2 ICD–10–CM codes deleted and 48 ICD–10–CM codes added to the IPF Code First table. For FY 2024, there are no proposed changes to the Code First Table. The proposed FY 2024 Code First table is shown in Addendum B on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

b. Proposed Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain existing medical or psychiatric conditions that are expensive to treat. In our RY 2012 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, LOS, or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for discharge claims, on or after October 1, 2015, require IPFs to enter the complete ICD–10–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM code first instructions applied. In a code first situation, the submitted claim goes through the CMS processing system, which will identify the principal diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign an MS–DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes were converted to ICD–10–CM/PCS in our FY 2015 IPF PPS final rule (79 FR 45947 through 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it will be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal. For FY 2024, we propose to use the same comorbidity adjustment factors in effect in FY 2023. The proposed FY 2024 comorbidity adjustment factors are found in Addendum A, available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

For FY 2024, we propose to add 2 ICD–10–CM/PCS codes and remove 1 ICD–10–CM/PCS code from the Chronic Renal Failure category. The proposed FY 2024 comorbidity codes are shown in Addenda B, available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

In accordance with the policy established in the FY 2015 IPF PPS final rule (79 FR 45949 through 45952), we reviewed all new FY 2024 ICD–10–CM codes to remove codes that were site ''unspecified'' in terms of laterality from the FY 2024 ICD–10–CM/PCS codes in instances where more specific codes are available. As we stated in the FY 2015 IPF PPS final rule, we believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or a condition exists should be used when coding patients' diagnoses whenever these codes are available. We finalized in the FY 2015 IPF PPS rule, that we would remove site ''unspecified'' codes from the IPF PPS ICD–10–CM/PCS codes in instances when laterality codes (site specified codes) are available, as the clinician should be able to identify a more specific diagnosis based on clinical assessment at the medical encounter. None of the finalized additions to the FY 2024 ICD–10–CM/PCS codes were site ''unspecified'' by laterality, therefore, we are not removing any of the new codes.

c. Proposed Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are costlier than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant. For FY 2024, we propose to use the patient age adjustments currently in effect for FY 2023, as shown in Addendum A of this proposed rule (see *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*).

d. Proposed Variable per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF. As discussed in the November 2004 IPF PPS final rule, we used a regression analysis to estimate the average differences in per diem cost among stays of different lengths (69 FR 66947 through 66950). As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4 of this proposed rule.

For FY 2024, we propose to use the variable per diem adjustment factors currently in effect in FY 2023, as shown in Addendum A of this proposed rule

(available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*). A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

D. Proposed Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the RY 2007 IPF PPS final rule (71 FR 27061), RY 2009 IPF PPS (73 FR 25719) and the RY 2010 IPF PPS notices (74 FR 20373), to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area, as defined in 42 CFR 412.64(b)(1)(ii)(A) and (C).

Due to the variation in costs and because of the differences in geographic wage levels, in the November 15, 2004 IPF PPS final rule, we required that payment rates under the IPF PPS be adjusted by a geographic wage index. We proposed and finalized a policy to use the unadjusted, pre-floor, pre-reclassified IPPS hospital wage index to account for geographic differences in IPF labor costs. We implemented use of the pre-floor, pre-reclassified IPPS hospital wage data to compute the IPF wage index since there was not an IPF-specific wage index available. We believe that IPFs generally compete in the same labor market as IPPS hospitals so the pre-floor, pre-reclassified IPPS hospital wage data should be reflective of labor costs of IPFs. We believe this pre-floor, pre-reclassified IPPS hospital wage index to be the best available data to use as proxy for an IPF specific wage index. As discussed in the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without considering geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, we refer readers to the FY 2019 IPPS/LTCH PPS final rule (83 FR 41362 through 41390). Our wage index policy at § 412.424(a)(2), requires that we use the best Medicare data available to estimate costs per day, including an appropriate wage index to adjust for wage differences.

When the IPF PPS was implemented in the November 15, 2004 IPF PPS final rule, with an effective date of January 1, 2005, the pre-floor, pre-reclassified IPPS hospital wage index that was available at the time was the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index. Historically, the IPF wage index for a given RY has used the pre-floor, pre-reclassified IPPS hospital wage index from the prior FY as its basis. This has been due in part to the pre-floor, pre-reclassified IPPS hospital wage index data that were available during the IPF rulemaking cycle, where an annual IPF notice or IPF final rule was usually published in early May. This publication timeframe was relatively early compared to other Medicare payment rules because the IPF PPS follows a RY, which was defined in the implementation of the IPF PPS as the 12-month period from July 1 to June 30 (69 FR 66927). Therefore, the best available data at the time the IPF PPS was implemented was the pre-floor, pre-reclassified IPPS hospital wage index from the prior FY (for example, the RY 2006 IPF wage index was based on the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index).

In the RY 2012 IPF PPS final rule, we changed the reporting year timeframe for IPFs from a RY to the FY, which begins October 1 and ends September 30 (76 FR 26434 through 26435). In that RY 2012 IPF PPS final rule, we continued our established policy of using the pre-floor, pre-reclassified IPPS hospital wage index from the prior year (that is, from FY 2011) as the basis for the FY 2012 IPF wage index. This policy of basing a wage index on the prior year's pre-floor, pre-reclassified IPPS hospital wage index has been followed by other Medicare payment systems, such as hospice and inpatient rehabilitation facilities. By continuing with our established policy, we remained consistent with other Medicare payment systems.

In FY 2020, we finalized the IPF wage index methodology to align the IPF PPS wage index with the same wage data timeframe used by the IPPS for FY 2020 and subsequent years. Specifically, we finalized to use the pre-floor, pre-reclassified IPPS hospital wage index from the FY concurrent with the IPF FY as the basis for the IPF wage index. For example, the FY 2020 IPF wage index was based on the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index rather than on the FY 2019 pre-floor, pre-reclassified IPPS hospital wage index.

We explained in the FY 2020 proposed rule (84 FR 16973), that using the concurrent pre-floor-, pre-reclassified IPPS hospital wage index will result in the most up-to-date wage data being the basis for the IPF wage index. It will also result in more consistency and parity in the wage index methodology used by other Medicare payment systems. The Medicare SNF PPS already used the concurrent IPPS hospital wage index data as the basis for the SNF PPS wage index. Thus, the wage adjusted Medicare payments of various provider types will be based upon wage index data from the same timeframe. CMS proposed similar policies to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index data in other Medicare payment systems, such as hospice and inpatient rehabilitation facilities. For FY 2024, we propose to continue using the concurrent pre-floor, pre-reclassified IPPS hospital wage index as the basis for the IPF wage index.

We propose to apply the IPF wage index adjustment to the labor-related share of the national base rate and ECT payment per treatment. The labor-related share of the national rate and ECT payment per treatment would change from 77.4 percent in FY 2023 to 78.5 percent in FY 2024. This percentage reflects the proposed labor-related share of the proposed 2021-based IPF market basket for FY 2024 (see section III.A of this proposed rule).

b. Office of Management and Budget (OMB) Bulletins

i. Background

The wage index used for the IPF PPS is calculated using the unadjusted, pre-reclassified and pre-floor IPPS wage index data and is assigned to the IPF on the basis of the labor market area in which the IPF is geographically located. IPF labor market areas are delineated based on the Core Based Statistical Area (CBSAs) established by the OMB.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses through OMB Bulletins. These bulletins contain information regarding CBSA changes, including changes to CBSA numbers and titles. OMB bulletins may be accessed online at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins/*. In accordance

with our established methodology, the IPF PPS has historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the IPPS hospital wage index used to determine the IPF wage index and, when necessary and appropriate, has proposed and finalized transition policies for these changes.

In the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Micropolitan Statistical Areas and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in RY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the RY 2009 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applied to the IPPS hospital wage index used to determine the current IPF wage index and stated that we expected to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721).

Subsequently, CMS adopted the changes that were published in past OMB bulletins in the FY 2016 IPF PPS final rule (80 FR 46682 through 46689), the FY 2018 IPF PPS rate update (82 FR 36778 through 36779), the FY 2020 IPF PPS final rule (84 FR 38453 through 38454), and the FY 2021 IPF PPS final rule (85 FR 47051 through 47059). We direct readers to each of these rules for more information about the changes that were adopted and any associated transition policies.

In part due to the scope of changes involved in adopting the CBSA delineations for FY 2021, we finalized a 2-year transition policy consistent with our past practice of using transition policies to help mitigate negative impacts on hospitals of certain wage index policy changes. We applied a 5-percent cap on wage index decreases to all IPF providers that had any decrease in their wage indexes, regardless of the circumstance causing the decline, so that an IPF's final wage index for FY 2021 will not be less than 95 percent of its final wage index for FY 2020, regardless of whether the IPF was part of an updated CBSA. We refer readers to the FY 2021 IPF PPS final rule (85 FR 47058 through 47059) for a more detailed discussion about the wage index transition policy for FY 2021.

On March 6, 2020 OMB issued OMB Bulletin 20–01 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). In considering whether to adopt this bulletin, we analyzed whether the changes in this bulletin would have a material impact on the IPF PPS wage index. This bulletin creates only one Micropolitan statistical area. As discussed in further detail in section III.D.1.b.ii of this proposed rule, since Micropolitan areas are considered rural for the IPF PPS wage index, this bulletin has no material impact on the IPF PPS wage index. That is, the constituent county of the new Micropolitan area was considered rural effective as of FY 2021 and would continue to be considered rural if we adopted OMB Bulletin 20–01. Therefore, we did not propose to adopt OMB Bulletin 20–01 in the FY 2022 IPF PPS proposed rule.

In the FY 2023 IPF PPS final rule (87 FR 46856 through 46859), we finalized a permanent 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, and we stated that we would apply this cap in a budget-neutral manner. Additionally, we finalized a policy that a new IPF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied because a new IPF would not have a wage index in the prior FY. We amended the IPF PPS regulations at § 412.424(d)(1)(i) to reflect this permanent cap on wage index decreases. We refer readers to the FY 2023 IPF PPS final rule for a more detailed discussion about this policy.

ii. Micropolitan Statistical Areas (MSA)

OMB defines a ''Micropolitan Statistical Area'' as a CBSA associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each State's IPF PPS rural wage index. We refer the reader to the FY 2007 IPF PPS final rule (71 FR 27064 through 27065) for a complete discussion regarding treating Micropolitan Areas as rural.

c. Proposed Adjustment for Rural Location

In the November 2004 IPF PPS final rule, (69 FR 66954), we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. This 17 percent adjustment has been part of the IPF PPS each year since the inception of the IPF PPS. For FY 2024, we propose to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C) (see 69 FR 66954 for a complete discussion of the adjustment for rural locations).

d. Proposed Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. Therefore, for FY 2024, we propose to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to update the wage index in such a way that total estimated payments to IPFs for FY 2024 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget-neutrality factor to the IPF PPS rates. We use the following steps to ensure that the rates reflect the FY 2024 update to the wage indexes (based on the FY 2020 hospital cost report data) and the labor-related share in a budget-neutral manner:

Step 1: Simulate estimated IPF PPS payments, using the FY 2023 IPF wage index values (available on the CMS website) and labor-related share (as published in the FY 2023 IPF PPS final rule (87 FR 46846).

Step 2: Simulate estimated IPF PPS payments using the proposed FY 2024 IPF wage index values (available on the CMS website) and proposed FY 2024 labor-related share (based on the latest available data as discussed previously).

Step 3: Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the proposed FY 2024 budget-neutral wage adjustment factor of 1.0011.

Step 4: Apply the FY 2024 budget-neutral wage adjustment factor from step 3 to the FY 2023 IPF PPS Federal per diem base rate after the application of the market basket update described in section III.A of this proposed rule, to determine the FY 2024 IPF PPS Federal per diem base rate.

2. Proposed Teaching Adjustment

a. Background

In the November 2004 IPF PPS final rule, we implemented regulations at

§ 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of fulltime equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable'', which is (1 + [the number of FTE residents training in the IPF's average daily census]). The teaching variable is then raised to the 0.5150 power to result in the teaching adjustment. This formula is subject to the limitations on the number of FTE residents, which are described in this section of this proposed rule.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (69 FR 66955). A complete discussion of the temporary adjustment to the FTE cap to reflect residents due to hospital closure or residency program closure appears in the RY 2012 IPF PPS proposed rule (76 FR 5018 through 5020) and the RY 2012 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the RY 2009 IPF PPS notice (73 FR 25721). As with other adjustment factors derived through the regression analysis, we do not plan to propose updates to the teaching adjustment factors until we more fully analyze IPF PPS data. Therefore, in this FY 2024 proposed rule, we propose to retain the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

3. Proposed Cost of Living Adjustment (COLA) for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the area in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare prospective payment systems (for example, the IPPS and LTCH PPS) adopted a COLA to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii will improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the non-labor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors through 2009 were published by the Office of Personnel Management (OPM), and the OPM memo showing the 2009 COLA factors is available at *https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act.*

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse.
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse.
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse.
- Rest of the State of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Non-foreign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) (Pub. L. 111–84, October 28, 2009), for FY 2010 transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay was phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the RY 2012 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates, which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010 through RY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a new methodology to update the COLA factors for Alaska and Hawaii, and adopted this methodology for the IPF PPS in the FY 2015 IPF final rule (79 FR 45958 through 45960). We adopted this new COLA methodology for the IPF PPS because IPFs are hospitals with a similar mix of commodities and services. We believe it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, the IPF COLAs for FY 2015 through FY 2017 were the same as those applied under the IPPS in those years. As finalized in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53700 and 53701), the COLA updates are determined every

4 years, when the IPPS market basket labor-related share is updated. Because the labor-related share of the IPPS market basket was updated for FY 2022, the COLA factors were updated in FY 2022 IPPS/LTCH rulemaking (86 FR 45547). As such, we also updated the IPF PPS COLA factors for FY 2022 (86 FR 42621 through 42622) to reflect the updated COLA factors finalized in the FY 2022 IPPS/LTCH rulemaking. Table 16 shows the proposed IPF PPS COLA factors effective for FY 2022 through FY 2025.

TABLE 16—IPF PPS COST-OF-LIVING-ADJUSTMENT FACTORS: IPFS LOCATED IN ALASKA AND HAWAII

Area	FY 2022 through FY 2025
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.22
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.22
City of Juneau and 80-kilometer (50-mile) radius by road	1.22
Rest of Alaska	1.24
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.22
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

The proposed IPF PPS COLA factors for FY 2024 are also shown in Addendum A to this proposed rule, and is available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

4. Proposed Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a psychiatric hospital with a qualifying ED or an excluded psychiatric unit of an IPPS hospital or a CAH, for preadmission services otherwise payable under the Medicare Hospital Outpatient Prospective Payment System (OPPS), furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception, which we described), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. Those IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described in this section of this proposed rule. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an IPPS hospital or CAH and admitted to the same IPPS hospital's or CAH's excluded psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the IPPS hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an IPPS hospital or CAH and admitted to the same hospital's or CAH's excluded psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF. For FY 2024, we propose to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factors are in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the RY 2007 IPF PPS final rule (71 FR 27070 through 27072).

E. Other Proposed Payment Adjustments and Policies

1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require costlier care, and therefore, reduce the incentives for IPFs to under-serve these patients. We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. The adjusted threshold amount is equal to the outlier threshold amount adjusted for wage area, teaching status, rural area, and the COLA adjustment (if applicable), plus the amount of the Medicare IPF payment for the case. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2

percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total estimated IPF PPS payments.

2. Proposed Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we propose to update the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy, which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

Our longstanding methodology for updating the outlier fixed dollar loss threshold involves using the best available data, which is typically the most recent available data. For the FY 2022 IPF PPS final rule, we finalized the use of FY 2019 claims rather than the more recent FY 2020 claims for updating the outlier fixed dollar loss threshold (86 FR 42623). We noted that our use of the FY 2019 claims to set the final outlier fixed dollar loss threshold for FY 2022 deviated from our longstanding practice of using the most recent available year of claims, but remained otherwise consistent with the established outlier update methodology. We explained that we finalized our proposal to deviate from our longstanding practice of using the most recent available year of claims only because, and to the extent that, the ''coronavirus disease 2019'' (abbreviated ''COVID–19'') Public Health Emergency (PHE) appeared to have significantly impacted the FY 2020 IPF claims. We further stated that we intended to continue to analyze further data in order to better understand both the short-term and long-term effects of the COVID–19 PHE on IPFs (86 FR 42624).

In the FY 2023 IPF PPS final rule (87 FR 46862 through 46864) we noted that we observed an overall increase in average cost per day and an overall decrease in the number of covered days. However, we identified that some providers had significant increases in their charges, resulting in higher than normal estimated cost per day that would skew our estimate of outlier payments for FY 2022 and FY 2023. We finalized our proposal for FY 2023 to use the latest available FY 2021 claims, in accordance with our longstanding practice, to simulate payments for determining the final FY 2023 IPF PPS outlier fixed dollar loss threshold amount. In addition, we finalized a methodology for FY 2023 to exclude providers from our impact simulations whose change in simulated cost per day is outside 3 standard deviations from the mean.

For this FY 2024 IPF PPS proposed rulemaking, consistent with our longstanding practice, we analyzed the most recent available data for simulating IPF PPS payments in FY 2023. Based on an analysis of these updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 3.0 percent in FY 2023. We analyzed the change in providers' charges from the FY 2021 claims that were used to simulate payments for determining the final FY 2023 IPF PPS outlier threshold, and the latest available FY 2022 claims. In contrast to our analysis of FY 2021 claims for the FY 2023 IPF PPS proposed and final rules, we did not find the same level of significant increases in charges in the FY 2022 claims that we believe would skew our estimate of outlier payments for FY 2023 and FY 2024. Therefore, we propose to update the outlier threshold amount to $34,750. This would allow us to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2024. This proposed update is an increase from the FY 2023 threshold of $24,630. We are soliciting comments on this proposed increase to the outlier threshold for FY 2024, and whether we should consider alternative methodologies for FY 2024. Specifically, we are interested in understanding whether commenters believe it would be appropriate to exclude providers from our FY 2024 impact simulations whose change in simulated cost per day is outside 3 standard deviations from the mean, following the same methodology we applied in FY 2023. We note that our analysis for this FY 2024 proposed rule shows that the FY 2024 outlier fixed dollar loss threshold amount would be closer to $30,000 if we were to exclude providers based on the same methodology finalized for FY 2023. We are also interested in other methodologies that commenters believe might be appropriate to consider, including why commenters believe applying such a methodology would be appropriate for establishing the outlier threshold for FY 2024.

3. Proposed Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the FY 2004 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for IPPS hospitals, because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As indicated in the November 2004 IPF PPS final rule (69 FR 66961), we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS; therefore, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule:

- Calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas.
- Computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the most recent Provider Specific File (PSF) available.

For FY 2024, we propose to continue to follow this methodology.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2024 is 2.0801 for rural IPFs, and 1.7864 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national median CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national median CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

• IPFs whose overall CCR is in excess of three standard deviations above the corresponding national geometric mean (that is, above the ceiling).

• Other IPFs for which the Medicare Administrative Contractor (MAC) obtains inaccurate or incomplete data with which to calculate a CCR.

We propose to update the FY 2024 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS PSF.

Specifically, for FY 2024, to be used in each of the three situations listed previously, using the most recent CCRs entered in the CY 2022 PSF, we provide an estimated national median CCR of 0.5720 for rural IPFs and a national median CCR of 0.4200 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations. A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

4. Proposed Modification to the Regulation for Excluded Psychiatric Units Paid Under the IPF PPS

a. Background

Under current regulation, in order to be excluded from the IPPS and paid under the IPF PPS or the IRF PPS, an IPF or IRF unit of a hospital must meet a number of requirements under 42 CFR 412.25. As discussed in the following paragraphs, both this regulation and the policies applying to excluded units (which include excluded IRF units and excluded IPF units) have been in effect since before both the IPF PPS and IRF PPS were established. Before the IRF PPS and the IPF PPS were established, excluded units were paid based on their costs, as reported on their Medicare cost reports, subject to certain facility-specific cost limits. These cost-based payments were determined separately for operating and capital costs. Thus, under cost-based payments, the process of allocating costs to an IPF unit for reimbursement created significant administrative complexity. This administrative complexity necessitated strict regulations that allowed hospitals to open a new IPPS-excluded unit only at the start of a cost reporting period.

In the January 3, 1984 final rule (49 FR 235), CMS (then known as the Health Care Financing Administration) established policies and regulations for hospitals and units subject to and excluded from the IPPS. In that rule, we explained that section 1886(d) of the Act requires that the prospective payment system apply to inpatient hospital services furnished by all hospitals participating in the Medicare program except those hospitals or units specifically excluded by the law. We further explained our expectation that a hospital's status (that is, whether it is subject to, or excluded from, the prospective payment system) would generally be determined at the beginning of each cost reporting period. We also stated that this status would continue throughout the period, which is normally 1 year. Accordingly, we stated that changes in a hospital's (or unit's) status that result from meeting or failing to meet the criteria for exclusion would be implemented only at the start of a cost reporting period. However, we also acknowledged that under some circumstances involving factors external to the hospital, status changes could be made at times other than the beginning of the cost reporting period. For example, a change in status could occur if a hospital is first included under the prospective payment system and, after the start of its cost reporting period, is excluded because of its participation in an approved demonstration project or State reimbursement control program that begins after the hospital's cost reporting period has begun.

In the 1993 IPPS final rule (57 FR 39798 through 39799), we codified our longstanding policies regarding when a hospital unit can change its status from not excluded to excluded. We explained in that final rule that since the inception of the PPS for operating costs of hospital inpatient services in October 1983, certain types of specialty-care hospitals and hospital units have been excluded from that system under section 1888(d)(1)(B) of the Act. We noted that these currently include psychiatric and rehabilitation hospitals and distinct part units, children's hospitals, and long-term care hospitals. We further explained that section 6004(a)(1) of Public Law 101–239 amended section 1886(d)(1)(B) of the Act to provide that certain cancer hospitals are also excluded. We noted that the preamble to the January 3, 1984 final rule implementing the PPS for operating costs (49 FR 235) stated that the status of a hospital or unit (that is, whether it is subject to, or excluded from, the PPS) will be determined at the beginning of each cost reporting period. We noted that that same 1984 final rule also provided that changes in a hospital's or unit's status that result from meeting or failing to meet the criteria for exclusion will be implemented prospectively only at the start of a cost reporting period, that is, starting with the beginning date of the next cost reporting period (49 FR 243). However, we noted that this policy was not set forth in the regulations. In that 1993 IPPS final rule, we stated that we proposed revising §§ 412.22 and 412.25 to specify that changes in the status of each hospital or hospital unit would be recognized only at the start of a cost reporting period. We stated that, except in the case of retroactive payment adjustments for excluded rehabilitation units described in § 412.30(c), any change in a hospital's or unit's compliance with the exclusion criteria that occurs after the start of a cost reporting period would not be taken into consideration until the start of the following period. We noted that this policy would also apply to any unit that is added to a hospital during the hospital's cost reporting period. We also stated that we proposed revising § 412.25(a) to specify that as a requirement for exclusion, a hospital unit must be fully equipped and staffed, and be capable of providing inpatient psychiatric or rehabilitation care as of the first day of the first cost reporting period for which all other exclusion requirements are met. We explained that a unit that meets this requirement would be considered open regardless of whether there are any inpatients in the unit.

In the same 1993 IPPS final rule, we responded to commenters who objected to this policy, stating that it unnecessarily penalizes hospitals for factors beyond their control, such as construction delays, that it discourages hospitals from making changes in their programs to meet community needs, or that it can place undue workload demands on regulatory agencies during certain time periods. In response, we explained that we believed that regulatory agencies, hospitals, and the public generally would benefit from policies that are clearly stated, can be easily understood by both hospitals and intermediaries, and can be simply administered. We stated that recognizing changes in status only at the beginning of cost reporting periods is consistent with these goals, while recognizing changes in the middle of cost reporting periods would introduce added complexity to the administration of the exclusion provisions. Therefore, we did not revise the proposed changes based on these comments.

In the FY 2000 IPPS final rule (64 FR 41531 through 41532), we amended the regulations at § 412.25(c) to allow a hospital unit to change from excluded to not excluded at any time during the cost reporting period. We explained the statutory basis and rationale for this change in the FY 2000 IPPS proposed rule (64 FR 24740), and noted that a

number of hospitals suggested that we consider a change in our policy to recognize, for purposes of exclusion from the IPPS, reductions in number of beds in, or entire closure of, units at any time during a cost reporting period. In that FY 2000 IPPS proposed rule, we explained that hospitals indicated that the bed capacity made available as a result of these changes could be used as needed to provide additional services to meet patient needs in the acute care part of the hospital that is paid under the IPPS. We further explained that we evaluated the concerns of the hospitals and the effects on the administration of the Medicare program and the health care of beneficiaries of making these payment changes. As a result of that evaluation, we stated that we believed it was reasonable to adopt a more flexible policy in recognition of hospitals' changes in the use of their facilities. However, we noted that whenever a hospital establishes an excluded unit within the hospital, our Medicare fiscal intermediary would need to be able to determine costs of the unit separately from costs of the part of the hospital paid under the prospective payment system. At that time, we stated that the proper determination of costs ensured that the hospital was paid the correct amount for services in each part of the facility, and that payments under the IPPS did not duplicate payments made under the rules that were applicable to excluded hospitals and units, or vice versa. For this reason, we did not believe it would be appropriate to recognize, for purposes of exclusion from the IPPS, changes in the bed size or status of an excluded unit that are so frequent that they interfere with the ability of the intermediary to accurately determine costs. Moreover, we explained that section 1886(d)(1)(B) of the Act authorizes exclusion from the IPPS of specific types of hospitals and units, but not of specific admissions or stays, such as admissions for rehabilitation or psychiatric care, in a hospital paid under the IPPS. We stated that without limits on the frequency of changes in excluded units for purposes of proper Medicare payment, there was the potential for some hospitals to adjust the status or size of their excluded units so frequently that the units would no longer be distinct entities and the exclusion would effectively apply only to certain types of care.

In the FY 2012 IRF PPS final rule (76 FR 47870), we began further efforts to increase flexibilities for excluded IPF and IRF units. In that rule, we explained that cost-based reimbursement methodologies that were in place before the IPF PPS and IRF PPS meant that the facilities' capital costs were determined, in part, by their bed size and square footage. Changes in the bed size and square footage would complicate the facilities' capital cost allocation. Thus, regulations at § 412.25 limited the situations under which an IRF or IPF could change its bed size and square footage. In the FY 2012 IRF PPS final rule, we revised § 412.25(b) to enable IRFs and IPFs to more easily adjust to beneficiary changes in demand for IRF or IPF services, and improve beneficiary access to these services. We believed that the first requirement (that beds can only be added at the start of a cost reporting period) was difficult, and potentially costly, for IRFs and IPFs that were expanding through new construction because the exact timing of the end of a construction project is often difficult to predict. In that same FY 2012 IRF PPS final rule, commenters suggested that CMS allow new IRF units or new IPF units to open and begin being paid under their respective IRF PPS or IPF PPS at any time during a cost reporting period, rather than requiring that they could only begin being paid under the IRF PPS or the IPF PPS at the start of a cost reporting period. We believed that this suggestion was outside the scope of the FY 2012 IRF PPS proposed rule (76 FR 24214) because we did not propose any changes to the § 412.25(c). However, we stated that we would consider this suggestion for possible inclusion in future rulemaking.

b. Current Challenges Related to Excluded Hospital Units (§§ 412.25(c)(1) and (c)(2))

Currently, under § 412.25(c)(1), a hospital can only start being paid under the IPF PPS or the IRF PPS for services provided in an excluded hospital unit at the start of a cost reporting period. Specifically, § 412.25(c) limits when the status of hospital units may change for purposes of exclusion from the IPPS, as specified in § 412.25(c)(1) and § 412.25(c)(2). Section 412.25(c)(1) states that the status of a hospital unit may be changed from not excluded to excluded only at the start of the cost reporting period. If a unit is added to a hospital after the start of a cost reporting period, it cannot be excluded from the IPPS before the start of a hospital's next cost reporting period. Section 412.25(c)(2) states the status of a hospital unit may be changed from excluded to not excluded at any time during a cost reporting period, but only if the hospital notifies the fiscal intermediary and the CMS Regional Office in writing of the change at least 30 days before the date of the change, and maintains the information needed to accurately determine costs that are or are not attributable to the excluded unit. A change in the status of a unit from excluded to not excluded that is made during a cost reporting period must remain in effect for the rest of that cost reporting period.

In recent years, interested parties, such as hospitals, have written CMS to express concerns about what they see as the unnecessary restrictiveness of the requirements at § 412.25(c). Based on this feedback, we continued to explore opportunities to reduce burden for providers and clinicians, while keeping patient-centered care a priority. For instance, we considered whether this regulation might create unnecessary burden for hospitals and potentially delay necessary psychiatric beds from opening and being paid under the IPF PPS. As we continued to review and reconsider regulations to identify ways to improve policy, we recognized that the requirement at § 412.25(c)(1), that hospital units can only be excluded at the start of a cost reporting period, may be challenging and potentially costly for facilities under some circumstances, for example, those that are expanding through new construction. Hospitals have indicated it is often difficult to predict the exact timing of the end of a construction project and construction delays may hamper a hospital's ability to have the construction of an excluded unit completed exactly at the start of a cost reporting period, which hospitals have said can lead to significant revenue loss if they are unable to be paid under the IPF PPS or IRF PPS until the start of the next cost reporting period.

As previously stated, the requirements at § 412.25(c) were established to manage the administrative complexity associated with cost-based reimbursement for excluded IPF and IRF units. Today, however, because IPF units are paid under the IPF PPS and IRF units are paid under the IRF PPS, cost allocation is not used for payment purposes. Because advancements in technology since the inception of the IPF PPS and IRF PPS have simplified the cost reporting process and enhanced communication between providers, Medicare contractors, and CMS, we are reconsidering whether it is necessary to continue to allow hospital units to become excluded only at the start of a cost reporting period.

c. Proposed Changes to Excluded Hospital Units (§§ 412.25(c)(1) and (c)(2))

We are committed to continuing to transform the health care delivery system and the Medicare program by putting additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes, while meeting relevant health care priorities and explore burden reduction.

In response to increased mental health needs, including the need for availability of inpatient psychiatric beds, we propose changes to § 412.25(c) to allow greater flexibility for hospitals to open excluded units, while minimizing the amount of effort Medicare contractors would need to spend administering the regulatory requirements. Although we are cognizant that there is need for mental health services and support for providers along a continuum of care, including a robust investment in community-based mental health services, this propose rule is focused on inpatient psychiatric facility settings.

We note that § 412.25(c) applies to both IPFs and IRFs; therefore, revisions to § 412.25(c) would also affect IRFs in similar ways. Readers should refer to the FY 2024 IRF PPS proposed rule for discussion of proposed revisions to § 412.25(c) and unique considerations applicable to IRF units. As previously stated the current requirements at § 412.25(c)(1) were originally established to manage the administrative complexity associated with cost-based reimbursement for excluded IPF and IRF units. Because IPF and IRF units are no longer paid under cost-based reimbursement, but rather under the IPF PPS and IRF PPS respectively, we believe that the restriction that limits an IPF or IRF unit to being excluded only at the start of a cost reporting period is no longer necessary. We amended our regulations in the FY 2012 IRF PPS final rule to address a regulation that, similarly, was previously necessary for cost-based reimbursement, but was not material to payment under the IRF PPS and IPF PPS. In that final rule, we explained that under cost-based payments, the facilities' capital costs were determined, in part, by their bed size and square footage. Changes in the bed size and square footage would complicate the facilities' capital cost allocation. We explained that under the IRF PPS and IPF PPS, a facility's bed size and square footage were not relevant for determining the individual facility's Medicare payment. Therefore, we believed it was appropriate to modify some of the restrictions on a facility's ability to change its bed size and square footage. Accordingly, we relaxed the restrictions on a facility's ability to increase its bed size and square footage. Under the revised requirements that we adopted in the FY 2012 IRF PPS final rule at § 412.25(b), an IRF or IPF can change (either increase or decrease) its bed size or square footage one time at any point in a given cost reporting period as long as it notifies the CMS Regional Office (RO) at least 30 days before the date of the proposed change, and maintains the information needed to accurately determine costs that are attributable to the excluded units.

Similarly, in the case of the establishment of new excluded IPF and IRF units, we do not believe that the timing of the establishment of the new unit is material for determining the individual facility's Medicare payment under the IPF PPS or IRF PPS. We believe it would be appropriate to allow a unit to become excluded at any time in the cost reporting year. However, we also believe it is important to minimize the potential administrative complexity associated with units changing their excluded status.

Accordingly, we propose to modify the requirements currently in regulation at § 412.25(c)(1) to allow a hospital to open a new IPF unit any time within the cost reporting year, as long as the hospital notifies the CMS Regional Office and Medicare Administrative Contractor (MAC) in writing of the change at least 30 days before the date of the change. Additionally, we propose that if a unit becomes excluded during a cost reporting year, the hospital must notify the MAC and CMS Regional Office in writing of the change at least 30 days before the change, and this change would remain in effect for the rest of that cost reporting year. We also propose to maintain the current requirements of § 412.25(c)(2) which specify that, if an excluded unit becomes not excluded during a cost reporting year, the hospital must notify the MAC and CMS Regional Office in writing of the change at least 30 days before the change, and this change would remain in effect for the rest of that cost reporting year. Finally, we propose to consolidate the requirements for § 412.25(c)(1) and § 412.25(c)(2) into a new § 412.25(c)(2) that would apply to IPF units and specify the requirements for an IPF unit to become excluded or not excluded. We believe this proposal would provide greater flexibility to hospitals to establish an excluded unit at a time other than the start of a cost reporting period. We welcome comments on this proposed change.

As noted above, we propose an identical policy for rehabilitation units of hospitals in the FY 2024 IRF PPS proposed rule. The regulatory provision that would pertain to IRF units would appear in § 412.25(c)(1). We propose discrete regulations text for each of the hospital unit types (that is, IRF units and IPF units) in order to solicit comments on issues that might impact one hospital unit type and not the other. However, we may consider adopting one consolidated regulations text for both IRF and IPF units in the final rules if we finalize both of our proposals. We solicit public comments on finalizing a consolidated provision that would pertain to both IRF and IPF units.

IV. Existing Data Collection and Request for Information (RFI) To Inform Revisions to the IPF PPS as Required by the CAA, 2023

A. Changes to IPF PPS in the CAA, 2023

As discussed in section III.C.1 of this proposed rule, we propose to continue using the existing regression-derived IPF PPS adjustment factors for FY 2024. In the FY 2023 IPF PPS proposed rule (87 FR 19428 through 19429), we discussed the background of these current IPF PPS patient-level and facility-level adjustment factors, which are the regression-derived adjustment factors from the November 15, 2004 IPF PPS final rule and briefly discussed past analyses and areas of concern for future refinement, about which we previously solicited comments. Finally, in the FY 2023 proposed rule, we described the results of the latest analysis of the IPF PPS, which were summarized in a technical report posted to the CMS website [2] accompanying the rule, and solicited comments on certain topics from the report.

Section 4125 of the CAA, 2023 amended section 1886(s) of the Act to add new paragraph 1886(s)(5), which requires revisions to the methodology for determining the payment rates under the IPF PPS for FY 2025 and future years as the Secretary determines appropriate. Specifically, new section 1886(s)(5)(A) of the Act requires the Secretary to collect data and information as the Secretary as determines appropriate to revise payments under the IPF PPS. This data collection is required to begin no later than October 1, 2023, which is the start of FY 2024. In addition, new section 1886(s)(5)(D) of the Act requires that the

[2] *https://www.cms.gov/files/document/technical-report-medicare-program-inpatient-psychiatric-facilities-prospective-payment-system.pdf.*

Secretary implement by regulation revisions to the methodology for determining the payment rates for psychiatric hospitals and psychiatric units (that is, under the IPF PPS), for rate year 2025 (FY 2025) and for subsequent years if the Secretary determines it appropriate. The revisions may be based on a review of the data and information collection.

As noted above, section 1886(s)(5)(A) of the Act requires the Secretary to begin collecting, by not later than October 1, 2023, data and information as appropriate to inform revisions to the IPF PPS. New section 1886(s)(5)(B) of the Act, as added by the CAA, 2023 lists the following types of data and information as a non-exhaustive list of examples of what may be collected under this authority:

- Charges, including those related to ancillary services;
- The required intensity of behavioral monitoring, such as cognitive deficit, suicidal ideations, violent behavior, and need for physical restraint; and
- Interventions, such as detoxification services for substance abuse, dependence on respirator, total parenteral nutritional support, dependence on renal dialysis, and burn care.

We note that our extensive years-long and ongoing data collection efforts are consistent with the types of data the CAA, 2023 suggests we might collect as well as the purpose for which the CAA, 2023 requires the data collection, as described in the following paragraphs.

B. Current Data and Information Collection Requirements

1. Charges, Including Those Related to Ancillary Services

As specified at 42 CFR 413.20, hospitals are required to file cost reports on an annual basis, and maintain sufficient financial records and statistical data for proper determination of costs payable under the Medicare program. Currently, IPFs and psychiatric units are required to report ancillary charges on cost reports.

In general, most providers allocate their Medicare costs using costs and charges as described at 42 CFR 413.53(a)(1)(i) and referred to as the Departmental Method. For cost reporting periods beginning on or after October 1, 1982, the Departmental Method, which is the ratio of beneficiary charges to total patient charges for the services of each ancillary department, is applied to apportion the cost of the department. Added to this amount is the cost of routine services for program beneficiaries, determined on the basis of a separate average cost per diem for all patients for general routine patient care areas as required at § 413.53(a)(1)(i) and (e).

The Departmental Method for apportioning allowable cost between Medicare and non-Medicare patients under the program is not readily adaptable to those hospitals that do not have a charge structure. Current cost reporting rules allow hospitals that do not have a charge structure to file an all-inclusive cost report using an alternative cost allocation method. These alternative methods as described in the CMS Pub. 15–1, chapter 22 of the Provider Reimbursement Manual (PRM), Methods A, B and E, in order of preference, must be approved by the MAC after considering the data available and ascertaining which method can be applied to achieve equity, not merely greater reimbursement, in the allocation of costs for services rendered to Medicare beneficiaries.

Method A (Departmental Statistical Method) is used in the absence of charge data and where adequate departmental statistics are available. Where Method A was not used, the MAC may have granted specific permission for a hospital to continue to use on a temporary basis a less sophisticated Method B (Sliding Scale) or E (Percentage of Per Diem). A provider that elects and is approved under Method A, may not change to a Method B or E in a subsequent year. These alternative methods of apportionment are limited and available only to those hospitals that do not and never have had a charge structure for individual services rendered. Historically, most hospitals that were approved to file all-inclusive cost reports were Indian Health Services hospitals, government-owned psychiatric and acute care hospitals, and nominal charge hospitals.

In the FY 2016 IPF PPS final rule (80 FR 46693 through 46694), we discussed analysis conducted to better understand IPF industry practices for future IPF PPS refinements. This analysis revealed that in 2012 to 2013, over 20 percent of IPF stays show no reported ancillary costs, such as laboratory and drug costs, on cost reports or charges on claims. In the FY 2016 IPF PPS final rule (80 FR 46694), FY 2017 IPF PPS final rule (81 FR 50513), FY 2018 IPF PPS final rule (82 FR 36784), FY 2019 IPF PPS final rule (83 FR 38588) and FY 2020 IPF PPS final rule (84 FR 38458), we reminded providers that we pay only the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF, except for certain professional services, and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

On November 17, 2017, we issued Transmittal 12, which made changes to the hospital cost report form CMS–2552–10 (OMB No. 0938–0050), and included cost report Level I edit 10710S, effective for cost reporting periods ending on or after August 31, 2017. Edit 10710S required that cost reports from psychiatric hospitals include certain ancillary costs, or the cost report will be rejected. On January 30, 2018, we issued Transmittal 13, which changed the implementation date for Transmittal 12 to be for cost reporting periods ending on or after September 30, 2017. CMS suspended edit 10710S effective April 27, 2018, pending evaluation of the application of the edit to all-inclusive-rate providers. CMS issued Transmittal 15 on October 19, 2018, reinstating the requirement that cost reports from psychiatric hospitals, except all-inclusive rate providers, include certain ancillary costs. For details, we refer readers to see these Transmittals, which are available on the CMS website at *https://www.cms.gov/regulations-and-guidance/guidance/transmittals.*

2. Required Intensity of Behavioral Monitoring and Interventions

As discussed in the November 2004 IPF PPS final rule (69 FR 66946), we encourage IPFs to code all diagnoses requiring active treatment during the IPF stay. These include ICD–10–CM codes that indicate the required intensity of behavioral monitoring, such as cognitive deficit, suicidal ideations, violent behavior, and need for physical restraint. The IPF PPS includes comorbidity and MS–DRG adjustment factors that increase IPF PPS payment for stays that include these codes. For example, ICD–10–CM codes X71 through X83 indicate self-harm. ICD–10–CM codes under R45 indicate emotional state including violent behavior. These and other ICD–10–CM codes indicate the required intensity of behavioral monitoring and should be reported on the IPF claims, if applicable.

The presence of certain ICD–10–CM codes as a principal or comorbid condition is used to adjust IPF PPS payments to reflect the resource intensity associated with these conditions. For example, codes that group to MS–DRG 884 Organic Disturbances & Intellectual Disabilities, and codes that are included in the IPF comorbidity category for Developmental Disabilities, result in increased payment

for IPF stays for patients with cognitive deficit.

As we further discussed in the November 2004 IPF PPS final rule (69 FR 66938 through 66944), we developed comorbidity categories based on the clinical expertise of physicians to identify conditions that would require comparatively more costly treatment during an IPF stay than other comorbid conditions. We used a regression analysis of administrative claims and cost report data to determine the adjustment factors associated with each comorbidity category. In addition, we used the same regression analysis to determine the adjustment factors associated with the 17 MS–DRGs that are included for payment adjustments under the IPF PPS (as identified in Addendum A). As discussed in section III.C.2.b of this proposed rule, we routinely update the ICD–10–CM codes that are included in the MS–DRGs and comorbidity categories.

We also collect relevant demographic information such as patient age, and we collect information and adjust payment based on the length of IPF stays. Each of these adjustments reflects the difference in service intensity, as measured by increased or decreased costs, for different patients over the course of an IPF stay.

In addition, IPFs and psychiatric units report on claims the ICD–10–PCS codes for interventions including oncology treatment procedures, which is used for adjusting payment under the oncology comorbidity category, and ECT, which is paid for using a per treatment amount as discussed in section III.B.2 of this FY 2024 IPF PPS proposed rule. Other ICD–10–CM diagnosis codes indicate the need for certain interventions, such as detoxification services or substance abuse (for example, F10.121, which is included in the drug and alcohol abuse comorbidity category), dependence on respirator (for example, Z99.11 included in the COPD category), and dependence on renal dialysis (for example, Z99.2 included in the chronic renal failure category). We note that the IPS PPF does not currently adjust for burn care, but recognize there are ICD–10–CM/PCS codes that denote conditions and procedures related to burn care. As discussed in the previous paragraph, the IPF PPS includes comorbidity adjustments that reflect the higher relative costs for active treatment of these conditions. IPF patients with these conditions are costlier to treat primarily because of the costs associated with interventions and longer lengths of stay.

3. Request for Information on Data and Information Collection

As noted in section IV.A of this proposed rule, our extensive years-long and ongoing data collection efforts are consistent with the types of data that the CAA, 2023 suggests we might collect, as well as aligns with the purpose for which the CAA, 2023 requires the data collection. In this proposed rule, we are requesting information from the public to inform revisions to the IPF PPS required by section 4125(a) of the CAA, 2023. We are seeking information about specific additional data and information psychiatric hospitals and psychiatric units might report that could be appropriate and useful to help inform possible revisions to the methodology for payment rates under the IPF PPS for FY 2025 and future years if determined appropriate by the Secretary.

Section 1886(s)(5)(C) of the Act provides that the Secretary may collect additional data and information on cost reports, claims, or otherwise. Therefore, we are also seeking information about potential available data and information sources, including using additional elements of the current cost reports, claims, or other sources, taking into consideration factors such as the timing and availability of data, the quality of the potential data and information to be collected, and the potential administrative burden on providers, MACs, and CMS.

We are seeking comment on the following topics:

- What other data and information would be beneficial for informing revisions to the IPF PPS payment methodologies that are currently obtainable through claims or cost report information? What codes, conditions, or other indicators should we examine in order to potentially identify this data from existing sources?
- What other data and information would be beneficial for informing revisions to the IPF PPS payment methodologies that are not routinely coded on claims or identifiable through cost report information? What are some potential alternative sources we could consider for collecting these data and information?
- What data and information that is currently reported on claims data could be used to inform revisions to the IPF PPS payment methodologies?
- As we discussed earlier in this FY 2024 IPF PPS proposed rule, the current IPF PPS payment adjustments were derived from a regression analysis based on the FY 2002 MedPAR data file. The adjustment factors included for payment were found in the regression analysis to be associated with statistically significant per diem cost differences; with statistical significance defined as p less than 0.05. Are there alternative methodological approaches or considerations that we should consider for future analysis?
- What if any additional data or information should we consider collecting that could address access to care in rural and isolated communities?

4. Request for Information About Charges for Ancillary Services

In conjunction with the FY 2023 IPF PPS proposed rule (87 FR 19428 through 19429), we posted a report on the CMS website that summarizes the results of the latest analysis of more recent IPF cost and claim information for potential IPF PPS adjustments, and requested comments about the results summarized in the report. That report showed that approximately 23 percent of IPF stays were trimmed from the data set used in that analysis because they were stays at facilities where fewer than 5 percent of their stays had ancillary charges. This report is available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS.*

In response to the comment solicitation, we received a comment from MedPAC regarding facilities that do not report ancillary charges on most or any of their claims. Ancillary services are the services for which charges are customarily made in addition to routine services. These include services such as labs, drugs, radiology, physical and occupational therapy services, and other types of services that typically vary between stays. Generally, based on the nature of IPF services and the conditions of participation [3] applicable to IPFs, we expect to see ancillary services and correlating charges, such as labs and drugs, on most IPF claims. Our ongoing analysis has found that certain providers, especially for-profit freestanding IPFs, are consistently reporting no ancillary charges or very minimal ancillary charges. MedPAC stated that it is not known: whether IPFs fail to report ancillary charges separately because they were appropriately bundled with all other charges into an all-inclusive per diem rate; if no ancillary charges were incurred because the IPF cares for a

[3] IPFs are subject to all hospital conditions of participation, including 42 CFR 482.25, which specifies that ''The hospital must have pharmaceutical services that meet the needs of the patients,'' and 482.27, which specifies that ''The hospital must maintain, or have available, adequate laboratory services to meet the needs of its patients.''

patient mix with lower care needs or inappropriately stints on care; or if ancillary charges for services furnished during the IPF stay are inappropriately billed outside of the IPF base rate (unbundling). MedPAC recommended CMS conduct further investigation into the lack of certain ancillary costs and charges and whether IPFs are providing necessary care and appropriately billing for inpatient psychiatric services under the IPF PPS.

As discussed in the previous section of this FY 2024 IPF PPS proposed rule, we are requesting information related to the specific types of data and information specified in the CAA, 2023, including the reporting of charges for ancillary services, such as labs and drugs, on IPF claims. We are interested in better understanding IPF industry practices pertaining to the billing and provision of ancillary services to inform future IPF PPS refinements. We are considering whether to require charges for ancillary services to be reported on claims and potentially reject claims if no ancillary services are reported, and whether to consider payment for such claims to be inappropriate or erroneous and subject to recoupment. Accordingly, we are soliciting comments on the following questions:

- What would be the appropriate level of ancillary charges CMS should expect to be reported on claims? Are there specific reasons that an IPF stay would include no ancillary services?
- What are the reasons that some providers are not reporting ancillary charges on their claims?
- Would it be appropriate for CMS to require and reject claims if there are no ancillary charges reported? Or should CMS consider adjusting payment toto providers that do not report ancillary charges on their claims? For example, does the lack of ancillary charges on claims suggest a lack of reasonable and necessary treatment during the IPF stay, and would it be appropriate for CMS to only apply the IPF PPS patient-level adjustment factors for claims that include ancillary charges?

C. Social Drivers of Health

Social drivers of health (SDOH), also known as social determinants of health, are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.[4] Studies have shown that there is a correlation between the effects of low income and education and overall health status. One study derived that the lowest income and least educated individuals were consistently least healthy.[5] We have previously demonstrated our commitment to advancing health equity and reducing health disparities. In the past, and in our ongoing efforts, we have strived to identify and implement policies, procedures, reporting protocols, and other initiatives in a number of our programs that address the impact of SDOH on an individual's health.

For the IPF Quality Reporting Program, as discussed in section V.D below of this proposed rule, we propose to adopt the Facility Commitment to Health Equity measure for the FY 2026 payment determination and subsequent years, the Screening for Social Drivers of Health measure beginning with voluntary reporting of data beginning in CY 2025 with required reporting for the FY 2027 payment determination and subsequent years, and the Screen Positive Rate for Social Drivers of Health measure beginning with voluntary reporting of data beginning in CY 2024 with required reporting for the FY 2027 payment determination and subsequent years.

Additionally, in the technical report[6] accompanying the FY 2023 IPF PPS proposed rule, we explained that we analyzed the costs associated with SDOH, but found that our analysis was confounded by a low frequency of IPF claims reporting the applicable ICD–10 diagnosis codes. In response to the FY 2023 IPF PPS proposed rule we received 10 comments pertaining to the report on the analysis of patient-level and facility-level adjustment factors, and areas of interest for further research, including additional SDOH analysis.

Working in collaboration with a contractor, subsequent analysis has shown that other SDOH codes, such as Z59.9 Problem related to housing and economic circumstances, unspecified, are associated with statistically significant, higher costs. In general, our analysis found that claims that included SDOH codes had lower costs than claims that did not include such codes. This finding is counterintuitive; however, we note that studies have found that there are disparities in the reporting of SDOH codes, such as homelessness.[7] Additionally, our analysis found that certain codes were associated with increased cost for IPF treatment. Specifically, the below SDOH codes in the analysis were found to be statistically significant and had a stay count of greater than 100. These codes had an adjustment factor above 1, suggesting that these conditions may increase relative costliness of IPF stays:

- Z559 Problems related to education and literacy, unspecified.
- Z599 Problems related to housing and economic circumstances, unspecified.
- Z600 Problems of adjustment to life-cycle transitions.
- Z634 Disappearance and death of family member.
- Z653 Problems related to other legal circumstances.
- Z659 Problems related to unspecified psychosocial circumstances.

We are seeking comments on these findings and information about whether it would be appropriate to consider incorporating these codes into the IPF PPS in the future, for example as a patient-level adjustment. Specifically, for codes that are ''unspecified,'' we are seeking information about what types of conditions or circumstances these codes might represent. We are seeking any information that commenters can provide about the reasons for including these codes on claims. What factors do commenters believe we should consider in order to better understand the cost regression results presented above?

V. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

A. Background and Statutory Authority

The Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program is authorized by section 1886(s)(4) of the Act, and it applies to psychiatric hospitals and psychiatric units paid by Medicare under the IPF PPS (see section V.B. of this proposed rule). Section 1886(s)(4)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual update to the standard Federal rate for discharges for the IPF occurring during such fiscal year[8] for

[4] *https://health.gov/healthypeople/priority-areas/social-determinants-health.*

[5] Paula A. Braveman, Catherine Cubbin, Susan Egerter, David R. Williams, and Elsie Pamuk, 2010: Socioeconomic Disparities in Health in the United States: What the Patterns Tell Us American Journal of Public Health 100, S186_S196, *https://doi.org/10.2105/AJPH.2009.166082.*

[6] *https://www.cms.gov/files/document/technical-report-medicare-program-inpatient-psychiatric-facilities-prospective-payment-system.pdf.*

[7] *https://aspe.hhs.gov/reports/health-conditions-among-individuals-history-homelessness-research-brief-0.*

[8] We note that the statute uses the term ''rate year'' (RY). However, beginning with the annual update of the inpatient psychiatric facility prospective payment system (IPF PPS) that took effect on July 1, 2011 (RY 2012), we aligned the IPF PPS update with the annual update of the ICD codes, effective on October 1 of each year. This change allowed for annual payment updates and the ICD coding update to occur on the same schedule and appear in the same **Federal Register** document, promoting administrative efficiency. To

any IPF that does not comply with quality data submission requirements under the IPFQR Program, set forth in accordance with section 1886(s)(4)(C) of the Act, with respect to an applicable fiscal year.

Section 1886(s)(4)(C) of the Act requires IPFs to submit to the Secretary data on quality measures specified by the Secretary under section 1886(s)(4)(D) of the Act. Except as provided in section 1886(s)(4)(D)(ii) of the Act, section 1886(s)(4)(D)(i) of the Act requires that any measure specified by the Secretary must have been endorsed by the consensus-based entity (CBE) with a contract under section 1890(a) of the Act. Section 1886(s)(4)(D)(ii) of the Act provides that, in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the CBE with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

We refer readers to the FY 2019 IPF PPS final rule (83 FR 38589) for a more detailed discussion of the background and statutory authority of the IPFQR Program.

For the IPFQR Program, we refer to the year in which an IPF would receive the 2-percentage point reduction to the annual update to the standard Federal rate as the *payment determination* year. An IPF generally meets IPFQR Program requirements by submitting data on specified quality measures in a specified time and manner during a *data submission period* that occurs prior to the payment determination year. These data reflect a period prior to the data submission period during which the IPF furnished care to patients; this period is known as the *performance period.* For example, for a measure for which CY 2024 is the performance period which is required to be submitted in CY 2025 and affects FY 2026 payment determination, if an IPF did not submit the data for this measure as specified during CY 2025 (and meets all other IPFQR Program requirements for the FY 2026 payment determination) we would reduce by 2-percentage points that IPF's update for the FY 2026 payment determination year.

In this proposed rule, we propose to codify the IPFQR Program requirements governing IPF reporting on quality measures in a new regulation at § 412.433, which is the section preceding our existing regulation governing reconsideration and appeals procedures for IPFQR Program decisions in our regulations at § 412.434. Specifically, we propose to codify a general statement of the IPFQR Program authority and structure at § 412.433(a). If finalized, paragraph (a) would cite section 1886(s)(4) of the Act, which requires the Secretary to implement a quality reporting program for inpatient psychiatric hospitals and psychiatric units. The proposed paragraph (a) would also state that IPFs paid under the IPF PPS as provided in section 1886(s)(1) of the Act that do not report data required for the quality measures selected by the Secretary in a form and manner, and at a time specified by the Secretary will incur a 2.0 percentage point reduction to the annual update to the standard Federal rate with respect to the applicable fiscal year.

We welcome comments on this proposal.

B. Covered Entities

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645), we established that the IPFQR Program's quality reporting requirements cover those psychiatric hospitals and psychiatric units paid by Medicare under IPF PPS in accordance with § 412.404(b). Generally, psychiatric hospitals and psychiatric units within acute care and critical access hospitals (CAHs) that treat Medicare patients are paid under the IPF PPS. Consistent with previous regulations, we continue to use the terms ''facility'' or ''IPF'' to refer to both inpatient psychiatric hospitals and psychiatric units. This usage follows the terminology in our IPF PPS regulations at § 412.402. For more information on covered entities, we refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645).

C. Previously Finalized Measures

The current IPFQR Program includes 14 measures for the FY 2024 payment determination. For more information on these measures, we refer readers to Table 20 of this proposed rule (see section V.G of this proposed rule).

D. Measure Adoption

We strive to put patients and caregivers first, ensuring they are empowered to partner with their clinicians in their healthcare decision-making using information from data-driven insights that are increasingly aligned with meaningful quality measures. We support technology that reduces burden and allows clinicians to focus on providing high-quality healthcare for their patients. We also support innovative approaches to improve quality, accessibility, and affordability of care while paying particular attention to improving clinicians' and beneficiaries' experiences when interacting with our programs. In combination with other efforts across HHS, we believe the IPFQR Program helps to incentivize IPFs to improve healthcare quality and value while giving patients and providers the tools and information needed to make the best individualized decisions. Consistent with these goals, our objective in selecting quality measures for the IPFQR Program is to balance the need for information on the full spectrum of care delivery and the need to minimize the burden of data collection and reporting. We have primarily focused on measures that evaluate critical processes of care that have significant impact on patient outcomes and support CMS and HHS priorities for improved quality and efficiency of care provided by IPFs. When possible, we also propose to incorporate measures that directly evaluate patient outcomes and experience. We refer readers to the CMS National Quality Strategy,[9] the Behavioral Health Strategy,[10] the Framework for Health Equity,[11] and the Meaningful Measures Framework [12] for information related to our priorities in selecting quality measures.

1. Measure Selection Process

Section 1890A of the Act requires that the Secretary establish and follow a pre-rulemaking process, in coordination with the consensus-based entity (CBE)

reflect the change to the annual payment rate update cycle, we revised the regulations at 42 CFR 412.402 to specify that, beginning October 1, 2012, the IPF PPS RY means the 12-month period from October 1 through September 30, which we refer to as a ''fiscal year'' (FY) (76 FR 26435). Therefore, with respect to the IPFQR Program, the terms ''rate year,'' as used in the statute, and ''fiscal year'' as used in the regulation, both refer to the period from October 1 through September 30. For more information regarding this terminology change, we refer readers to section III of the RY 2012 IPF PPS final rule (76 FR 26434 through 26435).

[9] Schreiber, M, Richards, A, et al. (2022). The CMS National Quality Strategy: A Person-Centered Approach to Improving Quality. Available at: *https://www.cms.gov/blog/cms-national-quality-strategy-person-centered-approach-improving-quality.* Accessed on February 20, 2023.

[10] CMS. (2022). CMS Behavioral Health Strategy. Available at *https://www.cms.gov/cms-behavioral-health-strategy.* Accessed on February 20, 2023.

[11] CMS. (2022). CMS Framework for Health Equity 2022–2032. Available at *https://www.cms.gov/files/document/cms-framework-health-equity-2022.pdf.* Accessed on February 20, 2023.

[12] CMS. (2022). Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at *https://www.cms.gov/medicare/meaningful-measures-framework/meaningful-measures-20-moving-measure-reduction-modernization.* Accessed on February 20, 2023.

with a contract under section 1890 of the Act, to solicit input from certain groups regarding the selection of quality and efficiency measures for the IPFQR Program. Before being proposed for inclusion in the IPFQR Program, measures are placed on a list of Measures Under Consideration (MUC) list, which is published annually on behalf of CMS by the consensus-based entity (CBE),[13] with which the Secretary must contract as required by section 1890(a) of the Act. Following publication on the MUC list, the Measure Applications Partnership (MAP), a multi-stakeholder group convened by the CBE, reviews the measures under consideration for the IPFQR Program, among other Federal programs, and provides input on those measures to the Secretary. We consider the input and recommendations provided by the MAP in selecting all measures for the IPFQR Program.

Information about the MAP's input on each of our proposed measures is described in the following subsections. In our evaluation of the IPFQR Program measure set, we identified four measures that we believe are appropriate for adoption for the IPFQR Program:

- Facility Commitment to Health Equity;
- Screening for Social Drivers of Health;
- Screen Positive Rate for Social Drivers of Health; and
- Psychiatric Inpatient Experience (PIX) Survey.

These four measures are described in the following subsections.

2. Proposal To Adopt the Facility Commitment to Health Equity Measure Beginning With the CY 2024 Reporting Period Reported in CY 2025/FY 2026 Payment Determination

a. Background

Significant and persistent disparities in healthcare outcomes exist in the United States. For example, belonging to a racial or ethnic minority group, living with a disability, being a member of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community, being a member of a religious minority, living in a rural area, or being near or below the poverty level, is often associated with worse health outcomes.[14] [15] [16] [17] [18] [19] [20] [21] [22] [23] Numerous studies have shown that among Medicare beneficiaries, racial and ethnic minority individuals often receive clinical care of lower quality, report having worse care experiences, and experience more frequent hospital readmissions and procedural complications.[24] [25] [26] [27] [28] [29] Readmission rates in the Hospital Readmissions Reduction Program have been shown to be higher among Black and Hispanic Medicare beneficiaries with common conditions, including congestive heart failure and acute myocardial infarction.[30] [31] [32] [33] [34] Data indicate that, even after accounting for factors such as socioeconomic conditions, members of racial and ethnic minority groups reported experiencing lower quality of healthcare.[35] Evidence of differences in quality of care received among people from racial and ethnic minority groups shows worse health outcomes,

[13] In previous years, we referred to the consensus-based entity by corporate name. We have updated this language to refer to the consensus-based entity more generally.

[14] Joynt KE, Orav E, Jha AK. (2011). Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA, 305(7), 675 681. Available at: *https://jamanetwork.com/journals/jama/fullarticle/645647*. Accessed on February 13, 2023.

[15] Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income Inequality and Thirty-Day Outcomes After Acute Myocardial Infarction, Heart Failure, and Pneumonia: Retrospective Cohort Study. BMJ, 346. Available at: *https://doi.org/10.1136/bmj.f521*. Accessed on February 13, 2023.

[16] Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and Equity of Care in U.S. Hospitals. N Engl J Med, 371(24), 229 8-2308. Available at: *https://www.nejm.org/doi/10.1056/NEJMsa1405003*. Accessed on February 13, 2023.

[17] Polyakova, M, Udalova V, et al. (2021). Racial Disparities In Excess All-Cause Mortality During The Early COVID–19 Pandemic Varied Substantially Across States. Health Affairs, 40(2), 307–316. Available at: *https://doi.org/10.1377/hlthaff.2020.02142*. Accessed on February 14, 2023.

[18] Rural Health Research Gateway. (2018). Rural Communities: Age, Income, and Health Status. Rural Health Research Recap. Available at: *https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-income-health-status-recap.pdf*. Accessed on February 14, 2023.

[19] HHS Office of Minority Health. (2020). Progress Report to Congress, 2020 Update on the Action Plan to Reduce Racial and Ethnic Health Disparities. Department of Health and Human Services. Available at: *https://www.minorityhealth.hhs.gov/assets/PDF/Update__HHS__Disparities__Dept-FY2020.pdf*. Accessed on February 14, 2023.

[20] Heslin KC, Hall JE. (2021). Sexual Orientation Disparities in Risk Factors for Adverse COVID–19–Related Outcomes, by Race/Ethnicity—Behavioral Risk Factor Surveillance System, United States, 2017-2019. MMWR Morb Mortal Wkly Rep, 70(5), 149. Available at: *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm*. Accessed on February 14, 2023.

[21] Poteat TC, Reisner SL, Miller M, Wirtz AL. (2020). COVID–19 Vulnerability of Transgender Women With and Without HIV Infection in the Eastern and Southern U.S. medRxiv. Available at: *https://www.medrxiv.org/content/10.1101/2020.07.21.20159327v1.full.pdf*. Accessed on February 14, 2023.

[22] Vu M, Azmat A, Radejko T, Padela AI. (2016). Predictors of Delayed Healthcare Seeking Among American Muslim Women. Journal of Women's Health, 25(6), 586–593. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5912720/*. Accessed on February 14, 2023.

[23] Nadimpalli SB, Cleland CM, Hutchinson MK, Islam N, Barnes LL, Van Devanter N. (2016). The Association Between Discrimination and the Health of Sikh Asian Indians. Health Psychology, 35(4), 351–355. Available at: *https://doi.org/10.1037/hea0000268*. Accessed on February 14, 2023.

[24] CMS Office of Minority Health. (2020). Racial, Ethnic, and Gender Disparities in Healthcare in Medicare Advantage. Baltimore, MD: Centers for Medicare & Medicaid Services. Available at: *https://www.cms.gov/files/document/2020-national-level-results-race-ethnicity-and-gender-pdf.pdf*. Accessed on February 14, 2023.

[25] CMS Office of Minority Health. (2018). Guide to Reducing Disparities in Readmissions. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH__Readmissions__Guide.pdf*. Accessed on February 14, 2023.

[26] Singh JA, Lu X, et al. (2014). Racial Disparities in Knee and Hip Total Joint Arthroplasty: An 18-year analysis of national Medicare data. Ann Rheum Dis., 73(12), 2107–15. Available at: *https://ard.bmj.com/content/73/12/2107.full*. Accessed on February 14, 2023.

[27] Rivera-Hernandez M, Rahman M, Mor V, Trivedi AN. (2019). Racial Disparities in Readmission Rates among Patients Discharged to Skilled Nursing Facilities. J Am Geriatr Soc., 67(8), 1672–1679. Available at: *https://doi.org/10.1111/jgs.15960*. Accessed on February 14, 2023.

[28] Joynt KE, Orav E, Jha AK. (2011). Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA, 305(7), 675–681. Available at: *https://jamanetwork.com/journals/jama/fullarticle/645647*. Accessed on February 13, 2023.

[29] Tsai TC, Orav EJ, Joynt KE. (2014). Disparities in Surgical 30-day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. Ann Surg., 259(6), 1086–1090. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4107654/*. Accessed on February 14, 2023.

[30] Rodriguez F, Joynt KE, Lopez L, Saldana F, Jha AK. (2011). Readmission Rates for Hispanic Medicare Beneficiaries with Heart Failure and Acute Myocardial Infarction. Am Heart J., 162(2), 254–261 e253. Available at: *https://www.sciencedirect.com/science/article/pii/S0002870311003966?viewFullText=true*. Accessed on February 14, 2023.

[31] Centers for Medicare & Medicaid Services. (2014). Medicare Hospital Quality Chartbook: Performance Report on Outcome Measures. Available at: *https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/YNH__Chartbook__2014__508Compliant__FINAL.pdf*. Accessed on February 14, 2023.

[32] CMS Office of Minority Health. (2018). Guide to Reducing Disparities in Readmissions. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH__Readmissions__Guide.pdf*. Accessed on February 14, 2023.

[33] Prieto-Centurion V, Gussin HA, Rolle AJ, Krishnan JA. (2013). Chronic Obstructive Pulmonary Disease Readmissions at Minority Serving Institutions. Ann Am Thorac Soc., 10(6), 680–684. Available at: *https://doi.org/10.1513/AnnalsATS.201307-223OT*. Accessed on February 14, 2023.

[34] Joynt KE, Orav E, Jha AK. (2011). Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA, 305(7), 675–681. Available at: *https://jamanetwork.com/journals/jama/fullarticle/645647*. Accessed on February 13, 2023.

[35] Nelson AR. (2003). Unequal Treatment: Report of the Institute of Medicine on Racial and Ethnic Disparities in Healthcare. The Annals of Thoracic Surgery, 76(4), S1377–S1381. *https://www.annalsthoracicsurgery.org/action/showPdf?pii=S0003-4975%2803%2901205-0*. Accessed on February 14, 2023.

including a higher incidence of diabetes complications such as retinopathy.[36] Additionally, inequities in the social drivers of health (SDOH) affecting these groups, such as poverty and healthcare access, are interrelated and influence a wide range of health and quality-of-life outcomes and risks.[37]

Because we are working toward the goal of all patients receiving high-quality healthcare, regardless of individual characteristics, we are committed to supporting healthcare organizations in building a culture of safety and equity that focuses on educating and empowering their workforce to recognize and eliminate health disparities. This includes patients receiving the right care, at the right time, in the right setting for their condition(s), regardless of those characteristics.

In the FY 2022 IPF PPS final rule (86 FR 42625 through 42632), we summarized the comments we received in response to our Request for Information (RFI) on closing health equity gaps in our quality programs, specifically the IPFQR Program. In response to this RFI, several commenters recommended that we consider a measure of organizational commitment to health equity. These commenters further described how infrastructure supports delivery of equitable care. In the FY 2023 IPF PPS final rule (87 FR 46865 through 46873), we described our RFI on overarching principles for measuring equity and healthcare quality across our quality programs and summarized the comments we received in response to that RFI. Because we had specifically solicited comments on the potential for a structural measure assessing an IPF's commitment to health equity, many commenters provided input on a structural measure. While many commenters supported the concept, one commenter expressed concern with this measure concept and stated that there is no evidence that performance on this measure would lead to improved patient outcomes (87 FR 46872 through 46873). However, we believe that strong and committed leadership from IPF executives and board members is essential and can play a role in shifting organizational culture and advancing equity goals.

Additionally, studies demonstrate that facility leadership can positively influence culture for better quality, patient outcomes, and experience of care.[38] [39] [40] A systematic review of 122 published studies showed that strong leadership that prioritized safety, quality, and the setting of clear guidance with measurable goals for improvement resulted in high-performing facilities with better patient outcomes.[41] Therefore, we believe leadership commitment to health equity will have a parallel effect in contributing to a reduction in health disparities.

Further, we note that the Agency for Healthcare Research and Quality (AHRQ) and The Joint Commission (TJC) identified that facility leadership plays an important role in promoting a culture of quality and safety.[42] [43] [44] For instance, AHRQ research shows that a facility's board can influence quality and safety in a variety of ways, not only through strategic initiatives, but also through more direct interactions with frontline workers.[45]

In addition, the Institute of Healthcare Improvement's (IHI's) research of 23 health systems throughout the United States and Canada shows that health equity must be a priority championed by leadership teams to improve both patient access to needed healthcare services and outcomes among populations that have been disadvantaged by the healthcare system.[46] This IHI study specifically identified concrete actions to make advancing health equity a core strategy, including establishing this goal as a leader-driven priority alongside organizational development structures and processes.[47]

Based upon these findings, we believe that IPF leadership can be instrumental in setting specific, measurable, attainable, realistic, and time-based (SMART) goals to assess progress towards achieving equity goals and ensuring high-quality care is accessible to all. Therefore, consistent with the Hospital Inpatient Quality Reporting (IQR) Program's adoption of an attestation-based structural measure in the FY 2023 IPPS/LTCH PPS final rule (87 FR 49191 through 49201), we propose to adopt an attestation-based structural measure, Facility Commitment to Health Equity, to address health equity beginning with the CY 2024 reporting period/FY 2026 payment determination.

The first pillar of our strategic priorities [48] reflects our deep commitment to improvements in health equity by addressing the health disparities that underly our health system. In line with this strategic pillar, we developed this structural measure to assess facility commitment to health equity across five domains (described in Table 17 in the section V.D.2.b of this proposed rule) using a suite of

[36] Peek, ME, Odoms-Young, A, et al. (2010). Race and Shared Decision-Making: Perspectives of African-Americans with diabetes. Social Science & Medicine, 71(1), 1–9. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2885527/.* Accessed on February 14, 2023.

[37] Department of Health and Human Services. (2023). Healthy People 2030: Social Determinants of Health. Available at: *https://health.gov/healthypeople/priority-areas/social-determinants-health.* Accessed on February 20, 2023.

[38] Bradley EH, Brewster AL, et al. (2018). How Guiding Coalitions Promote Positive Culture Change in Hospitals: A Longitudinal Mixed Methods Interventional Study. BMJ Qual Saf., 27(3), 218–225. Available at: *https://qualitysafety.bmj.com/content/qhc/27/3/218.full.pdf.* Accessed on February 14, 2023.

[39] Smith SA, Yount N, Sorra J. (2017). Exploring Relationships Between Hospital Patient Safety Culture and Consumer Reports Safety Scores. BMC Health Services Research, 17(1), 143. Available at: *https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-017-2078-6.* Accessed on February 14, 2023.

[40] Keroack MA, Youngberg BJ, et al. (2007). Organizational Factors Associated with High Performance in Quality and Safety in Academic Medical Centers. Acad Med., 82(12), 1178 86. Available at: *https://journals.lww.com/academicmedicine/Fulltext/2007/12000/Organizational__Factors__Associated__with__High.14.aspx.* Accessed on February 14, 2023.

[41] Millar R, Mannion R, Freeman T, et al. (2013). Hospital Board Oversight of Quality and Patient Safety: A Narrative Review and Synthesis of Recent Empirical Research. The Milbank Quarterly, 91(4), 738–70. Available at: *https://onlinelibrary.wiley.com/doi/10.1111/1468-0009.12032.* Accessed February 14, 2023.

[42] Agency for Healthcare Research and Quality. Leadership Role in Improving Patient Safety. Patient Safety Primer, September 2019. Available at: *https://psnet.ahrq.gov/primer/leadership-role-improving-safety.* Accessed on February 14, 2023.

[43] Joint Commission on Accreditation of Healthcare Organizations, USA. The essential role of leadership in developing a safety culture. Sentinel Event Alert. 2017 (Revised June 2021). Available at: *https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/sentinel-event/sea-57-safety-culture-and-leadership-final2.pdf.* Accessed on February 15, 2023.

[44] See information on launch of new ''Health Care Equity Certification'' in July 2023 from Joint Commission on Accreditation of Healthcare Organizations, USA, available at: *https://www.jointcommission.org/our-priorities/health-care-equity/health-care-equity-prepublication/.* Accessed on February 15, 2023.

[45] Agency for Healthcare Research and Quality. Leadership Role in Improving Patient Safety. Patient Safety Primer. (2019). Available at: *https://psnet.ahrq.gov/primer/leadership-role-improving-safety. Accessed on February 14, 2023.*

[46] Mate KS and Wyatt R. (2017). Health Equity Must Be a Strategic Priority. NEJM Catalyst. Available at: *https://catalyst.nejm.org/doi/full/10.1056/CAT.17.0556.* Accessed on February 15, 2023.

[47] Mate KS and Wyatt R. (2017). Health Equity Must Be a Strategic Priority. NEJM Catalyst. Available at: *https://catalyst.nejm.org/doi/full/10.1056/CAT.17.0556.* Accessed on February 15, 2023.

[48] Brooks-LaSure, C. (2021). My First 100 Days and Where We Go From Here: A Strategic Vision for CMS. Centers for Medicare & Medicaid. Available at: *https://www.cms.gov/blog/my-first-100-days-and-where-we-go-here-strategic-vision-cms.* Accessed on February 15, 2023.

organizational competencies aimed at achieving health equity for racial and ethnic minority groups, people with disabilities, members of the LGBTQ+ community, individuals with limited English proficiency, rural populations, religious minorities, and people facing socioeconomic challenges. We believe these elements are actionable focus areas, and assessment of IPFs' leadership commitment to them is foundational.

We also believe adoption of the proposed Facility Commitment to Health Equity measure would incentivize IPFs to collect and utilize data to identify critical equity gaps, implement plans to address these gaps, and ensure that resources are dedicated toward addressing health equity initiatives. While many factors contribute to health equity, we believe this measure is an important step toward assessing IPFs' leadership commitment, and a fundamental step toward closing the gap in equitable care for all populations. We note that this measure is not intended to encourage IPFs to act on any one data element or domain, but instead encourages IPFs to analyze their own findings to understand if there are any demographic factors (for example, race, national origin, primary language, and ethnicity) as well as SDOHs (for example, housing status and food security) associated with underlying inequities and, in turn, develop solutions to deliver more equitable care. Thus, the proposed Facility Commitment to Health Equity measure aims to support IPFs in leveraging available data, pursuing focused quality improvement activities, and promoting efficient and effective use of resources.

The proposed Facility Commitment to Health Equity measure aligns with the measure previously adopted in the Hospital IQR Program, and we refer readers to the FY 2023 IPPS/LTCH PPS final rule (87 FR 49191 through 49201) for more information regarding the measure's adoption in the Hospital IQR Program. The five domains of the proposed measure are adapted from the CMS Office of Minority Health's Building an Organizational Response to Health Disparities framework, which focuses on data collection, data analysis, culture of equity, and quality improvement.[49]

The proposed measure also aligns with our efforts under the Meaningful Measures Framework, which identifies high-priority areas for quality measurement and improvement to assess core issues most critical to high-quality healthcare and improving patient outcomes.[50] In 2021, we launched Meaningful Measures 2.0 to promote innovation and modernization of all aspects of quality, and to address a wide variety of settings, stakeholders, and measure requirements.[51] We are addressing healthcare priorities and gaps with Meaningful Measures 2.0 by leveraging quality measures to promote equity and close gaps in care. The proposed Facility Commitment to Health Equity measure supports these efforts and is aligned with the Meaningful Measures Area of ''Equity of Care'' and the Meaningful Measures 2.0 goal to ''Leverage Quality Measures to Promote Equity and Close Gaps in Care.'' This proposed measure also supports the Meaningful Measures 2.0 objective to commit to a patient-centered approach in quality measure and value-based incentives programs to ensure that quality and safety measures address health equity.

b. Overview of Measure

The proposed Facility Commitment to Health Equity measure would assess IPFs' commitment to health equity using a suite of equity-focused organizational competencies aimed at achieving health equity for populations that have been disadvantaged, marginalized, and underserved by the healthcare system. As previously noted, these populations include, but are not limited to, racial and ethnic minority groups, people with disabilities, members of the LGBTQ+ community, individuals with limited English proficiency, rural populations, religious minorities, and people facing socioeconomic challenges. Table 17 sets forth the five attestation domains, and the elements within each of those domains, to which an IPF would affirmatively attest for the IPF to receive credit for that domain within the proposed Facility Commitment to Health Equity measure.

[49] CMS. (2021). Building an Organizational Response to Health Disparities [Fact Sheet]. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Health-Disparities-Guide.pdf.* Accessed on February 15, 2023.

[50] Centers for Medicare & Medicaid Services. Meaningful Measures Framework. Available at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.* Accessed on February 15, 2023.

[51] CMS. (2022). Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at *https://www.cms.gov/medicare/meaningful-measures-framework/meaningful-measures-20-moving-measure-reduction-modernization.* Accessed on February 20, 2023.

TABLE 17—THE FACILITY COMMITMENT TO HEALTH EQUITY MEASURE FIVE ATTESTATIONS

Attestation	Elements: Select all that apply (Note: Affirmative attestation of all elements within a domain would be required for the facility to receive a point for the domain in the numerator)
Domain 1: Equity is a Strategic Priority	
Facility commitment to reducing healthcare disparities is strengthened when equity is a key organizational priority. Please attest that your facility has a strategic plan for advancing health equity * and that it includes all the following elements.	(A) Our facility strategic plan identifies priority populations who currently experience health disparities. (B) Our facility strategic plan identifies health equity goals and discrete action steps to achieving these goals.* (C) Our facility strategic plan outlines specific resources which have been dedicated to achieving our equity goals. (D) Our facility strategic plan describes our approach for engaging key stakeholders, such as community-based organizations.
Domain 2: Data Collection	
Collecting valid and reliable demographic and SDOH data on patients served in a facility is an important step in identifying and eliminating health disparities. Please attest that your facility engages in the following activities.	(A) Our facility collects demographic information (such as self-reported race, national origin, primary language, and ethnicity data) and/or social determinant of health information on the majority of our patients.** (B) Our facility has training for staff in culturally sensitive collection of demographic and/or SDOH information. (C) Our facility inputs demographic and/or SDOH information collected from patients into structured, interoperable data elements using a certified electronic health record (EHR) technology.
Domain 3: Data Analysis	
Effective data analysis can provide insights into which factors contribute to health disparities and how to respond. Please attest that your facility engages in the following activities.	(A) Our facility stratifies key performance indicators by demographic and/or SDOH variables to identify equity gaps and includes this information on facility performance dashboards.
Domain 4: Quality Improvement	
Health disparities are evidence that high-quality care has not been delivered equitably *** to all patients. Engagement in quality improvement activities can improve quality of care for all patients..	(A) Our facility participates in local, regional, or national quality improvement activities focused on reducing health disparities.
Domain 5: Leadership Engagement	
Leaders and staff can improve their capacity to address disparities by demonstrating routine and thorough attention to equity and setting an organizational culture of equity. Please attest that your facility engages in the following activities..	(A) Our facility senior leadership, including chief executives and the entire facility **** board of trustees, annually reviews our strategic plan for achieving health equity. (B) Our facility senior leadership, including chief executives and the entire facility board of trustees, annually reviews key performance indicators stratified by demographic and/or social factors.

* After publication of the 2022 MUC List, we clarified the language in Domain 1 to refer to ''health equity'' instead of ''healthcare equity.''

** After publication of the 2022 MUC List, we clarified the language in Domain 2 to refer to example demographic information.

*** After publication of the 2022 MUC List, we clarified the language in Domain 4: ''Health disparities are evidence that high quality care has not been delivered *equitably* to all patients.''

**** After publication of the 2022 MUC List, we identified that Domain 5 incorrectly referred to the ''hospital board of trustees'' instead of the ''facility board of trustees.''

(1) Measure Calculation

The proposed Facility Commitment to Health Equity measure consists of five attestation-based questions, each representing a separate domain of the IPF's commitment to addressing health equity. Some of these domains have multiple elements to which an IPF would be required to attest. For an IPF to affirmatively attest ''yes'' to a domain, and receive credit for that domain, the IPF would evaluate and determine whether it engages in each of the elements that comprise that domain. Each of the domains would be represented in the denominator as a point, for a total of five points (that is, one point per domain).

The numerator of the proposed Facility Commitment to Health Equity measure would capture the total number of domain attestations that the IPF is able to affirm. An IPF that affirmatively attests to each element within the five domains would receive the maximum five points.

An IPF would only receive a point for a domain if it attests ''yes'' to all related elements within that domain. There is no ''partial credit'' for elements. For example, for Domain 1 (''Facility commitment to reducing healthcare disparities is strengthened when equity is a key organizational priority''), an IPF would evaluate and determine whether its strategic plan meets each of the elements described in (A) through (D) (see Table 17 in section V.D.2.b of this proposed rule). If the IPF's strategic plan meets all four of these elements, the IPF would affirmatively attest ''yes'' to Domain 1 and would receive one (1) point for that attestation. An IPF would not be able to receive partial credit for a domain. For example, if the IPF's strategic plan meets elements (A) and (B), but not (C) and (D), of Domain 1, then the IPF would not be able to affirmatively attest ''yes'' to Domain 1 and would not receive a point for that attestation, and instead would receive zero points for Doman 1.

In response to our RFI on the potential for a structural measure assessing an IPF's commitment to health equity, several commenters expressed concern that such a measure would be difficult for IPFs to report because of the requirement to use certified electronic health record (EHR) technology for Domain 2 (87 FR 46972 through 46873). We believe that use of certified EHR technology is an important element of collecting valid and reliable demographic and social drivers of health data on patients served in an IPF and that use of this technology facilitates data analytics to ensure consistent, high-quality, equitable care. However, we recognize that some IPFs may face challenges to adopting certified EHR technology. We note that the IPFQR Program is a pay-for-reporting program, not a pay-for-performance program, and therefore IPFs that do not have certified EHR technology can attest that they satisfy the other domains, as applicable, and receive a score of 0–4 out of 5 without any penalties.

(2) Review by the Measure Applications Partnership (MAP)

We included the proposed Facility Commitment to Health Equity measure on the publicly available ''List of Measures Under Consideration for December 1, 2022'' (MUC List), a list of measures under consideration for use in various Medicare programs.[52] The specifications for the proposed Facility Commitment to Health Equity measure, which were available during the review of the MUC List, are available on the CMS website at: *https://mmshub.cms.gov/sites/default/files/map-hospital-measure-specifications-manual-2022.pdf.*

The Consensus-Based Entity (CBE) convened Measure Applications Partnership (MAP) Health Equity Advisory Group reviewed the MUC List and the proposed Facility Commitment to Health Equity measure (MUC 2022–027) in detail on December 6 through 7, 2022.[53] The MAP Health Equity Advisory Group raised concerns that this measure does not evaluate outcomes and may not directly address health inequities at a systemic level, but generally agreed that a structural measure such as this one represents progress toward improving equitable care.[54]

In addition, on December 8 through 9, 2022, the MAP Rural Health Advisory Group reviewed the 2022 MUC List and expressed support for this measure as a step towards advancing access to and quality of care with the caveat that resource challenges exist in rural communities.[55]

The MAP Hospital Workgroup reviewed the 2022 MUC List on December 13 through 14, 2022.[56] The MAP Hospital Workgroup recognized that reducing health care disparities would represent a substantial benefit to overall quality of care but expressed reservations about the measure's link to clinical outcomes. As stated in the MAP recommendations document, the MAP Hospital Workgroup members voted to conditionally support the Facility Commitment to Health Equity measure for rulemaking pending: (1) endorsement by the CBE; (2) commitment to consideration of equity related outcome measures in the future; (3) provision of more clarity on the Facility Commitment to Health Equity measure and supplementing interpretation with results; and (4) verification of accurate attestation by IPFs.[57] Thereafter, the MAP Coordinating Committee deliberated on January 24 through 25, 2023 and ultimately voted to uphold the MAP Hospital Workgroup's recommendation to conditionally support the measure for rulemaking.[58]

We believe that the proposed Facility Commitment to Health Equity measure establishes an important foundation for prioritizing the achievement of health equity among IPFs participating in the IPFQR Program. Our approach to developing health equity measures has been incremental to date, but we see inclusion of such measures in the IPFQR Program as informing efforts to advance and achieve health equity not only among IPFs, but also other acute care settings. We believe this proposed measure to be a building block that lays the groundwork for a future meaningful suite of measures that would assess IPF progress in providing high-quality healthcare for all patients regardless of social risk factors or demographic characteristics.

(3) CBE Endorsement

We have not submitted this measure for CBE endorsement at this time.

[52] Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2022. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[53] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[54] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[55] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[56] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[57] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[58] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

Although section 1886(s)(4)(D)(i) of the Act generally requires that measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) of the Act states that, in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We reviewed CBE-endorsed measures and were unable to identify any other CBE-endorsed measures on this topic, and therefore, we believe the exception in section 1886(s)(4)(D)(ii) of the Act applies.

c. Data Collection, Submission, and Reporting

IPFs are required to submit information for structural measures once annually using a CMS-approved web-based data collection tool available within the Hospital Quality Reporting (HQR) System. For more information about our previously finalized policies related to reporting of structural measures, we refer readers to the FY 2014 IPPS/LTCH PPS final rule (78 FR 50890 through 50901) and the FY 2015 IPF PPS final rule (79 FR 45963 through 45964 and 45976). Given the role of committed leadership in improving health outcomes for all patients, we propose to adopt this measure beginning with attestation in CY 2025 reflecting the CY 2024 reporting period and affecting the FY 2026 payment determination.

We invite comments on our proposed adoption of the Facility Commitment to Health Equity Measure beginning with the FY 2026 payment determination.

3. Proposal To Adopt the Screening for Social Drivers of Health Measure Beginning With Voluntary Reporting of CY 2024 Data Followed by Required Reporting Beginning With CY 2025 Data/FY 2027 Payment Determination

a. Background

Health-related social needs (HRSNs), which we define as individual-level, adverse social conditions that negatively impact an individual person's health or healthcare, are significant risk factors associated with worse health outcomes as well as increased healthcare utilization.[59] We believe that consistently pursuing identification of HRSNs would have two significant benefits. First, HRSNs disproportionately impact people who have historically been underserved by the healthcare system [60] and screening helps identify individuals who may have HRSNs. Second, screening for HRSNs could support ongoing IPF quality improvement initiatives by providing data with which to stratify patient risk and organizational performance. Further, we believe that IPFs collecting patient-level HRSN data through screening is essential for the long-term in encouraging meaningful collaboration between healthcare providers and community-based organizations and in implementing and evaluating related innovations in health and social care delivery.

Health disparities manifest primarily as worse health outcomes in population groups where access to care is inequitable.[61] [62] [63] [64] [65] Such differences persist across geography and healthcare settings irrespective of improvements in quality of care over time.[66] [67] [68] Assessment of HRSNs is an essential mechanism for capturing the interaction between social, community, and environmental factors associated with health status and health outcomes.[69] [70] [71]

Growing evidence demonstrates that specific HRSNs are directly associated with patient health outcomes as well as healthcare utilization, costs, and performance in quality-based payment programs.[72] [73] While widespread interest in addressing HRSNs exists, action is inconsistent.[74]

While social risk factors account for 50 to 70 percent of health outcomes, the mechanisms by which this connection emerges are complex and

[59] Centers for Medicare & Medicaid Services. (2021). A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights. June 2021. Available at: *https://innovation.cms.gov/media/document/ahcm-screeningtool-companion.* Accessed on February 20, 2023.

[60] American Hospital Association. (2020). Health Equity, Diversity & Inclusion Measures for Hospitals and Health System Dashboards. December 2020. Available at: *https://ifdhe.aha.org/system/files/media/file/2020/12/ifdhe_inclusion_dashboard.pdf.* Accessed on February 20, 2023.

[61] Seligman, H.K., & Berkowitz, S.A. (2019). Aligning Programs and Policies to Support Food Security and Public Health Goals in the United States. Annual Review of Public Health, 40(1), 319–337. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6784838/.* Accessed on February 20, 2023.

[62] The Physicians Foundation. (2020). Survey of America's Patients, Part Three. Available at: *https://physiciansfoundation.org/wp-content/uploads/2020/10/2020-Physicians-Foundation-Survey-Part3.pdf.* Accessed on February 20, 2023.

[63] Office of the Assistant Secretary for Planning and Evaluation (ASPE) (2020). Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Program (Second of Two Reports). Available at: *https://aspe.hhs.gov/pdf-report/second-impact-report-to-congress.* Accessed on February 20, 2023.

[64] Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and Equity of Care in U.S. Hospitals. N Engl J Med, 371(24), 2298–2308. Available at: *https://www.nejm.org/doi/10.1056/NEJMsa1405003.* Accessed on February 13, 2023.

[65] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.* Accessed on February 20, 2023.

[66] Office of the Assistant Secretary for Planning and Evaluation (ASPE) (2020). Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Program (Second of Two Reports). Available at: *https://aspe.hhs.gov/pdf-report/second-impact-report-to-congress.* Accessed on February 20, 2023.

[67] Hill-Briggs, F. (2021). Social Determinants of Health and Diabetes: A Scientific Review. Diabetes Care. Available at: *https://diabetesjournals.org/care/article/44/1/258/33180/Social-Determinants-of-Health-and-Diabetes-A.* Accessed on February 20, 2023.

[68] Khullar, D., MD. (2020). Association Between Patient Social Risk and Physician Performance American academy of Family Physicians. Addressing Social Determinants of Health in Primary Care team-based approach for advancing health equity. Available at: *https://www.aafp.org/dam/AAFP/documents/patient_care/everyone_project/team-based-approach.pdf.* Accessed on February 20, 2023.

[69] Institute of Medicine. (2014). Capturing Social and Behavioral Domains and Measures in Electronic Health Records: Phase 2. Washington, DC: The National Academies Press. Available at: *https://doi.org/10.17226/18951.* Accessed on February 20, 2023.

[70] Alley, D.E., C.N. Asomugha, P.H. Conway, and D.M. Sanghavi. (2016). Accountable Health Communities—Addressing Social Needs through Medicare and Medicaid. The New England Journal of Medicine 374(1):8–11. Available at: *https://doi.org/10.1056/NEJMp1512532.* Accessed on February 20, 2023.

[71] Centers for Disease Control and Prevention. CDC COVID–19 Response Health Equity Strategy: Accelerating Progress Towards Reducing COVID–19 Disparities and Achieving Health Equity. July 2020. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/cdc-strategy.html.* Accessed on February 2, 2023.

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[74] TK Fraze, AL Brewster, VA Lewis, LB Beidler, GF Murray, CH Colla. Prevalence of screening for food insecurity, housing instability, utility needs, transportation needs, and interpersonal violence by US physician practices and hospitals. JAMA Network Open 2019; *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/10.1001/jamanetworkopen.2019.11514.* Accessed on February 20, 2023.

multifaceted.[75] [76] [77] [78] The persistent interactions among individuals' HRSNs, medical providers' practices and behaviors, and community resources significantly impact healthcare access, quality, and ultimately costs, as described in the CMS Equity Plan for Improving Quality in Medicare.[79] [80] In their 2018 survey, to which more than 8,500 physicians responded, the Physicians Foundation found that almost 90 percent of these physician respondents reported their patients had a serious health problem linked to poverty or other social conditions.[81] Additionally, associations among disproportionate health risk, hospitalization, and adverse health outcomes have been highlighted and magnified by the COVID–19 pandemic.[82] [83]

In 2017, CMS' Center for Medicare and Medicaid Innovation (CMMI) launched the Accountable Health Communities (AHC) Model to test the impact of systematically identifying and addressing the HRSNs of Medicare and Medicaid beneficiaries (that is, through screening, referral, and community navigation) on their health outcomes and related healthcare utilization and costs.[84] [85] [86] [87] The AHC Model is one of the first Federal pilots to systematically test whether identifying and addressing core HRSNs improves healthcare costs, utilization, and outcomes with over 600 clinical sites in 21 states.[88] The AHC Model had a 5-year period of performance that began in May 2017 and ended in April 2022, with beneficiary screening beginning in the summer of 2018.[89] [90] Evaluation of the AHC Model data is still underway.

Under the AHC Model, the following five core domains were selected to screen for HRSNs among Medicare and Medicaid beneficiaries: (1) food insecurity; (2) housing instability; (3) transportation needs; (4) utility difficulties; and (5) interpersonal safety. These domains were chosen based upon literature review and expert consensus utilizing the following criteria: (1) availability of high-quality scientific evidence linking a given HRSN to adverse health outcomes and increased healthcare utilization, including hospitalizations and associated costs; (2) ability for a given HRSN to be screened and identified in the inpatient setting prior to discharge, addressed by community-based services, and potentially improve healthcare outcomes, including reduced readmissions; and (3) evidence that a given HRSN is not systematically addressed by healthcare providers.[91] In addition to established evidence of their association with health status, risk, and outcomes, these five domains were selected because they can be assessed across the broadest spectrum of individuals in a variety of settings.[92] [93] [94]

These five evidence-based HRSN domains, which informed development of the two Social Drivers of Health measures adopted in the Hospital IQR Program and proposed here for the IPFQR Program, are described in Table 18. We note that while the measures were initially developed by The Health Initiative (THI), CMS has since assumed stewardship.

[75] Kaiser Family Foundation. (2021). Racial and Ethnic Health Inequities and Medicare. Available at: *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.* Accessed February 20, 2023.

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[77] Hammond, G., Johnston, K., Huang, K., Joynt Maddox, K. (2020). Social Determinants of Health Improve Predictive Accuracy of Clinical Risk Models for Cardiovascular Hospitalization, Annual Cost, and Death. Circulation: Cardiovascular Quality and Outcomes, 13 (6) 290–299. Available at: *https://doi.org/10.1161/CIRCOUTCOMES.120.006752.* Accessed on February 20, 2023.

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[81] The Physicians Foundation. (2019). Viewpoints: Social Determinants of Health. Available at: *https://physiciansfoundation.org/wp-content/uploads/2019/08/The-Physicians-Foundation-SDOH-Viewpoints.pdf.* Accessed on February 20, 2023.

[82] Centers for Disease Control and Prevention. (2020). CDC COVID–19 Response Health Equity Strategy: Accelerating Progress Towards Reducing COVID–19 Disparities and Achieving Health Equity. July 2020. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/cdc-strategy.html.* Accessed on February 20, 2023.

[83] Kaiser Family Foundation. (2021). Racial and Ethnic Health Inequities and Medicare. Available at: *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.* Accessed on February 20, 2023.

[84] Centers for Medicare & Medicaid Services. (2021). A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights. June 2021. Accessed: November 23, 2021. Available at: *https://innovation.cms.gov/media/document/ahcm-screeningtool-companion.* Accessed on February 20, 2023.

[85] Alley, D.E., Asomugha, C.N., et al. (2016). Accountable Health Communities—Addressing Social Needs through Medicare and Medicaid. The New England Journal of Medicine 374(1):8–11. Available at: *https://doi.org/10.1056/NEJMp1512532.* Accessed on February 20, 2023.

[86] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health-Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.* Accessed on February 20, 2023.

[87] Centers for Medicare & Medicaid Services. (2021). Accountable Health Communities Model. Accountable Health Communities Model √ CMS Innovation Center Available at: *https://innovation.cms.gov/innovation-models/ahcm.* Accessed on February 20, 2023.

[88] RTI International. (2020). Accountable Health Communities (AHC) Model Evaluation. Available at: *https://innovation.cms.gov/data-and-reports/2020/ahc-first-eval-rpt.* Accessed on February 20, 2023.

[89] RTI International. (2020). Accountable Health Communities (AHC) Model Evaluation. Available at: *https://innovation.cms.gov/data-and-reports/2020/ahc-first-eval-rpt.* Accessed on February 20, 2023.

[90] We note that the model officially concluded in April 2022, but many awardees have continued with no-cost extensions to continue utilizing unspent cooperative agreement funding and all awardees will conclude by April 2023.

[91] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health-Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.* Accessed on February 20, 2023.

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[93] Centers for Medicare & Medicaid Services. (2021). Accountable Health Communities Model. Accountable Health Communities Model √ CMS Innovation Center. Available at: *https://innovation.cms.gov/innovation-models/ahcm.* Accessed on February 20, 2023.

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TABLE 18—THE FIVE CORE HRSN DOMAINS TO SCREEN FOR SOCIAL DRIVERS OF HEALTH

Domain	Description
Food Insecurity	Food insecurity is defined as limited or uncertain access to adequate quality and quantity of food at the household level. It is associated with diminished mental and physical health and increased risk for chronic conditions.[95] [96] Individuals experiencing food insecurity often have inadequate access to healthier food options which can impede self-management of chronic diseases like diabetes and heart disease, and require individuals to make personal trade-offs between food purchases and medical needs, including prescription medication refills and preventive health services.[97] [98] Food insecurity is associated with high-cost healthcare utilization including emergency department (ED) visits and hospitalizations.[99] [100] [101] Evidence indicates that individuals with serious mental illness have a higher prevalence of food insecurity than the U.S. population as a whole (specifically 71% prevalence among patients with severe mental illness versus 14.9% in the population as a whole).[102]
Housing Instability	Housing instability encompasses multiple conditions ranging from inability to pay rent or mortgage, frequent changes in residence including temporary stays with friends and relatives, living in crowded conditions, and actual lack of sheltered housing in which an individual does not have a personal residence.[103] [104] Population surveys consistently show that people from some racial and ethnic minority groups constitute the largest proportion of the U.S. population experiencing housing instability.[105] Housing instability is associated with higher rates of chronic illnesses, injuries, and complications and more frequent utilization of high-cost healthcare services.[106] [107] Additionally, housing instability can exacerbate psychiatric conditions and individuals with psychiatric conditions are more likely to have housing instability.[108]
Transportation Needs	Unmet transportation needs include limitations that impede transportation to destinations required for all aspects of daily living.[109] Groups disproportionately affected include older adults (aged >65 years), people with lower incomes, people with impaired mobility, residents of rural areas, and people from some racial and ethnic minority groups. Transportation needs contribute to postponement of routine medical care and preventive services which ultimately lead to chronic illness exacerbation and more frequent utilization of high-cost healthcare services including emergency medical services, EDs, and hospitalizations.[110] [111] [112] [113] Patients with serious mental illness often lack access to transportation with many Medicaid eligible patients relying on Medicaid's non-emergency medical transportation (NEMT) to access needed healthcare, though this does not provide access to transportation to other aspects of daily living.[114]
Utility Difficulties	Inconsistent availability of electricity, water, oil, and gas services is directly associated with housing instability and food insecurity.[115] Specifically, interventions that increase or maintain access to such services have been associated with individual and population-level health improvements.[116]
Interpersonal Safety	Interpersonal safety affects individuals across the lifespan, from birth to old age, and is directly linked to mental and physical health. Assessment for this domain includes screening for exposure to intimate partner violence, child abuse, and elder abuse.[117] Exposure to violence and social isolation are reflective of individual-level social relations and living conditions that are directly associated with injury, psychological distress, and death in all age groups.[118] [119] Research indicates that adults with mental illness are at an increased risk of being victims of violence, noting that 30.9 percent were victims of violence within a six month period and recommending increased public health interventions to reduce violence in this vulnerable population.[120]

As a first step towards leveraging the opportunity to close equity gaps by identifying patients' HRSNs, we finalized the adoption of two evidence-based measures in the Hospital IQR Program—the Screening for Social Drivers of Health measure and the Screen Positive Rate for Social Drivers of Health measure (collectively, Social Drivers of Health measures)—and refer readers to the FY 2023 IPPS/LTCH PPS final rule (87 FR 49191 through 49220).

[95] Berkowitz SA, Seligman HK, Meigs JB, Basu S. Food insecurity, healthcare utilization, and high cost: a longitudinal cohort study. Am J Managed Care. 2018 Sep;24(9):399–404. PMID: 30222918; PMCID: PMC6426124. Available at *https://pubmed.ncbi.nlm.nih.gov/30222918/.* Accessed on February 20, 2023.

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[102] *https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201300022?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%20%200pubmed.* Accessed on February 20, 2023.

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[110] National Academies of Sciences, Engineering, and Medicine 2006. Executive Summary: Cost-Benefit Analysis of Providing Non-Emergency Medical Transportation. Washington, DC: The National Academies Press. Available at: *https://doi.org/10.17226/23285.*

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[115] Baxter, A., Tweed, E., Katikireddi, S., Thomson, H. (2019). Effects of Housing First approaches on health and well-being of adults who are homeless or at risk of homelessness: systematic review and meta-analysis of randomized controlled trials. Journal of Epidemiology and Community

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If also adopted in the IPFQR Program, these two Social Drivers of Health measures (that is, the Screening for Social Drivers of Health measure being proposed for adoption in this section and the Screen Positive Rate for Social Drivers of Health measure being proposed for adoption in section V.D.4 of this proposed rule) would support identification of specific risk factors for inadequate healthcare access and adverse health outcomes among patients. We note that these measures would enable systematic collection of HRSNs data. This activity aligns with our other efforts beyond the acute care setting, including the CY 2023 Medicare Advantage and Part D final rule in which we finalized the policy requiring that all Special Needs Plans (SNPs) include one or more questions on housing stability, food security, and access to transportation in their health risk assessment using questions from a list of screening instruments specified in sub-regulatory guidance (87 FR 27726 through 27740) as well as the CY 2023 Physician Fee Schedule (PFS) final rule in which we adopted the Screening for Social Drivers of Health measure in the Merit-based Incentive Payment System (MIPS) Program (87 FR 70054 through 70055).

The proposed Social Drivers of Health measures (as set forth in this section V.D.3 and section V.D.4. of this proposed rule) would encourage IPFs to identify patients with HRSNs, who are known to experience the greatest risk of poor health outcomes, thereby improving the accuracy of high-risk prediction calculations. Improvement in risk prediction has the potential to reduce healthcare access barriers, address the disproportionate expenditures attributed to people with greatest risk, and improve the IPF's quality of care.[121] [122] [123] [124] Further, these data could guide future public and private resource allocation to promote targeted collaboration among IPFs, health systems, community-based organizations, and others in support of improving patient outcomes. We believe that this screening is especially important for IPF patients because patients with psychiatric conditions have an increased risk of having HRSNs.[125]

In the FY 2023 IPF PPS final rule, we observed that the Hospital IQR Program had proposed two Social Drivers of Health measures and stated that we would consider these measures for the IPFQR Program in the future (87 FR 46873). The first of these two measures is the Screening for Social Drivers of Health measure, which assesses the percent of patients admitted to the hospital who are 18 years or older at time of admission and are screened for food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety.

Utilization of screening tools to identify the burden of unmet HRSNs can be a helpful first step for IPFs in identifying necessary community partners and connecting individuals to resources in their communities. We believe collecting data across the same five HRSN domains that were screened under the AHC Model and adopted for acute care hospitals in the Hospital IQR Program would illuminate their impact on health outcomes and disparities and the healthcare cost burden for IPFs, particularly for IPFs that serve patients with disproportionately high levels of social risk, given that patients with serious mental illness are especially vulnerable to and affected by HRSNs. In addition, data collection in the IPF care setting could inform meaningful and sustainable solutions for provider-types participating in other quality reporting programs to close equity gaps among the communities they serve.[126] [127] [128] [129] [130]

For data collection of the proposed Screening for Social Drivers of Health measure, IPFs could use a self-selected screening tool and collect these data in multiple ways, which can vary to accommodate the population they serve and their individual needs. One example of a potential screening tool for IPFs to collect data on the proposed Screening for Social Drivers Health Measure is the AHC Model's standard 10-item AHC Health-Related Social Needs Screening Tool (AHC HRSN Screening Tool), which enables providers to identify HRSNs in the five core domains (described in Table 18) among community-dwelling Medicare, Medicaid, and dually eligible beneficiaries. The AHC Model, including its screening tool, was tested across many care delivery sites in diverse geographic locations across the United States. More than one million Medicare and Medicaid beneficiaries have been screened using the AHC HRSN Screening Tool, which was evaluated psychometrically and demonstrated evidence of both reliability and validity, including inter-rater reliability and concurrent and

Health, 73; 379–387. Available at: *https://jech.bmj.com/content/jech/73/5/379.full.pdf.*

[116] Wright, B.J., Vartanian, K.B., Li, H.F., Royal, N., & Matson, J.K. (2016). Formerly Homeless People Had Lower Overall Health Care Expenditures After Moving into Supportive Housing. Health Affairs, 35(1), 20–27. Available at: *https://doi.org/10.1377/hlthaff.2015.0393.*

[117] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health-Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.*

[118] Henry M., de Sousa, T., Roddey, C., Gayen, S., Bednar, T.; Abt Associates. The 2020 Annual Homeless Assessment Report (AHAR) to Congress; Part 1: Point-in-Time Estimates of Homelessness, January 2021. U.S. Department of Housing and Urban Development. Accessed November 24, 2021. Available at: *https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf.*

[119] Larimer, M.E. (2009). Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons with Severe Alcohol Problems. JAMA, 301(13), 1349. Available at: *https://doi.org/10.1001/jama.2009.414.*

[120] *https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2013.301680.*

[121] Baker, MC, Alberti, PM, et al. (2021). Social Determinants Matter for Hospital Readmission Policy: Insights From New York City. Health Affairs, 40(4), 645–654. Available at: *https://doi.org/10.1377/hlthaff.2020.01742.* Accessed on February 20, 2023.

[122] Hammond, G., Johnston, K., et al. (2020). Social Determinants of Health Improve Predictive Accuracy of Clinical Risk Models for Cardiovascular Hospitalization, Annual Cost, and Death. Circulation: Cardiovascular Quality and Outcomes, 13 (6) 290–299. Available at: *https://doi.org/10.1161/CIRCOUTCOMES.120.006752.* Accessed on February 20, 2023.

[123] Hill-Briggs, F. (2021). Social Determinants of Health and Diabetes: A Scientific Review. Diabetes Care. Available at: *https://diabetesjournals.org/care/article/44/1/258/33180/Social-Determinants-of-Health-and-Diabetes-A.* Accessed on February 20, 2023.

[124] Jaffrey, J.B., Safran, G.B., Addressing Social Risk Factors in Value-Based Payment: Adjusting Payment Not Performance to Optimize Outcomes and Fairness. Health Affairs Blog, April 19, 2021. Available at: *https://www.healthaffairs.org/do/10.1377/forefront.20210414.379479/full/.* Accessed on February 20, 2023.

[125] Adepoju, OE, Liaw, W, et al. (2022) Assessment of Unmet Health-Related Social Needs Among Patients with Mental Illness Enrolled in Medicare Advantage. Available at: *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2798096.* Accessed on December 7, 2022.

[126] The Physicians Foundation: 2020 Survey of America's Patients, Part Three. Available at: *https://physiciansfoundation.org/wp-content/uploads/2020/10/2020-Physicians-Foundation-Survey-Part3.pdf.*

[127] Office of the Assistant Secretary for Planning and Evaluation (ASPE) (2020). Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Program (Second of Two Reports). Available at: *https://aspe.hhs.gov/pdf-report/second-impact-report-to-congress.*

[128] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health-Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.*

[129] Baker, M.C., Alberti, P.M., Tsao, T.Y., Fluegge, K., Howland, R.E., & Haberman, M. (2021). Social Determinants Matter for Hospital Readmission Policy: Insights From New York City. Health Affairs, 40(4), 645–654. Available at: *https://doi.org/10.1377/hlthaff.2020.01742.*

[130] De Marchis, E., Knox, M., Hessler, D., Willard-Grace, R., Oliyawola, JN, et al. (2019). Physician Burnout and Higher Clinic Capacity to Address Patients' Social Needs. The Journal of the American Board of Family Medicine, 32 (1), 69–78.

predictive validity. Moreover, the AHC HRSN Screening Tool can be implemented in a variety of places where patients seek healthcare, including inpatient psychiatric facilities.

The intent of the proposed Screening for Social Drivers of Health measure is to promote adoption of HRSN screening by IPFs. We encourage IPFs to use the screening as a basis for developing their own individual action plans (for example, navigation services and subsequent referral), as well as an opportunity to initiate or improve partnerships with community-based service providers. We believe that this proposed measure would yield actionable information to close equity gaps by encouraging IPFs to identify patients with HRSNs, with a reciprocal goal of strengthening linkages between IPFs and local community-based partners to promptly connect patients and families to the support they need.

Both the proposed Screening for Social Drivers of Health measure and the proposed Screen Positive Rate for Social Drivers of Health measure, discussed in V.D.4. of this proposed rule, address our Meaningful Measures Framework's [131] quality priority of ''Work with Communities to Promote Best Practices of Healthy Living'' through the Meaningful Measures Area of ''Equity of Care.'' Additionally, pursuant to our Meaningful Measures 2.0, these proposed Social Drivers of Health measures address the equity priority area and align with our commitment to introduce plans to close health equity gaps and promote equity through quality measures, including to ''develop and implement measures that reflect social and economic determinants.'' [132] Development and proposal of these measures also align with our strategic pillar to advance health equity by addressing the health disparities that underlie our health system.[133] Further, proposal of these measures aligns with these measures' adoption in the Hospital IQR Program in the FY 2023 IPPS/LTCH final rule (87 FR 49202 through 49215).

The proposed Screening for Social Drivers of Health measure (alongside the proposed Screen Positive Rate for Social Drivers of Health measure described in section V.D.4 of this proposed rule) would be the first measurement of social drivers of health in the IPFQR Program. We believe this proposed measure is appropriate for measurement of the quality of care furnished by IPFs. Screening patients for HRSNs during inpatient hospitalization in an IPF would allow healthcare providers, including IPFs, to identify and potentially help address HRSNs for this medically underserved patient population as part of discharge planning and contribute to long-term improvements in patient outcomes. Identifying and addressing HRSNs for patients receiving care in IPFs could have a direct and positive impact on IPFs' quality performance because of improvements in patient outcomes that could occur when patients' HRSNs are reduced. Moreover, collecting aggregate data on the HRSNs of IPF patient populations via this proposed measure is crucial in informing design of future measures that could enable us to set appropriate performance targets for IPFs with respect to closing the gap on health equity.

b. Overview of Measure

The proposed Screening for Social Drivers of Health measure would assess whether an IPF implements screening for all patients who are 18 years or older at time of admission for food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety. To report on this proposed measure, IPFs would provide: (1) the number of inpatients admitted to the facility who are 18 years or older at time of admission and who are screened for all of the five HRSNs (food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety); and (2) the total number of patients who are admitted to the facility who are 18 years or older on the date they are admitted.

Measure specifications for the proposed Screening for Social Drivers of Health measure, which were available during the review of the MUC List, are available at *https://mmshub.cms.gov/sites/default/files/map-hospital-measure-specifications-manual-2022.pdf.*

(1) Measure Calculation

(a) Cohort

The proposed Screening for Social Drivers of Health measure would assess the total number of patients aged 18 years and older, screened for social risk factors (specifically, food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety) during an IPF stay.

(b) Numerator

The numerator of the proposed Screening for Social Drivers of Health measure consists of the number of patients admitted to an IPF stay who are 18 years or older on the date of admission and are screened during their IPF stay for all of the following five HRSNs: food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety.

(c) Denominator

The denominator of the proposed Screening for Social Drivers of Health measure consists of the number of patients who are admitted to an IPF stay and who are 18 years or older on the date of admission. The following patients would be excluded from the denominator: (1) patients who opt-out of screening; and (2) patients who are themselves unable to complete the screening during their inpatient stay and have no legal guardian or caregiver able to do so on the patient's behalf during their inpatient stay.

(d) Calculation

The proposed Screening for Social Drivers of Health measure would be calculated as the number of patients admitted to an IPF stay who are 18 years or older on the date of admission screened for all five HRSNs (food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety) divided by the number of patients 18 years or older on the date of admission admitted to the IPF.

(2) Review by the Measure Applications Partnership

We included the proposed Screening for Social Drivers of Health measure on the publicly available ''List of Measures Under Consideration for December 1, 2022'' (MUC List), a list of measures under consideration for use in various Medicare programs.[134] The CBE-

[131] Centers for Medicare & Medicaid Services. Meaningful Measures Framework. Available at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.*

[132] Centers for Medicare & Medicaid Services. Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at: *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[133] Brooks-LaSure, C. (2021). My First 100 Days and Where We Go From Here: A Strategic Vision for CMS. Available at: *https://www.cms.gov/blog/my-first-100-days-and-where-we-go-here-strategic-vision-cms.*

[134] Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2022. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

convened MAP Health Equity Advisory Group reviewed the MUC List including the proposed Screening for Social Drivers of Health measure (MUC 2022–053) in detail on December 6 through 7, 2022.[135] The MAP Health Equity Advisory Group expressed support for the collection of data related to social drivers of health, but raised concerns regarding public reporting of these data and potential repetition of asking patients the same questions across settings.[136]

In addition, on December 8 through 9, 2022, the MAP Rural Health Advisory Group reviewed the 2022 MUC List and the MAP Hospital Workgroup did so on December 13 through 14, 2022.[137] The MAP Rural Health Advisory Group noted some potential reporting challenges including the potential masking of health disparities that are underrepresented in some areas and that sample size and populations served may be an issue, but expressed that the proposed measure serves as a starting point to determine where screening is occurring. The MAP Hospital Workgroup expressed strong support for the measure but noted that interoperability will be important and cautioned about survey fatigue. The MAP Hospital Workgroup members conditionally supported the measure pending: (1) testing of the measure's reliability and validity; (2) endorsement by the CBE; (3) additional details on how potential tools map to the individual HRSNs, as well as best practices; (4) identification of resources that may be available to assist patients with identified HRSNs; and (5) the measure's alignment with data standards, particularly the GRAVITY project.[138] The GRAVITY project's mission statement is ''to serve as the open public collaborative advancing health and social data standardization for health equity.'' [139] Thereafter, the MAP Coordinating Committee deliberated on January 24 through 25, 2023, and ultimately voted to uphold the MAP Hospital Workgroup's recommendation to conditionally support for rulemaking with the same conditions.[140]

We believe this measure establishes an important foundation for prioritizing the achievement of health equity among IPFs. Our approach to developing health equity measures is incremental, and we believe that health care equity outcomes in the IPFQR Program will inform future efforts to advance and achieve health care equity by IPFs. We additionally believe this measure to be a building block that lays the groundwork for a future meaningful suite of measures that would assess IPF progress in providing high-quality healthcare for all patients, regardless of social risk factors or demographic characteristics.

(3) CBE Endorsement

We have not submitted this measure for CBE endorsement at this time. Although section 1886(s)(4)(D)(i) of the Act generally requires that measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) of the Act, states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to a measure that has been endorsed or adopted by a consensus organization identified by the Secretary. We reviewed CBE-endorsed measures and were unable to identify any other CBE-endorsed measures on this topic, and therefore, we believe the exception in section 1886(s)(4)(D)(ii) of the Act applies.

c. Data Collection, Submission and Reporting

We believe incremental implementation of the proposed Screening for Social Drivers of Health measure, by permitting one year of voluntary reporting prior to required reporting, would allow IPFs who are not yet screening patients for HRSNs to get experience with collecting data for this proposed measure and equally allow IPFs who already undertake screening efforts to report data already being collected. Therefore, we propose voluntary reporting of this measure beginning with the data collected in CY 2024, which would be reported to CMS in CY 2025, followed by required reporting beginning with data collected in CY 2025, which would be reported to CMS in CY 2026 for the FY 2027 payment determination.

Due to variability across IPFs and the populations they serve, and in alignment with the Hospital IQR Program, we would allow IPFs flexibility with selection of tools to screen patients for food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety. Potential sources of these data could include, for example, administrative claims data, electronic clinical data, standardized patient assessments, or patient-reported data and surveys.

Multiple screening tools for health-related social needs (HRSNs) already exist. For additional information on resources, we refer readers to evidence-based resources like the Social Interventions Research and Evaluation Network (SIREN) website, for example, for comprehensive information about the most widely used HRSN screening tools.[141] [142] SIREN contains descriptions of the content and characteristics of various tools, including information about intended populations, completion time, and number of questions.

We would encourage IPFs to consider digital standardized screening tools and refer readers to the FY 2023 IPPS/LTCH PPS final rule (87 FR 49207 through 49208) where we discuss how the use of certified health information technology (IT), including but not limited to certified EHR technology, can support capture of HRSN information in an interoperable fashion so that these data can be shared across the care continuum to support coordinated care. We also encourage readers to learn about the United States Core Data for Interoperability (USCDI) standard used in certified health IT and how this standard can support interoperable exchange of health and HRSN assessment data.[143]

[135] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[136] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[137] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[138] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[139] *https://thegravityproject.net/.*

[140] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[141] Social Interventions Research & Evaluation Network. (2019). Social Needs Screening Tool Comparison Table. Available at: *https://sirenetwork.ucsf.edu/tools-resources/resources/screening-tools-comparison.* Accessed January 18, 2021.

[142] The Social Interventions Research and Evaluation Network (SIREN) at University of California San Francisco was launched in the spring of 2016 to synthesize, disseminate, and catalyze research on SDOH and healthcare delivery.

[143] Office of the National Coordinator for Health IT (ONC). United States Core Data for Interoperability. Accessed at: *https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi.*

We propose that IPFs would report aggregate data on this measure, that is IPFs would report aggregated data for the numerator and the denominator to CMS (as described in section V.D.3.b.(1). of this proposed rule) but would not be required to report patient-level data. IPFs are required to submit information for chart-abstracted measures once annually using a CMS-approved web-based data collection tool available within the HQR System (previously referred to as the QualityNet Secure Portal). We refer readers to section V.I. of the preamble of this proposed rule (Form, Manner, and Timing of Quality Data Submission) for more details on our previously finalized data submission and deadline requirements across measure types.

We invite public comment on this proposal.

4. Proposal To Adopt the Screen Positive Rate for Social Drivers of Health Measure Beginning With Voluntary Reporting of CY 2024 Data and Followed by Required Reporting Beginning With CY 2025 Data/FY 2027 Payment Determination

a. Background

The impact of social risk factors on health outcomes has been well-established in the literature.[144] [145] [146] [147] [148] The Physicians Foundation reported that 73 percent of the physician respondents to the 2021 iteration of their annual survey agreed that social risk factors like housing instability and food insecurity would drive health services demand.[149] Recognizing the need for a more comprehensive approach to eliminating the health equity gap, we have prioritized quality measures that would capture social risk factors and facilitate assessment of their impact on health outcomes and disparities and healthcare utilization and costs.[150] [151] [152] Specifically, in the inpatient setting, we aim to encourage systematic identification of patients' HRSNs (as defined in section V.D.3.a. of this proposed rule) as part of discharge planning with the intention of promoting linkages with relevant community-based services that address those needs and support improvements in health outcomes following discharge from the IPF.

While the Screening for Social Drivers of Health measure (discussed previously in section V.D.3. of this proposed rule) enables identification of individuals with HRSNs, use of the proposed Screen Positive Rate for Social Drivers of Health measure would allow IPFs to capture the magnitude of these needs and even estimate the impact of individual-level HRSNs on healthcare utilization when evaluating quality of care.[153] [154] [155] The proposed Screen Positive Rate for Social Drivers of Health measure would require IPFs to report the rates of patients who screened positive for each of the five core HRSNs. Reporting the screen positive rate for each of the five core HRSNs would inform actionable planning by IPFs towards closing health equity gaps unique to the populations they serve and enable the development of individual patient action plans (including navigation and referral services).

In the FY 2022 IPF PPS final rule (86 FR 42625 through 42632) and the FY 2023 IPF PPS final rule (87 FR 46865 through 46873), we discussed our ongoing consideration of potential approaches that could be implemented to address health equity through the IPFQR Program. As a result of the feedback we received, we identified the Screen Positive Rate for Social Drivers of Health measure to help inform efforts to address health equity.

This proposed measure would assess the percent of patients admitted to the IPF who are 18 years or older at time of admission who were screened for HRSNs and who screen positive for one or more of the core HRSNs, including food insecurity, housing instability, transportation needs, utility difficulties, or interpersonal safety (reported as five separate rates).[156]

We refer readers to section V.D.3 of this proposed rule where we previously discussed the screening and identification process resulting in the selection of these five domains associated with the proposed Screen for Social Drivers of Health measure. The proposed Screening for Social Drivers of Health measure forms the basis of this proposed Screen Positive Rate for Social Drivers of Health measure. That is, the number of patients screened for all five HRSNs in the Screening for Social Drivers of Health measure is the denominator of the Screen Positive for Social Drivers of Health measure described here.

The COVID–19 pandemic underscored the overwhelming impact that these five core domains of HRSNs have on disparities, health risk, healthcare access, and health outcomes, including premature mortality.[157] [158]

[144] Institute of Medicine 2014. Capturing Social and Behavioral Domains and Measures in Electronic Health Records: Phase 2. Washington, DC: The National Academies Press. Available at: *https://doi.org/10.17226/18951.*

[145] Centers for Medicare & Medicaid Services. (2021). Accountable Health Communities Model. Accountable Health Communities Model √ CMS Innovation Center. Available at: *https://innovation.cms.gov/innovation-models/ahcm.* Accessed November 23, 2021.

[146] Kaiser Family Foundation. (2021). Racial and Ethnic Health Inequities and Medicare. Available at: *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.* Accessed November 23, 2021.

[147] Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women, Journal of Women's Health 26(6) (2016) at 58; Nadimpalli SB, Cleland CM, Hutchinson MK, Islam N, Barnes LL, Van Devanter N. (2016) The Association between Discrimination and the Health of Sikh Asian Indians. Health Psychology, 35(4), 351–355. *https://doi.org/10.1037/hea0000268.*

[148] Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2020). Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Program (Second of Two Reports). Available at: *https://aspe.hhs.gov/pdf-report/second-impact-report-to-congress.*

[149] The Physicians Foundation. (2020) 2020 Survey of America's Patients, Part Three. Available at: *https://physiciansfoundation.org/wp-content/uploads/2020/10/2020-Physicians-Foundation-Survey-Part3.pdf.*

[150] Alley, D.E., C.N. Asomugha, P.H. Conway, and D.M. Sanghavi. 2016. Accountable Health Communities—Addressing Social Needs through Medicare and Medicaid. The New England Journal of Medicine 374(1):8–11. Available at: *https://doi.org/10.1056/NEJMp1512532.*

[151] Centers for Medicare & Medicaid Services. (2021). Accountable Health Communities Model. Accountable Health Communities Model CMS Innovation Center. Available at: *https://innovation.cms.gov/innovation-models/ahcm.* Accessed November 23, 2021.

[152] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health-Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.*

[153] Baker, M.C., Alberti, P.M., Tsao, T.Y., Fluegge, K., Howland, R.E., & Haberman, M. (2021). Social Determinants Matter for Hospital Readmission Policy: Insights From New York City. Health Affairs, 40(4), 645–654. Available at: *https://doi.org/10.1377/hlthaff.2020.01742.*

[154] CMS. Accountable Health Communities Model. Accountable Health Communities Model CMS Innovation Center. Available at: *https://innovation.cms.gov/innovation-models/ahcm.* Accessed November 23, 2021.

[155] Hammond, G., Johnston, K., Huang, K., Joynt Maddox, K. (2020). Social Determinants of Health Improve Predictive Accuracy of Clinical Risk Models for Cardiovascular Hospitalization, Annual Cost, and Death. Circulation: Cardiovascular Quality and Outcomes, 13 (6) 290–299. Available at: *https://doi.org/10.1161/CIRCOUTCOMES.120.006752.*

[156] Billioux, A., Verlander, K., Anthony, S., & Alley, D. (2017). Standardized Screening for Health Related Social Needs in Clinical Settings: The Accountable Health Communities Screening Tool. NAM Perspectives, 7(5). Available at: *https://doi.org/10.31478/201705b.*

[157] Kaiser Family Foundation. (2021). Racial and Ethnic Health Inequities and Medicare. Available at: *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.* Accessed November 23, 2021.

[158] Centers for Disease Control and Prevention. (2019). CDC COVID–19 Response Health Equity Strategy: Accelerating Progress Towards Reducing COVID–19 Disparities and Achieving Health Equity. July 2020. Available at: *https://www.cdc.gov/*

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Adoption of the Screen Positive Rate for Social Drivers of Health measure would encourage IPFs to track prevalence of specific HRSNs among patients over time and use the data to stratify risk as part of quality performance improvement efforts. This proposed measure may also prove useful for patients by providing data transparency and signifying IPFs' familiarity, expertise, and commitment regarding these health equity issues. This proposed measure also has the potential to reduce healthcare provider burden and burnout, including among IPFs and their staff, by both acknowledging patients' non-clinical needs that nevertheless greatly contribute to adverse clinical outcomes and linking providers with community-based organizations to enhance patient-centered treatment and discharge planning.[159] [160] [161] Finally, we believe the proposed Screen Positive Rate for Social Drivers of Health measure has the potential to facilitate data-informed collaboration with community-based services and focused community investments, including the development of pathways and infrastructure to connect patients to local community resources.

Ultimately, we are focused on supporting effective and sustainable collaboration between healthcare delivery and local community-based services organizations to meet the unmet needs of people they serve. Reporting data from both the Screening for Social Drivers of Health and the Screen Positive Rate for Social Drivers of Health measures would enable both identification and quantification of the levels of HRSNs among communities served by IPFs. These two Social Drivers of Health measures harmonize, as it is important to know both whether screening occurred and the results from the screening in order to develop sustainable solutions. We believe that there are multiple benefits to increasing IPFs' understanding of their patients' HRSNs. First, we believe that this could lead to increased clinical-community collaborations and an associated increase in system capacity and community investments. Second, we believe this in turn could yield a net reduction in costly healthcare utilization by promoting more appropriate healthcare service consumption.[162]

Pursuant to our Meaningful Measures 2.0 Framework and in alignment with the measures previously adopted for hospitals participating in the Hospital IQR Program, the proposed Screen Positive Rate for Social Drivers of Health measure would address the equity priority area and align with our commitment to introduce plans to close health equity gaps and promote equity through quality measures, including to ''develop and implement measures that reflect social and economic determinants.'' [163] Under our Meaningful Measures Framework, the Screen Positive Rate for Social Drivers of Health measure would address the quality priority of ''Work with Communities to Promote Best Practices of Healthy Living'' through the Meaningful Measures Area of ''Equity of Care.'' [164] Adoption of this proposed measure would also align with our strategic pillar to advance health equity by addressing the health disparities that underlie our health system.[165]

b. Overview of Measure

The proposed Screen Positive Rate for Social Drivers of Health measure is intended to enhance standardized data collection that can identify individuals who are at higher risk for poor health outcomes related to HRSNs who would benefit from connection via the IPF to targeted community-based services.[166] The proposed measure would identify the proportion of patients who screened positive for one or more of the following five HRSNs on the date of admission to the IPF: food insecurity, housing instability, transportation needs, utility difficulties, and interpersonal safety.

Consistent with the Hospital IQR Program, which adopted this measure in the FY 2023 IPPS/LTCH PPS final rule (87 FR 49215 through 49220), we would require IPFs to report this measure as five separate rates. Specifically, IPFs would report the number of patients who screened positive for food insecurity, the number of patients who screened positive for housing instability, the number of patients who screened positive for transportation needs, the number of patients who screened positive for utility difficulties, and the number of patients who screened positive for interpersonal safety. We note that this measure is intended to provide information to IPFs on the level of unmet HRSNs among patients served, and not for comparison between IPFs.

The specifications for the proposed Screen Positive Rate for Social Drivers of Health measure, which were available during the review of the MUC List, are available at: *https://mmshub.cms.gov/sites/default/files/map-hospital-measure-specifications-manual-2022.pdf.*

(1) Measure Calculation

(a) Cohort

The proposed Screen Positive Rate for Social Drivers of Health is a process measure that would provide information on the percent of patients, 18 years or older on the date of admission for an IPF stay, who were screened for an HRSN, and who screen positive for one or more of the following five HRSNs: food insecurity; housing instability; transportation needs; utility difficulties; or interpersonal safety.

(b) Numerator

The numerator would consist of the number of patients admitted for an IPF stay who are 18 years or older on the date of admission, who were screened for an HRSN, and who screen positive for having an unmet need in one or more of the following five HRSNs (calculated separately): The number of patients who screened positive for food insecurity, the number of patients who screened positive for housing instability, the number of patients who screened positive for transportation needs, the number of patients who screened positive for utility difficulties, and the number of patients who

coronavirus/2019-ncov/community/health-equity/cdc-strategy.html. Accessed November 17, 2021.

[159] The Physicians Foundation. (2020). Survey of America's Patients, Part Three. Available at: *https://physiciansfoundation.org/wp-content/uploads/2020/10/2020-Physicians-Foundation-Survey-Part3.pdf.*

[160] De Marchis, E., Knox, M., Hessler, D., WillardGrace, R., Oliyawola, JN, et al. (2019). Physician Burnout and Higher Clinic Capacity to Address Patients' Social Needs. The Journal of the American Board of Family Medicine, 32 (1), 69–78.

[161] Kung, A., Cheung, T., Knox, M., Willard-Grace, R., Halpern, J., et.al, (2019). Capacity to Address Social Needs Affect Primary Care Clinician Burnout. Annals of Family Medicine. 17 (6), 487–494. Available at: *https://doi.org/10.1370/afm.2470.*

[162] Centers for Medicare & Medicaid Services. (2021). Accountable Health Communities Model. Accountable Health Communities Model | CMS Innovation Center. Available at: *https://innovation.cms.gov/innovation-models/ahcm.* Accessed November 23, 2021.

[163] Centers for Medicare & Medicaid Services. Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at: *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[164] Centers for Medicare & Medicaid Services. (2021). CMS Measures Management System Blueprint (Blueprint v 17.0). Available at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/MMS-Blueprint.*

[165] Brooks-LaSure, C. (2021). My First 100 Days and Where We Go From Here: A Strategic Vision for CMS. Available at: *https://www.cms.gov/blog/my-first-100-days-and-where-we-go-here-strategic-vision-cms.*

[166] Centers for Medicare & Medicaid Services. (2021). A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights (June 2021). Available at: *https://innovation.cms.gov/media/document/ahcm-screeningtool-companion.* Accessed November 23, 2021.

screened positive for interpersonal safety. IPFs would report the number of patients who screened positive for having unmet needs in each of the five HRSNs as a separate numerator. A patient who screened positive for more than one unmet HRSN would be included in the numerator for each of those HRSNs. For example, a patient who screened positive for food insecurity, housing instability, and transportation needs would be included in each of these numerators.

(c) Denominator

The denominator would consist of the number of patients admitted for an IPF stay who are 18 years or older on the date of admission and are screened for an HRSN (food insecurity, housing instability, transportation needs, utility difficulties and interpersonal safety) during their IPF stay. The following patients would be excluded from the denominator: (1) patients who opt-out of screening; and (2) patients who are themselves unable to complete the screening during their inpatient stay and have no caregiver able to do so on the patient's behalf during their inpatient stay.

(d) Calculation

The result of this measure would be calculated as five separate rates. Each rate is derived from the number of patients admitted for an IPF stay and who are 18 years or older on the date of admission, screened for an HRSN, and who screen positive for each of the five HRSNs (that is, the number of patients who screened positive for food insecurity, the number of patients who screened positive for housing instability, the number of patients who screened positive for transportation needs, the number of patients who screened positive for utility difficulties, and the number of patients who screened positive for interpersonal safety) divided by the number of patients 18 years or older on the date of admission screened for all five HRSNs. The measure is reported as five separate rates—one for each HRSN, each calculated with the same denominator.

(2) Review by the Measure Applications Partnership

We included the proposed Screen Positive Rate for Social Drivers of Health measure on the publicly available MUC List, a list of measures under consideration for use in various Medicare programs.[167] The CBE-convened MAP Health Equity Advisory Group reviewed the MUC List and the Screen Positive Rate for Social Drivers of Health measure (MUC 2022–050) in detail on December 6 through 7, 2022.[168] The MAP Health Equity Advisory Group expressed support for the collection of data related to social drivers of health, but raised concerns regarding public reporting of these data and potential repetition of asking patients the same questions across settings.[169]

In addition, on December 8 through 9, 2022, the MAP Rural Health Advisory Group reviewed the 2022 MUC List, which was also reviewed by the MAP Hospital Workgroup on December 13 through 14, 2022.[170] The MAP Rural Health Advisory Group noted potential reporting challenges including the potential masking of health disparities that are underrepresented in some areas and that sample size and populations served may be an issue, but also expressed support that the measure seeks to advance the drivers of health and serves as a starting point to determine where screening is occurring. The MAP Hospital Workgroup recommended conditional support of the measure for rulemaking pending: (1) endorsement by the CBE to address reliability and validity concerns; (2) attentiveness to how results are shared and contextualized for public reporting; and (3) examination of any differences in reported rates by reporting process (that is, to assess whether reported rates are the same or different across IPFs and other facilities that may use different processes to report their data).[171] Thereafter, the MAP Coordinating Committee deliberated on January 24 through 25, 2023, and ultimately voted to conditionally support the Screen Positive Rate for Social Drivers of Health measure for rulemaking with the same conditions.[172]

We agree with the MAP Coordinating Committee's support for the proposed Screen Positive Rate for Social Drivers of Health measure. We believe this measure, alongside the Screening for Social Drivers of Health measure, establishes an important foundation to prioritizing the achievement of health equity among IPFs participating in the IPFQR Program. Our approach to developing health equity measures is incremental, and we believe that health equity outcomes in the IPFQR Program will inform future efforts to advance and achieve health equity by IPFs. We believe this measure to be a building block that lays the groundwork for a future meaningful suite of measures that would assess IPF progress in providing high-quality healthcare for all patients, regardless of social risk factors or demographic characteristics.

(3) CBE Endorsement

We have not submitted this measure for CBE endorsement at this time. Although section 1886(s)(4)(D)(i) of the Act generally requires that measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) of the Act states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to a measure that has been endorsed or adopted by a consensus organization identified by the Secretary. We reviewed CBE-endorsed measures and were unable to identify any other CBE-endorsed measures on this topic; therefore, we believe the exception in section 1886(s)(4)(D)(ii) of the Act applies.

c. Data Collection, Submission, and Reporting

We believe incremental implementation of the proposed Screen Positive Rate for Social Drivers of Health measure, by permitting one year of voluntary reporting prior to required reporting, would allow IPFs who are not yet screening patients for HRSNs to get experience with the measure and equally allow IPFs who already undertake screening efforts to report

[167] Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2022. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[168] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[169] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[170] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[171] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[172] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

data already being collected. Therefore, we propose voluntary reporting of this measure, along with the Screening for Social Drivers of Health measure described in section V.D.3 of this proposed rule, beginning with the data collected in CY 2024, which would be reported to CMS in 2025 followed by required reporting beginning with data collected in CY 2025, which would be reported to CMS in 2026 and affect FY 2027 payment determination.

While this measure would require IPFs to collect patient-level data on their patients' social drivers of health screening results, we propose to adopt this measure as an aggregate measure (that is, IPFs would be required to submit only numerator results for each of the five screening areas and the number of patients screened for all five of the HRSNs). IPFs are required to submit information for aggregate chart-abstracted measures once annually using a CMS-approved web-based data collection tool available within the HQR System (previously referred to as the QualityNet Secure Portal). We refer readers to section V.I of this proposed rule (Form, Manner, and Timing of Quality Data Submission) for more details on our previously finalized data submission and deadline requirements across measure types.

We invite public comment on this proposal.

5. Proposal To Adopt the Psychiatric Inpatient Experience (PIX) Survey Beginning With Voluntary Reporting of CY 2025 Data and Required Reporting Beginning With CY 2026 Data/FY 2028 Payment Determination

a. Background

We believe that a comprehensive approach to quality must include directly reported feedback regarding facility, provider, and payer performance. Therefore, we have consistently stated our commitment to identifying an appropriate patient experience of care measure for the IPF setting and adopting this measure in the IPFQR Program at the first opportunity (77 FR 53646, 78 FR 50897, 79 FR 45964 through 45965, 80 FR 46714 through 46715, 82 FR 38470 through 38471, 83 FR 38596, 84 FR 38467, 85 FR 47043, 86 FR 42654 through 42656, and 87 FR 46846).

In the FY 2014 IPPS/LTCH PPS final rule, we adopted a voluntary information collection regarding whether IPFs participating in the IPFQR Program assess patient experience of inpatient behavioral health services using a standardized instrument and for IPFs that answer ''Yes'' to indicate the name of the survey that they administer (78 FR 50896 through 50897). In the FY 2015 IPF PPS final rule, we adopted this information collection as the Assessment of Patient Experience of Care measure beginning with the FY 2016 payment determination (79 FR 45964 through 45965). Data for CY 2016 showed that while the majority of IPFs (approximately 76 percent) were collecting patient experience of care data through a standardized instrument, there was a wide variation in the instrument being used. The data for CY 2016 indicated that the most widely used survey instrument was not in the public domain and was used by less than 30 percent of the IPFs that used a patient experience survey. In the FY 2015 IPF PPS final rule, we indicated our intention to adopt a standardized measure of patient experience of care for the IPFQR Program.

In the FY 2019 IPF PPS final rule, we removed the Assessment of Patient Experience of Care measure from the IPFQR Program because we believed that we had collected sufficient information to inform development of a patient experience of care measure (83 FR 38596 through 38597). In the FY 2020 IPF PPS final rule, we summarized our request for comments on our analysis of the results of the Assessment of Patient Experience of Care measure and feedback on potential adoption of the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey for the IPFQR Program (84 FR 38467). In response to our request, many commenters expressed concern that HCAHPS was not specified for the IPF setting and recommended that CMS identify a survey that has been developed for and tested in the IPF setting. Furthermore, in the FY 2021 IPF PPS proposed rule, we did not propose any updates to the IPFQR Program; however, we received many comments requesting that we adopt a patient experience of care measure in the IPFQR Program, which we summarized in the FY 2021 IPF PPS final rule (85 FR 47043). We received similar input strongly advocating for a patient experience of care measure for the IPFQR Program in response to a solicitation of comments on potential measures for the IPFQR Program in the FY 2022 IPF PPS proposed rule, which we summarized in the FY 2022 IPF PPS final rule (86 FR 42654 through 42656). Many of these comments were from patients and their families and described how meaningful such a measure would be for individuals who receive services from IPFs. Though we did not solicit input on a patient experience of care measure in the FY 2023 IPF PPS proposed rule, we received many comments strongly recommending that we adopt such a measure, which we summarized in the FY 2023 IPF PPS final rule (87 FR 46846). Since publication of the FY 2023 IPF PPS final rule, section 4125(c) of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) was enacted, which amends section 1886(s)(4) of the Act to require that the quality measures specified for the IPFQR Program shall include a quality measure of patients' perspective on care not later than the FY 2031 payment determination.

We have continued to review publicly available patient experience of care instruments to identify such an instrument specified for, and tested in, the IPF setting. In our review, we identified the Psychiatric Inpatient Experience (PIX) survey as a publicly available survey instrument developed for and tested in the IPF setting. Pursuant to the Meaningful Measures 2.0 Framework, this measure addresses the ''Person-Centered'' priority area, as well as the ''Individual and Caregiver Voice'' foundation and aligns with our commitment to prioritize outcome and patient-reported measures.[173] This measure also aligns with the CMS National Quality Strategy Goal 4 ''Foster Engagement.'' It also supports the Behavioral Health Strategy goal of ''Strengthen Equity and Quality in Behavioral Health Care.'' [174] Furthermore, this measure supports the new Universal Foundation domain of ''Person-Centered Care.'' [175]

b. Overview of Measure

The PIX survey was developed by a team at the Yale University, Yale New Haven Psychiatric Hospital to address the gap in available experience of care surveys, specifically the lack of publicly available, minimally burdensome, psychometrically validated surveys specified for the IPF setting.[176] The interdisciplinary team that developed this survey, including researchers and clinicians, conducted the following steps in developing the survey: (1)

[173] Centers for Medicare & Medicaid Services. Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at: *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[174] CMS. (2022). CMS Behavioral Health Strategy. Available at *https://www.cms.gov/cms-behavioral-health-strategy.* Accessed on February 20, 2023.

[175] *https://www.nejm.org/doi/full/10.1056/NEJMp2215539.*

[176] Klemanski DH, Barnes T, Bautista C, Tancreti C, Klink B, Dix E. Development and Validation of the Psychiatric Inpatient Experience (PIX) Survey: A Novel Measure of Patient Experience Quality Improvement. *Journal of Patient Experience.* 2022;9. doi:10.1177/23743735221105671.

literature review; (2) patient focus groups; (3) solicitation of input from a patient and family advisory council; (4) review of content validity with an expert panel; (5) development of survey; and (6) survey testing within the Yale New Haven Psychiatric Hospital system.[177]

The resulting survey contains 23 items in four domains. Patients can respond to each of the 23 items using a five-point Likert scale (that is, strongly disagree, somewhat disagree, neutral, somewhat agree, strongly agree) or choose that the item does not apply. The four domains are:

- Relationship with Treatment Team;
- Nursing Presence;
- Treatment Effectiveness; and
- Healing Environment.[178]

The PIX survey is distributed to patients by administrative staff at a time beginning 24 hours prior to planned discharge. The survey, which is available in both English and Spanish, can be completed prior to discharge using either a paper copy of the survey or an electronic version of the survey via tablet computer.[179] For a complete list of survey questions, including which questions are elements of each domain, we refer readers to the description of the survey in the Journal of Patient Experience: *https://journals.sagepub.com/doi/full/10.1177/23743735221105671.*

(1) Measure Calculation

(a) Cohort

The cohort for this measure is all patients discharged from an IPF during the reporting period who do not meet one of the following exclusions: (1) patients who are under 13 years of age at time of discharge, and (2) patients who are unable to complete the survey due to cognitive or intellectual limitations. Our proposed sampling procedures that IPFs could apply to the PIX survey measure are described in section V.I.6 of the preamble of this proposed rule.

(b) Calculation

The measure would be reported as five separate rates, one for each of the four domains of the PIX survey and one overall rate. Each of these rates would be calculated from patient responses on the PIX survey and then publicly reported on the Care Compare website (or successor CMS website). We would report the mean rates for each domain as well the overall mean rate on the Care Compare website (or successor CMS website). To calculate the mean scores, we would assign a numerical value ranging from 1 (Strongly Disagree) to 5 (Strongly Agree). We would then calculate the average response by adding the values of all responses and dividing that value by the number of responses, excluding questions that were omitted or to which the patient selected ''Does Not Apply.''

(2) Review by the Measure Applications Partnership (MAP)

We included the PIX survey measure on the publicly available ''List of Measures Under Consideration for December 1, 2022'' (MUC List), a list of measures under consideration for use in various Medicare programs.[180] The CBE-convened Measure Applications Partnership (MAP) reviewed the MUC List and discussed the potential use of the PIX survey for the IPFQR Program.

The MAP Health Equity Advisory Group agreed that well-constructed patient experience of care measures are an important indicator of quality care. Overall, the MAP Health Equity Advisory Group expressed that this measure is a ''step in the right direction for behavioral health.'' [181]

In addition, on December 8 through 9, 2022, the MAP Rural Health Workgroup reviewed the 2022 MUC List and expressed support for this measure, with patient support being especially strong. Some members of the MAP Rural Health Advisory Group were concerned about operational challenges, specifically costs related to implementation and maintenance and potential bias if the surveying occurs prior to discharge.[182]

The MAP Hospital workgroup reviewed the 2022 MUC List on December 13 through 14, 2022. The MAP Hospital workgroup conditionally supported the measure for rulemaking, while emphasizing the importance of including patient reported experience of care data in the IPFQR Program. The MAP Hospital workgroup's conditions for support included endorsement by the CBE and additional testing data for this measure, specifically: (1) data from testing of the measure in a variety of settings (including urban, rural, safety net providers, and others), (2) data regarding survey results depending on the timing of survey administration (pre- versus post-discharge), (3) data regarding patient factors (for example, voluntary versus involuntary admissions), and (4) data regarding of mode of administration (for example, email versus mail) that may affect performance.[183] Thereafter, the MAP Coordinating Committee deliberated on January 24 through 25, 2023 and ultimately voted to uphold the Hospital Workgroup's recommendation to conditionally support the PIX survey measure for rulemaking pending the same conditions as the MAP Hospital workgroup.[184]

We believe that the testing that has been conducted on the PIX survey demonstrates that it is a valid and reliable tool for measuring patient experience of care in IPFs, and that the results from this initial testing are generalizable across IPFs. However, we agree with the MAP Hospital workgroup that additional testing of this measure could help better understand measure results, including any differences in measure results that were not analyzed during the PIX survey's initial testing. Therefore, we intend to conduct additional testing of the PIX survey prior to public reporting of the measure data, and we are proposing two years of voluntary reporting before beginning mandatory reporting of the PIX survey.

(3) CBE Endorsement

The measure developer has not submitted this measure for CBE endorsement at this time. The developer does intend to submit this measure for endorsement in the future, following additional testing as recommended by the MAP Hospital workgroup. Although

[177] Klemanski DH, Barnes T, Bautista C, Tancreti C, Klink B, Dix E. Development and Validation of the Psychiatric Inpatient Experience (PIX) Survey: A Novel Measure of Patient Experience Quality Improvement. *Journal of Patient Experience.* 2022;9. doi:10.1177/23743735221105671.

[178] Klemanski DH, Barnes T, Bautista C, Tancreti C, Klink B, Dix E. Development and Validation of the Psychiatric Inpatient Experience (PIX) Survey: A Novel Measure of Patient Experience Quality Improvement. *Journal of Patient Experience.* 2022;9. doi:10.1177/23743735221105671

[179] Klemanski DH, Barnes T, Bautista C, Tancreti C, Klink B, Dix E. Development and Validation of the Psychiatric Inpatient Experience (PIX) Survey: A Novel Measure of Patient Experience Quality Improvement. *Journal of Patient Experience.* 2022;9. doi:10.1177/23743735221105671

[180] Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2022. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[181] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[182] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[183] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[184] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

section 1886(s)(4)(D)(i) of the Act generally requires that measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) of the Act states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to a measure that has been endorsed or adopted by a consensus organization identified by the Secretary.

We reviewed CBE-endorsed measures and were unable to identify any other CBE-endorsed measures on this topic. We did identify the Experience of Care and Health Outcomes (ECHO) Survey measure (CBE #008); however, this measure has had its endorsement removed as of the spring 2020 cycle. Additionally, this survey was developed and tested for outpatient behavioral health, not the inpatient setting. Additionally, we identified the Patient Experience of Psychiatric Care as Measured by the Inpatient Consumer Survey (ICS) measure (CBE #0726). This measure has also had its endorsement removed as of the spring 2018 cycle. As neither of these two measures are endorsed at this time, we believe the exception in section 1886(s)(4)(D)(ii) of the Act applies.

(c) Data Collection, Submission and Reporting

IPFs would be responsible for administering the survey and collecting data on survey responses because the PIX survey is administered beginning 24 hours prior to a patient's planned discharge. Therefore, IPFs would collect the data in a manner similar to the collection of data for chart-abstracted measures or other patient screening measures. That is, the IPFs would collect data in the facility and then report these data to CMS using the methods described in section V.I.4 of this proposed rule, that is ''Data Submission Requirements'' under ''Procedural Requirements.''

Because we anticipate that many IPFs, which already administer different patient experience of care survey instruments to their patients, would need to transition to the PIX survey, we are proposing a voluntary reporting period beginning with data from CY 2025, which would be reported to CMS in CY 2026. We would then require IPFs to report data for the PIX survey measure beginning with data collected during CY 2026, to be reported to CMS during CY 2027 and affect the FY 2028 payment determination.

We invite comments on our proposal.

E. Proposed Modification of the COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP) Measure Beginning With the Quarter 4 CY 2023 Reporting Period/FY 2025 Payment Determination

1. Background

On January 31, 2020, the Secretary of the Department of Health and Human Services declared a public health emergency (PHE) for the United States in response to the global outbreak of SARS–COV–2, a novel (new) coronavirus that causes a disease named ''coronavirus disease 2019'' (COVID–19).[185] Subsequently, multiple quality reporting programs including the Hospital IQR Program (86 FR 45374) and the IPFQR Program (86 FR 42633 through 42640) adopted the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure. The COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP) measure adopted in the IPFQR Program in the FY 2022 IPF PPS final rule (86 FR 42633 through 42650) requires each IPF to calculate the percentage of HCP eligible to work in the IPF for at least one day during the reporting period, excluding persons with contraindications to the COVID–19 vaccine, who have received a complete vaccination course against SARS–CoV–2 (86 FR 42633 through 42640).

COVID–19 has continued to spread domestically and around the world with more than 102.7 million cases and 1.1 million deaths in the United States as of February 13, 2023.[186] In recognition of the ongoing significance and complexity of COVID–19, the Secretary has renewed the PHE on April 21, 2020, July 23, 2020, October 2, 2020, January 7, 2021, April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, July 15, 2022, October 13, 2022, January 11, and February 9, 2023.[187] The President has announced that the PHE will end on May 11, 2023,[188] and HHS has stated that the public health response to COVID–19 remains a public health priority with a whole of government approach to combatting the virus, including through vaccination efforts.[189]

In the FY 2022 IPF PPS final rule (86 FR 42633 through 42635) and in our Revised Guidance for Staff Vaccination Requirements,[190] we stated that vaccination is a critical part of the nation's strategy to effectively counter the spread of COVID–19. We continue to believe it is important to incentivize and track HCP vaccination through quality measurement across care settings, including IPFs, in order to protect HCP, patients, and caregivers, and to help sustain the ability of HCP to continue serving their communities throughout the PHE and beyond.

At the time we issued the FY 2022 IPF PPS final rule, the Food and Drug Administration (FDA) had issued emergency use authorizations (EUAs) for initial and primary adult vaccines manufactured by Pfizer-BioNTech,[191] Moderna,[192] and Janssen.[193] On August 23, 2021, the FDA issued an approval for the Pfizer-BioNTech vaccine, now marketed as Comirnaty.[194] The FDA issued approval for the Moderna vaccine, marketed as Spikevax, on

[185] U.S. Dept of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response. (2020). Determination that a Public Health Emergency Exists. Available at: *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[186] Centers for Disease Control and Prevention. COVID Data Tracker. Accessed February 13, 2023. Available at: *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[187] U.S. Dept. of Health and Human Services. Office of the Assistant Secretary for Preparedness and Response. (2023). Renewal of Determination that a Public Health Emergency Exists. Available at: *https://aspr.hhs.gov/legal/PHE/Pages/covid19-11Jan23.aspx.*

[188] *https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf.*

[189] U.S. Dept. of Health and Human Services. Fact Sheet: COVID–19 Public Health Emergency Transition Roadmap. February 9, 2023. Available at: *https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*

[190] Centers for Medicare & Medicaid Services. Revised Guidance for Staff Vaccination Requirements QSO–23–02–ALL. October 26, 2022. Available at: *https://www.cms.gov/files/document/qs0-23-02-all.pdf.*

[191] Food and Drug Administration. (December 2020). FDA Takes Key Action in Fight Against COVID–19 By Issuing Emergency Use Authorization for First COVID–19 Vaccine. Available at: *https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19.*

[192] Food and Drug Administration. (December 2020). FDA Takes Additional Action in Fight Against COVID–19 By Issuing Emergency Use Authorization for Second COVID–19 Vaccine. Available at: *https://www.fda.gov/news-events/press-announcements/fda-takes-additional-action-fight-against-covid-19-issuing-emergency-use-authorization-second-covid.*

[193] Food and Drug Administration. (February 2021). FDA Issues Emergency Use Authorization for Third COVID–19 Vaccine. Available at: *https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine.*

[194] Food and Drug Administration. (August 2021). FDA Approves First COVID–19 Vaccine. Available at: *https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine.*

January 31, 2022 [195] and an EUA for the Novavax adjuvanted vaccine on July 13, 2022.[196] The FDA also issued EUAs for COVID–19 single vaccine booster doses in September 2021 [197] and October 2021 [198] for certain populations and in November 2021 [199] for all individuals 18 years of age and older. EUAs were subsequently issued for a second vaccine booster dose in March 2022 [200] and for bivalent or ''updated'' booster doses in August 2022.[201]

In the FY 2022 IPF PPS final rule, we stated that data demonstrating the effectiveness of COVID–19 vaccines to prevent asymptomatic infection or transmission of SARS–COV–2, the novel (new) coronavirus that causes COVID–19, were limited (86 FR 42634). While the impact of COVID–19 vaccines on asymptomatic infection and transmission was not yet fully known at the time of the FY 2022 IPF PPS final rule, there were robust data available on COVID–19 vaccine effectiveness across multiple populations against symptomatic infection, hospitalization, and death. Two-dose COVID–19 vaccines from Pfizer-BioNTech and Moderna had been found to be 88 percent and 93 percent effective against hospitalization for COVID–19, respectively, over 6 months for adults over age 18 without immunocompromising conditions. [202] During a SARS–COV–2 surge in the spring and summer of 2021, 92 percent of COVID–19 hospitalizations and 91 percent of COVID–19-associated deaths were reported among persons not fully vaccinated.[203] Real-world studies of population-level vaccine effectiveness indicated similarly high rates of effectiveness in preventing SARS–COV–2 infection among frontline workers in multiple industries, with a 90 percent effectiveness in preventing symptomatic and asymptomatic infection from December 2020 through August 2021.[204] Vaccines have also been highly effective in real-world conditions (that is, vaccines have continued to be highly effective in conditions other than clinical trials) at preventing COVID–19 in HCP with up to 96 percent effectiveness for fully vaccinated HCP, including those at risk for severe infection and those in racial and ethnic groups disproportionately affected by COVID–19.[205] In the presence of high community prevalence of COVID–19, residents of nursing homes with low staff vaccination coverage had cases of COVID–19-related deaths 195 percent higher than those among residents of nursing homes with high staff vaccination coverage.[206] Currently available data demonstrate that COVID–19 vaccines are effective and prevent severe disease, including hospitalization, and death.

As SARS–COV–2 persists and evolves, our COVID–19 vaccination strategy must remain responsive. When we adopted the COVID–19 Vaccination Coverage Among HCP measure in the FY 2022 IPF PPS final rule, we stated that the need for booster doses of the COVID–19 vaccine had not been established and no additional doses had been recommended (86 FR 42639). We also stated that we believed the numerator was sufficiently broad to include potential future boosters as part of a ''complete vaccination course'' and that the measure was sufficiently specified to address boosters (86 FR 42639). Since we adopted the COVID–19 Vaccination Coverage Among HCP measure in the FY 2022 IPF PPS final rule, new variants of SARS–COV–2 have emerged around the world and within the United States. Specifically, the Omicron variant (and its related subvariants) is listed as a variant of concern by the Centers for Disease Control and Prevention (CDC) because it spreads more easily than earlier variants.[207] Vaccine manufacturers have responded to the Omicron variant by developing bivalent COVID–19 vaccines, which include a component of the original virus strain to provide broad protection against COVID–19 and a component of the Omicron variant to provide better protection against COVID–19 caused by the Omicron variant.[208] These booster doses of the bivalent COVID–19 vaccine have been shown to increase immune response to SARS–COV–2 variants, including Omicron, particularly in individuals who are more than 6 months removed from receipt of their primary series.[209] The FDA issued EUAs for two bivalent COVID–19 vaccine booster doses, one from Pfizer-BioNTech [210] and one from

[195] Food and Drug Administration. (January 2022). Coronavirus (COVID–19) Update: FDA Takes Key Action by Approving Second COVID–19 Vaccine. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-key-action-approving-second-covid-19-vaccine.*

[196] Food and Drug Administration. (July 2022). Coronavirus (COVID–19) Update: FDA Authorizes Emergency Use of Novavax COVID–19 Vaccine, Adjuvanted. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-emergency-use-novavax-covid-19-vaccine-adjuvanted.*

[197] Food and Drug Administration. (September 2021). FDA Authorizes Booster Dose of Pfizer-BioNTech COVID–19 Vaccine for Certain Populations. Available at: *https://www.fda.gov/news-events/press-announcements/fda-authorizes-booster-dose-pfizer-biontech-covid-19-vaccine-certain-populations.*

[198] Food and Drug Administration. (October 2021). Coronavirus (COVID–19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID–19 Vaccines. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-additional-actions-use-booster-dose-covid-19-vaccines.*

[199] Food and Drug Administration. (November 2021). Coronavirus (COVID–19) Update: FDA Expands Eligibility for COVID–19 Vaccine Boosters. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-expands-eligibility-covid-19-vaccine-boosters.*

[200] Food and Drug Administration. (March 2022). Coronavirus (COVID–19) Update: FDA Authorizes Second Booster Dose of Two COVID–19 Vaccines for Older and Immunocompromised Individuals. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-second-booster-dose-two-covid-19-vaccines-older-and.*

[201] Food and Drug Administration. (August 2022). Coronavirus (COVID–19) Update: FDA Authorizes Moderna, Pfizer-BioNTech Bivalent COVID–19 Vaccines for Use as a Booster Dose. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-moderna-pfizer-biontech-bivalent-covid-19-vaccines-use.*

[202] Centers for Disease Control and Prevention. (September 24, 2021). Morbidity and Mortality Weekly Report (MMWR). Comparative Effectiveness of Moderna, Pfizer-BioNTech, and Janssen (Johnson & Johnson) Vaccines in Preventing COVID–19 Hospitalizations Among Adults Without Immunocompromising Conditions—United States, March-August 2021. Available at: *https://cdc.gov/mmwr/volumes/70/wr/mm7038e1.htm?s_cid=mm7038e1_w.*

[203] Centers for Disease Control and Prevention. (September 10, 2021). Morbidity and Mortality Weekly Report (MMWR). Monitoring Incidence of COVID–19 Cases, Hospitalizations, and Deaths, by Vaccination Status—13 U.S. Jurisdictions, April 4-July 17, 2021. Available at: *https://cdc.gov.mmwr/volumes/70/wr/mm7037e1.htm?s_cid=mm7037e1_w.*

[204] Centers for Disease Control and Prevention. (August 27, 2021). Morbidity and Mortality Weekly Report (MMWR). Effectiveness of COVID–19 Vaccines in Preventing SARS–COV–2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance—Eight U.S. Locations, December 2020–August 2021. Available at: *https://cdc.gov/mmwr/volume/70/wr/mm7034e4.htm?s_cid=mm7034e4_w.*

[205] Pilishivi, T. et al. (December 2022). Effectiveness of mRNA Covid–19 Vaccine among U.S. Health Care Personnel. New England Journal of Medicine. 2021 Dec 16;385(25):e90. Available online at: *https://pubmed.ncbi.nlm.nih.gov/34551224/.*

[206] McGarry BE et al. (January 2022). Nursing Home Staff Vaccination and Covid–19 Outcomes. New England Journal of Medicine. 2022 Jan 27;386(4):397–398. Available online at: *https://pubmed.ncbi.nlm.nih.gov/34879189/.*

[207] Centers for Disease Control and Prevention. (August 2021). Variants of the Virus. Available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html.*

[208] Food and Drug Administration. (November 2022). COVID–19 Bivalent Vaccine Boosters.

[209] Chalkias, S et al. (October 2022). A Bivalent Omicron-Containing Booster Vaccine against Covid–19. N Engl J Med 2022; 387:1279–1291. Available online at: *https://www.nejm.org/doi/full/10.1056/NEJMoa2208343.*

[210] Food and Drug Administration. (November 2022). Pfizer-BioNTech COVID–19 Vaccines. Available at: *https://www.fda.gov/emergency-*

Continued

Moderna,[211] and strongly encourages anyone who is eligible to consider receiving a booster dose with a bivalent COVID–19 vaccine to provide better protection against currently circulating variants.[212] COVID–19 booster doses are associated with a greater reduction in infections among HCP and their patients relative to those who only received primary series vaccination. One study showed a rate of breakthrough infections among HCP who received only the two-dose regimen of the COVID–19 vaccine of 21.4 percent compared to a rate of 0.7 percent among HCP who received a third dose of the COVID–19 vaccine.[213]

Despite the efficacy of COVID–19 vaccination generally, data submitted to the CDC via the National Health Safety Network (NHSN) demonstrate clinically significant variation in booster dose vaccination rates across facilities, including IPFs. During the first quarter of 2022, IPFs reported a median coverage rate of booster or additional dose(s) of 19.1 percent, with an interquartile range of 8.7 percent to 37.9 percent. These data, which show a performance gap in booster coverage, indicate that there is opportunity to improve booster vaccination coverage among HCP in IPFs.[214]

We believe that vaccination remains the most effective means to prevent the worst consequences of COVID–19, including severe illness, hospitalization, and death. Given the availability of vaccine efficacy data, EUAs issued by the FDA for bivalent boosters, the continued presence of SARS–COV–2 in the United States, and variance among rates of booster dose vaccination, it is important to modify the COVID–19 Vaccination Coverage Among HCP measure to reflect recent guidance that explicitly specifies for HCP to receive primary series and booster vaccine doses in a timely manner. Given the persistent spread of COVID–19, we continue to believe that monitoring and surveillance is important and provides patients, beneficiaries, and their caregivers with information to support informed decision-making.

Beginning with the fourth quarter of the CY 2023 reporting period/FY 2025 payment determination, we propose to modify the COVID–19 Vaccination Coverage Among HCP measure to replace the term ''complete vaccination course'' with the term ''up-to-date'' in the HCP vaccination definition. We also propose to update the numerator to specify the time frames within which an HCP is considered ''up-to-date'' with recommended COVID–19 vaccines, including booster doses.

In the FY 2022 IPF PPS final rule (86 FR 42638), we stated, and reiterate now, that the COVID–19 Vaccination Coverage Among HCP measure is a process measure that assesses HCP vaccination coverage rates. Unlike outcome measures, process measures do not assess a particular outcome.

2. Overview of Measure

The proposed COVID–19 Vaccination Coverage Among HCP measure is a process measure developed by the CDC to track COVID–19 vaccination coverage among HCP in settings such as acute care facilities, including IPFs, and post-acute care facilities.

We refer readers to the FY 2022 IPF PPS final rule (86 FR 42635 through 42636) for more information on the initial review of the current COVID–19 Vaccination Coverage Among HCP measure by the Measure Applications Partnership (MAP). We included an updated version of the proposed modification of the COVID–19 Vaccination Coverage Among HCP measure on the list of measures under consideration (MUC List), which is published annually on behalf of CMS by the CBE with which the Secretary must contract as required by section 1890(a) of the Act, for the 2022 to 2023 pre-rulemaking cycle for consideration by the MAP.

In December 2022, the MAP Hospital Workgroup discussed the proposed modification of the COVID–19 Vaccination Coverage Among HCP measure. The MAP Hospital Workgroup stated that the proposed modification of the current measure captures ''up-to-date'' vaccination information in accordance with the CDC's recommendations, which have been updated since their initial development. Additionally, the MAP Hospital Workgroup appreciated that the proposed modified measure's denominator is broader and simplified from seven categories of healthcare personnel to four.[215]

During review on December 6 and 7, 2022, the MAP Health Equity Advisory Group highlighted the importance of COVID–19 measures and asked whether the proposed modified measure excludes individuals with contraindications to Food and Drug Administration (FDA) authorized or approved COVID–19 vaccines, and whether the measure will be stratified by demographic factors.[216] The CDC, the measure developer for this measure, responded to the question regarding individuals with contraindications by confirming that HCP with contraindications to the vaccines are excluded from the measure denominator. The CDC further explained that the proposed modified measure will not be stratified since the data are submitted at an aggregate rather than an individual level.

During review on December 8 through 9, 2022, the MAP Rural Health Advisory Group expressed concerns about data collection burden, citing that collection is performed manually and that small rural hospitals may not have employee health software.[217] The measure developer (that is, the CDC) acknowledged the challenge of getting adequate documentation and emphasized the goal to ensure the measure does not present a burden on providers. The measure developer also noted that the model used for this measure is based on the Influenza Vaccination Coverage Among HCP measure (CBE #0431), and it intends to utilize a similar approach to the modified COVID–19 Vaccination Coverage Among HCP measure if vaccination strategy becomes seasonal. The proposed modified COVID–19 Vaccination Coverage Among HCP measure received conditional support for rulemaking pending testing indicating the measure is reliable and valid, and endorsement by the CBE. The MAP noted that the previous version of

preparedness-and-response/coronavirus-disease-2019-Covid-19/pfizer-biontech-covid-19-vaccines.

[211] Food and Drug Administration. (November 2022). Moderna COVID–19 Vaccines. Available at: *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccines.*

[212] Food and Drug Administration. (August 2022). Coronavirus (COVID–19) Update: FDA Authorizes Moderna, Pfizer-BioNTech Bivalent COVID–19 Vaccines for Use as a Booster Dose. Available at: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-moderna-pfizer-biontech-bivalent-covid-19-vaccines-use.*

[213] Oster Y et al. (May 2022). The effect of a third BNT162b2 vaccine on breakthrough infections in health care workers: a cohort analysis. Clin Microbiol Infect. 2022 May;28(5):735.e1–735.e3. Available online at: *https://pubmed.ncbi.nlm.nih.gov/35143997/.*

[214] Measure Applications Partnership (MAP) Hospital Workgroup Preliminary Analyses. Available at: *https://mmshub.cms.gov/sites/default/files/map-hospital-measure-specifications-manual-2022.pdf.*

[215] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[216] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[217] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

the measure received endorsement from the CBE (CBE #3636) [218] and that the CDC intends to submit the proposed updated measure for endorsement.

a. Measure Specifications

The proposed modification of the COVID–19 Vaccination Coverage Among HCP measure would require that IPFs collect data at least one week each month for each of the three months in a quarter.

The denominator would be the number of HCP eligible to work in the facility for at least one day during the reporting period, excluding persons with contraindications to COVID–19 vaccination that are described by the CDC.[219] There are not any proposed changes to the denominator exclusions for the current COVID–19 Vaccination Coverage Among HCP measure, and the proposed modified COVID–19 Vaccination Coverage Among HCP measure would continue to exclude otherwise denominator-eligible HCPs with contraindications as defined by the CDC.[220] IPFs report the following four categories of HCP to NHSN; [221] the first three categories are included in the measure denominator:

1. *Employees:* This category includes all persons who receive a direct paycheck from the IPF (that is, on the IPF's payroll), regardless of clinical responsibility or patient contact.

2. *Licensed independent practitioners (LIPs):* This category includes physicians (MD, DO), advanced practice nurses, and physician assistants who are affiliated with the IPF but are not directly employed by it (that is, they do not receive a paycheck from the IPF), regardless of clinical responsibility or patient contact. Post-residency fellows are also included in this category if they are not on the IPF's payroll.

3. *Adult students/trainees and volunteers:* This category includes medical, nursing, or other health professional students, interns, medical residents, or volunteers aged 18 or older who are affiliated with the healthcare facility, but are not directly employed by it (that is, they do not receive a paycheck from the facility), regardless of clinical responsibility or patient contact.

4. *Other contract personnel:* Contract personnel are defined as persons providing care, treatment, or services at the IPF through a contract who do not fall into any of the previously discussed denominator categories. Please note that this also includes vendors providing care, treatment, or services at the facility who may or may not be paid through a contract. Facilities are required to enter data on other contract personnel for submission in the NHSN application, but reporting for this category is not included in the COVID–19 Vaccination Coverage Among HCP measure.

The numerator would be the cumulative number of HCP in the denominator population who are ''up-to-date'' with CDC recommended COVID–19 vaccines. IPFs should refer to the CDC's guidance, to determine the then-applicable definition of ''up-to-date,'' as of the first day of the applicable reporting quarter. The CDC's guidance can be found at: *https://www.cdc.gov/nhsn/pdfs/hps/covidvax/UpToDateGuidance-508.pdf.* For purposes of NHSN surveillance, the CDC used the following definition of ''up-to-date'' during the fourth quarter of CY 2022 surveillance period (September 26, 2022 through December 25, 2022):

1. Individuals who received an updated bivalent [222] booster dose, or

2a. Individuals who received their last booster dose less than 2 months ago, or

2b. Individuals who completed their primary series [223] less than 2 months ago.

We refer readers to *https://www.cdc.gov/nhsn/nqf/index.html* for more details on the proposed modified measure specifications.

We propose that public reporting of the modified version of the COVID–19 Vaccination Coverage Among HCP measure would begin with the October 2024 Care Compare refresh, or as soon as technically feasible after that refresh.

b. CBE Endorsement

The current version of the COVID–19 Vaccination Coverage Among HCP measure received CBE endorsement (CBE #3636, ''Quarterly Reporting of COVID–19 Vaccination Coverage among Healthcare Personnel'') on July 26, 2022.[224]

Although section 1886(s)(4)(D)(i) of the Act generally requires that measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) of the Act states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to a measure that has been endorsed or adopted by a consensus organization identified by the Secretary.

We reviewed CBE-endorsed measures and were unable to identify any other CBE-endorsed measures on this topic; therefore, we believe the exception in section 1886(s)(4)(D)(ii) of the Act applies. The CDC, as the measure developer, is currently pursuing endorsement for the modified version of the measure as the current version of the measure has already received endorsement.

3. Data Collection, Submission, and Reporting

We refer readers to the FY 2022 IPF PPS final rule (86 FR 42636 through 42640) for information on data submission and reporting of the current COVID–19 Vaccination Coverage Among HCP measure. While we do not propose any changes to the data submission or reporting process, we propose that reporting of the updated measure would begin with the fourth quarter of CY 2023 reporting period for FY 2025 payment determination. Beginning with the FY 2026 payment determination, we propose that IPFs would be required to submit data for the entire calendar year.

Under the data submission and reporting process, IPFs would collect the numerator and denominator for the COVID–19 Vaccination Coverage Among HCP measure for at least one self-selected week during each month of the reporting quarter and submit the data to the CDC's National Health Safety Network (NHSN) Healthcare Personal Safety (HPS) Component before the quarterly deadline. If an IPF submits more than one week of data in a month, the CDC would use most recent week's

[218] Centers for Medicare & Medicaid Services. 2022–2023 MAP Final Recommendations. Available at: *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.* and CMS Measures Inventory Tool. Available at: *https://cmit.cms.gov/cmit/#/MeasureView?variantId=5273&sectionNumber=1.*

[219] Centers for Disease Control and Prevention. (2022). Contraindications and precautions. Available at: *https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications.*

[220] Centers for Disease Control and Prevention. (2022). Contraindications and precautions. Available at: *https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications.*

[221] *https://www.cdc.gov/nhsn/pdfs/nqf/covid-vax-hcpcoverage-rev-2023-508.pdf.*

[222] The updated (bivalent) Moderna and Pfizer-BioNTech boosters target the most recent Omicron subvariants. The updated (bivalent) boosters were recommended by the CDC on 9/2/2022. As of this date, the original, monovalent mRNA vaccines are no longer authorized as a booster dose for people ages 12 years and older.

[223] Completing a primary series means receiving a two-dose series of a COVID–19 vaccine or a single dose of Janssen/J&J COVID–19 vaccine.

[224] CMS Measures Inventor Tool. COVDI–19 Vaccination Coverage among Healthcare Personnel. Available at: *https://cmit.cms.gov/cmit/#/MeasureView?variantId=5273&sectionNumber=1.*

data to calculate the measure results which would be publicly reported. Each quarter, the CDC would calculate a single quarterly COVID–19 HCP vaccination coverage rate for each IPF, which would be calculated by taking the average of the data from the three weekly rates submitted by the IPF for that quarter. CMS would publicly report each quarterly COVID–19 HCP vaccination coverage rate as calculated by the CDC based on the data IPFs submit to the NHSN (86 FR 42636 through 42640).

We invite public comment on this proposal.

F. Removal or Retention of IPFQR Program Measures

1. Background

In the FY 2018 IPPS/LTCH PPS final rule (82 FR 38463 through 38465) and FY 2019 IPF PPS final rule (83 FR 38591 through 38593), we adopted several considerations for removing or retaining measures within the IPFQR Program.

Specifically, we have adopted eight factors that we consider when evaluating whether to propose a measure for removal from the IPFQR Program. These factors are: (1) measure performance among IPFs is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (''topped out'' measures); (2) measure does not align with current clinical guidelines or practice; (3) measure can be replaced by a more broadly applicable measure (across setting or populations) or a measure that is more proximal in time to desired patient outcomes for the particular topic; (4) measure performance or improvement does not result in better patient outcomes; (5) measure can be replaced by a measure more strongly associated with desired patient outcomes for the particular topic; (6) measure collection or public reporting leads to negative intended consequences other than patient harm; (7) measure is not feasible to implement as specified; and (8) the costs associated with a measure outweigh the benefit of its continued use in the program. For measure removal factor one, we specified that a measure is ''topped out'' if it meets the following criteria: (1) statistically indistinguishable performance at the 75th and 90th percentiles; and (2) the truncated coefficient of variation is less than or equal to 0.10.

We also adopted three factors for consideration in determining whether to retain a measure in the IPFQR Program, even if the measure meets one or more factors for removal. These retention factors are: (1) measure aligns with other CMS and HHS policy goals, such as those delineated in the National Quality Strategy and CMS Quality Strategy; (2) measure aligns with other CMS programs, including other quality reporting programs; and (3) measure supports efforts to move IPFs towards reporting electronic measures. In the FY 2018 IPPS/LTCH PPS final rule (82 FR 38464), we stated that these removal and retention factors are considerations that we take into account in balancing the benefits and drawbacks of removing or retaining measures on a case-by-case basis.

Since adoption, we have not proposed any changes to these policies for removal or retention and refer readers to the FY 2018 IPPS/LTCH PPS final rule (82 FR 38463 through 38465) and the FY 2019 IPF PPS final rule (83 FR 38591 through 38593) for more information. We do not propose any updates to these measure retention and removal policies. We propose to codify these previously adopted policies at § 412.433(e).

We welcome comments on this proposal.

2. Proposed Measures for Removal

We continue to evaluate our measure set against these removal and retention factors on an ongoing basis. In this continual evaluation of the IPFQR Program measure set under our Meaningful Measures Framework and according to our measure removal and retention factors, we identified two measures that we believe are appropriate to propose removing from the IPFQR Program beginning with the FY 2025 payment determination. Our discussion of these measures follows.

a. Proposed Removal of the Patients Discharged on Multiple Antipsychotic Medications With Appropriate Justification (HBIPS–5) (Previously Endorsed Under CBE #0560) Measure Beginning With FY 2025 Payment Determination

As we assessed our existing measure set to ensure that it remains appropriate for the IPFQR Program, we determined that measure removal factor two (that is, measure does not align with current clinical guidelines or practice) applies to the Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification (HBIPS–5) (CBE #560) measure due to the American Psychiatric Association's (APA's) updated guidelines for patients with schizophrenia.

We adopted the HBIPS–5 measure in the FY 2013 IPPS/LTCH PPS final rule as part of a set with the Patients Discharged on Multiple Antipsychotic Medications (HBIPS–4) (previously endorsed under CBE #0552) measure because of the belief that these two measures would help reduce unnecessary use of multiple antipsychotics, which would lead to better clinical outcomes and reduced side effects for patients (77 FR 53649 through 53650). We subsequently removed the HBIPS–4 measure in the FY 2016 IPF PPS final rule (80 FR 46695 through 46696). As we described in that final rule, following our adoption of these measures, some experts, including the CBE, provided input that the HBIPS–4 measure did not provide meaningful information about the quality of care received by IPF patients. This led to the removal of the HBIPS–4 measure's CBE endorsement in January 2014. During the CBE's review of the HBIPS–4 measure in 2014, the CBE observed that the HBIPS–4 and HBIPS–5 measures could be collected and reported separately and expressed that the HBIPS–5 measure should be retained in the IPFQR Program as it continued to provide meaningful quality of care information (80 FR 046695 through 46696).

Evidence supporting development and adoption of the HBIPS–5 measure included the APA Workgroup on Schizophrenia's 2004 Practice Guideline for the Treatment of Patients with Schizophrenia. These guidelines stated that the ''combinations of antipsychotics . . . should be justified by strong documentation that the patient is not equally benefited by monotherapy.'' [225] In December 2019, the APA Board of Trustees approved updated guidelines for treatment of patients with schizophrenia.[226] The updated guidelines are based on evolving clinical knowledge and have increased focus and specificity of recommendations for the use of pharmacotherapy; they also underscore the importance of patient preference and shared-decision making.[227] These guidelines no longer contain the recommendation that combinations of antipsychotics should be justified by strong documentation that patients are not equally benefited by monotherapy. Therefore, the guidelines that originally supported the HBIPS–5 measure have changed substantially, and the HBIPS–

[225] *https://www.researchgate.net/publication/298561608_Practice_guideline_for_the_treatment_of_patients_with_schizophrenia_second_edition.*

[226] *https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp.2020.177901.*

[227] The American Psychiatric Association. Practice Guideline for the Treatment of Patients with Schizophrenia, Third Edition. Available at: *https://psychiatryonline.org/doi/book/10.1176/appi.books.9780890424841.* Accessed on February 15, 2023.

5 measure is no longer aligned with current clinical guidelines and practice.

Furthermore, the HBIPS–5 measure is no longer supported by the measure steward (that is, The Joint Commission), who withdrew it from the CBE endorsement process in 2019. As a result, the HBIPS–5 measure lost its CBE endorsement in October 2019.[228] Subsequent to this, the CBE-convened MAP's discussion of measure set removal for 2021–2022 included a discussion of this measure. Because the HBIPS–5 measure no longer aligns with clinical guidelines and is no longer CBE endorsed due to lack of support from the measure developer, the MAP recommended that the measure should be removed from the IPFQR Program.[229]

We agree with the MAP's assessment that the measure no longer aligns with clinical guidelines and therefore propose to remove the measure from the IPFQR Program beginning with FY 2025 payment determination. We note that data for the FY 2024 payment determination represents care provided in CY 2022 and will be reported to CMS prior to the publication of the FY 2024 IPF PPS final rule; therefore, the FY 2025 payment determination is the first period for which we can remove this measure.

We invite comments on our proposal.

b. Proposed Removal of the Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention (TOB–2/2a) for FY 2025 and Subsequent Years

We adopted the Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention (TOB–2/2a) measure in the FY 2015 IPF PPS final rule (79 FR 45971 through 45972) because of our belief that it is important to address the common comorbidity of tobacco use among IPF patients. The TOB–2/2a measure requires IPFs to chart-abstract measure data on a sample of IPF patient records, in accordance with established sampling policies (80 FR 46717 through 46719). When we introduced the TOB–2/2a measure to the IPFQR Program, the benefits of this measure were high because IPF performance was not consistent with respect to, and there were no other measures addressing, provision of tobacco use cessation counseling or treatment. At the time, the TOB–2/2a measure provided a means of distinguishing IPF performance regarding, and incentivized facilities to improve rates of, treatment for this common comorbidity. To further address tobacco use, we subsequently adopted the Tobacco Use Treatment Provided or Offered at Discharge and Tobacco Use Treatment at Discharge (TOB–3/3a) measure in the FY 2016 IPF PPS final rule (80 FR 46696 through 46699).

In the FY 2022 IPF PPS proposed rule, we proposed to remove the Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention (TOB–2/2a) measure from the IPFQR Program beginning with the FY 2024 payment determination under our measure removal factor 8, the costs associated with a measure outweigh the benefit of its continued use in the program (86 FR 19508 through 19509). We expressed our belief that the quality improvement benefits from the TOB–2/2a measure had greatly diminished because performance had leveled off, that is overall performance on the measure was no longer improving. We took this to mean that most IPFs routinely offer tobacco use brief interventions.

In the FY 2022 IPF PPS proposed rule, we also expressed our belief that the costs of maintaining this measure are high because costs are multi-faceted and include not only the IPFs' burden associated with reporting, but also our costs associated with implementing and maintaining the measure (86 FR 19508 through 19509). Additionally, we must expend resources in maintaining information collection systems, analyzing reported data, and providing public reporting of the collected information. We expressed that, for this measure, IPF information collection burden and related costs associated with reporting this measure to CMS were high because the measure is a chart-abstracted measure. Furthermore, we observed CMS incurs costs associated with the program oversight of the measure for public display.

However, in the FY 2022 IPF PPS final rule, we did not finalize our proposal to remove the Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention (TOB–2/2a) measure (86 FR 42648 through 42651). We stated that, following review of the public comments we received, we believed the benefits of continuing to encourage facilities to offer tobacco use brief interventions were greater than we had estimated. We noted that these benefits included the potential for IPFs to continue improving performance on the TOB–2/2a measure, the importance of tobacco use interventions due to increased tobacco use during the COVID–19 pandemic, and this measure's potential influence on other quality improvement activities related to tobacco use.

In our continual evaluation of the IPFQR Program measure set under our Meaningful Measures Framework and according to our measure removal and retention factors, we observed that having two measures addressing tobacco use, which are both associated with relatively high information collection burden, may not appropriately balance costs and benefits within the program. While we believe that both the TOB–2/2a measure and the TOB–3/3a measure address clinically important interventions to address smoking in this population, we believe that the overall cost associated with retaining both of these measures outweighs the benefit of having two measures to address treatment for the same comorbidity among the same patient population.

Both measures capture information about tobacco cessation counseling and FDA-approved tobacco cessation medications. The difference between the measures is that the TOB–2/2a measure captures whether the tobacco cessation counseling and FDA-approved tobacco cessation medications were offered or refused during the inpatient stay, while the TOB–3/3a measure captures whether a referral to outpatient tobacco cessation counseling and FDA-approved tobacco cessation medications were offered or refused at the time of the patient's discharge.

As we considered each of these measures, we determined that it would be more appropriate to retain the TOB–3/3a measure in the IPFQR Program, that is, to propose to remove the TOB–2/2a measure instead of the TOB–3/3a measure, because there is more opportunity for improvement on the TOB–3/3a measure. Specifically, the performance on the TOB–3/3a measure is lower than performance on the TOB–2/2a measure. National performance on TOB–2 and 2a measure and TOB–3 and 3a measure for the last five payment determination years in the IPFQR Program is presented in Table 19. Given the relatively high performance on the TOB–2/2a measure compared to the TOB–3/3a measure, we believe that retaining the TOB–3/3a measure, and

[228] CMS Measures Inventory Tool. Patients Discharged on multiple antipsychotic medications with appropriate justification. Available at: *https://cmit.cms.gov/cmit/#/MeasureView?variantId=1141&sectionNumber=1.*

[229] MAP 2021–2022 Considerations for Implementing Measures in Federal Programs. Available at: *https://mmshub.cms.gov/sites/default/files/map_2021-2022_considerations_for_implementing_measures_in_federal_programs_final_report.pdf.*

removing the TOB–2/2a measure, would provide more opportunity to drive improvement among IPFs; therefore, would potentially impact more patients.

TABLE 19—NATIONAL PERFORMANCE ON TOB–2 AND TOB–2A AND TOB–3 AND TOB–3A FROM CY 2017 THROUGH CY 2022

Payment determination year	TOB–2 performance (%)	TOB–2a performance (%)	TOB–3 performance (%)	TOB–3a performance (%)
FY 2019	79.7	44.9	54.1	15.0
FY 2020	81.0	46.2	57.5	17.8
FY 2021	82.0	46.8	59.9	21.6
FY 2022	80.4	44.9	60.7	21.7
FY 2023	72.2	39.0	57.4	18.3

As described earlier in this section V.F.2.b of this proposed rule, because the TOB–2/2a measure has a high cost (especially due to its high information collection burden), we believe that these high costs are no longer greater than the benefits of retaining this measure. Therefore, we believe measure removal factor 8 (that is, the costs associated with a measure outweigh the benefit of its continued use in the IPFQR Program), applies to the TOB–2/2a measure.

Furthermore, the TOB–2/2a measure is no longer supported by the measure steward (that is, the Joint Commission), who withdrew it from the CBE endorsement process in 2018. Therefore, the TOB–2/2a measure has not been CBE endorsed since October 2018.[230] Subsequent to this, the CBE-convened MAP's discussion of measure set removal for 2021and 2022 included a discussion of this measure. Because the TOB–2/2a measure is a high-cost measure and is no longer CBE endorsed, the MAP recommended that we remove the measure from the IPFQR Program.[231]

We agree with the MAP that this is a high-cost measure. Furthermore, we recognize that it is similar to the other tobacco use measure in the IPFQR Program measure set (that is, the TOB–3/3a measure) which we do not propose to remove. Therefore, we propose to remove Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention (TOB–2/2a) measure under our measure removal factor 8, ''the costs associated with a measure outweigh the benefit of its continued use in the program,'' beginning with FY 2025 payment determination. We note that data for the FY 2024 payment determination represents care provided in CY 2022 and will be reported to CMS prior to the publication of the FY 2024 IPF PPS final rule; therefore, the FY 2025 payment determination is the first period for which we can remove this measure.

We welcome public comment on this proposal.

G. Summary of IPFQR Program Measures

1. IPFQR Program Measures for the FY 2024 Payment Determination

We do not propose any changes to our measure set for the FY 2024 payment determination. The 14 measures which will be in the program for FY 2024 payment determination are shown in Table 20.

TABLE 20—IPFQR PROGRAM MEASURE SET FOR THE FY 2024 PAYMENT DETERMINATION

CBE No.	Measure ID	Measure
0640	HBIPS–2	Hours of Physical Restraint Use.
0641	HBIPS–3	Hours of Seclusion Use.
0560*	HBIPS–5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification.
N/A	FAPH	Follow-Up After Psychiatric Hospitalization.
N/A*	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
N/A*	SUB–3 and SUB–3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB–3a Alcohol and Other Drug Use Disorder Treatment at Discharge.
N/A*	TOB–2 and TOB–2a	Tobacco Use Treatment Provided or Offered and TOB–2a Tobacco Use Treatment.
N/A*	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and TOB–3a Tobacco Use Treatment at Discharge.
1659	IMM–2	Influenza Immunization.
N/A*	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
N/A	N/A	Screening for Metabolic Disorders.
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility.
3205	Med Cont.	Medication Continuation Following Inpatient Psychiatric Discharge.

[230] CMS Measures Inventory Tool. Tobacco Use Treatment Provided or Offered. Available at: *https://cmit.cms.gov/cmit/#/MeasureView?variantId=1818&sectionNumber=1.*

[231] MAP 2021–2022 Considerations for Implementing Measures in Federal Programs. Available at: *https://mmshub.cms.gov/sites/default/files/map_2021-2022_considerations_for_implementing_measures_in_federal_programs_final_report.pdf.*

TABLE 20—IPFQR PROGRAM MEASURE SET FOR THE FY 2024 PAYMENT DETERMINATION—Continued

CBE No.	Measure ID	Measure
3636	N/A	COVID–19 Healthcare Personnel (HCP) Vaccination Measure.

* Measure is no longer endorsed by the CBE but was endorsed at the time of adoption. We note that although section 1886(s)(4)(D)(i) of the Act generally requires measures specified by the Secretary be endorsed by the entity with a contract under section be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

2. IPFQR Program Measures for the FY 2025 Payment Determination

In this proposed rule, we propose to remove two measures for the FY 2025 payment determination and subsequent years. We also propose to modify one measure for the FY 2025 payment determination and subsequent years. The 12 measures, which would be in the program for FY 2025 payment determination if we finalize these proposals, are shown Table 21.

TABLE 21—IPFQR PROGRAM MEASURE SET FOR THE FY 2025 PAYMENT DETERMINATION IF PROPOSALS TO MODIFY AND REMOVE MEASURES ARE FINALIZED

CBE No.	Measure ID	Measure
0640	HBIPS–2	Hours of Physical Restraint Use.
0641	HBIPS–3	Hours of Seclusion Use.
N/A	FAPH	Follow-Up After Psychiatric Hospitalization.
1659	IMM–2	Influenza Immunization.
N/A *	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
N/A *	SUB–3 and SUB–3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB–3a Alcohol and Other Drug Use Disorder Treatment at Discharge.
N/A *	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and TOB–3a Tobacco Use Treatment at Discharge.
N/A *	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
N/A	N/A	Screening for Metabolic Disorders.
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility.
3205	Med Cont.	Medication Continuation Following Inpatient Psychiatric Discharge.
N/A	N/A	Modified COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP)[1].

* Measure is no longer endorsed by the CBE but was endorsed at the time of adoption. We note that although section 1886(s)(4)(D)(i) of the Act generally requires measures specified by the Secretary be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

[1] We have proposed updates to the COVID–19 HCP measure in section V.E. of this proposed rule.

3. IPFQR Program Measures for the FY 2026 Payment Determination

If we finalize our proposals for the FY 2026 payment determination and subsequent years, the measure set would include 13 required and two voluntary measures. This includes the 12 required measures discussed in section V.G.2 of this proposed rule for the FY 2025 payment determination and subsequent years, as well as the one required measure and two voluntary measures we proposed for the FY 2026 payment determination and subsequent years. The measures which would be in the program for FY 2026 payment determination if we finalize these four proposals are shown Table 22.

TABLE 22—IPFQR PROGRAM MEASURE SET FOR THE FY 2026 PAYMENT DETERMINATION IF PROPOSALS TO ADOPT NEW REQUIRED AND VOLUNTARY MEASURES ARE FINALIZED

CBE No.	Measure ID	Measure
	Required Measures	
0640	HBIPS–2	Hours of Physical Restraint Use.
0641	HBIPS–3	Hours of Seclusion Use.
N/A	FAPH	Follow-Up After Psychiatric Hospitalization.
1659	IMM–2	Influenza Immunization.
N/A *	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
N/A *	SUB–3 and SUB–3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB–3a Alcohol and Other Drug Use Disorder Treatment at Discharge.

TABLE 22—IPFQR PROGRAM MEASURE SET FOR THE FY 2026 PAYMENT DETERMINATION IF PROPOSALS TO ADOPT NEW REQUIRED AND VOLUNTARY MEASURES ARE FINALIZED—Continued

CBE No.	Measure ID	Measure
N/A*	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and TOB–3a Tobacco Use Treatment at Discharge.
N/A*	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
N/A	N/A	Screening for Metabolic Disorders.
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility.
3205	Med Cont.	Medication Continuation Following Inpatient Psychiatric Discharge.
N/A	N/A	Modified COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP).[1]
N/A	Facility Commitment.	Facility Commitment to Health Equity.[2]
	Voluntary Measures	
N/A	Screening for SDOH	Screening for Social Drivers of Health.[3]
N/A	Screen Positive	Screen Positive Rate for Social Drivers of Health.[4]

*Measure is no longer endorsed by the CBE but was endorsed at time of adoption. We note that although section 1886(s)(4)(D)(i) of the Act generally requires measures specified by the Secretary be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

[1] We have proposed updates to the COVID–HCP measure in section V.E. of this proposed rule.

[2] We have proposed adoption of the Facility Commitment measure in section V.D.2. of this proposed rule.

[3] We have proposed voluntary reporting of the Screening for SDOH measure in section V.D.3. of this proposed rule.

[4] We have proposed voluntary reporting of the Screen Positive Rate for SDOH measure in section V.D.4 of this proposed rule.

4. IPFQR Program Measures for the FY 2027 IPFQR Program's Payment Determination

If we finalize our proposals for the FY 2027 payment determination and subsequent years, the measure set would include 15 required measures and one voluntary measure. This includes the 13 required measures discussed in section V.G.3 of this proposed rule for the FY 2026 payment determination and subsequent years, as well as the two measures which we proposed to require for the FY 2027 payment determination and subsequent years. It also includes the one new voluntary measure proposed in section V.D.5. of this proposed rule. The measures which would be in the program for the FY 2027 payment determination and subsequent years if we finalize these proposals are shown Table 23.

TABLE 23—IPFQR PROGRAM MEASURE SET FOR THE FY 2027 PAYMENT DETERMINATION IF PROPOSALS TO ADOPT NEW REQUIRED AND VOLUNTARY MEASURES ARE FINALIZED

CBE No.	Measure ID	Measure
	Required Measures	
0640	HBIPS–2	Hours of Physical Restraint Use.
0641	HBIPS–3	Hours of Seclusion Use.
N/A	FAPH	Follow-Up After Psychiatric Hospitalization.
1659	IMM–2	Influenza Immunization.
N/A*	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
N/A*	SUB–3 and SUB–3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB–3a Alcohol and Other Drug Use Disorder Treatment at Discharge.
N/A*	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and TOB–3a Tobacco Use Treatment at Discharge.
N/A*	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
N/A	N/A	Screening for Metabolic Disorders.
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility.
3205	Med Cont	Medication Continuation Following Inpatient Psychiatric Discharge.
N/A	N/A	Modified COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP).[1]
N/A	Facility Commitment	Facility Commitment to Health Equity.[2]
N/A	Screening for SDOH	Screening for Social Drivers of Health.[3]
N/A	Screen Positive	Screen Positive Rate for Social Drivers of Health.[4]

TABLE 23—IPFQR PROGRAM MEASURE SET FOR THE FY 2027 PAYMENT DETERMINATION IF PROPOSALS TO ADOPT NEW REQUIRED AND VOLUNTARY MEASURES ARE FINALIZED—Continued

CBE No.	Measure ID	Measure
	Voluntary Measure	
N/A	PIX	Psychiatric Inpatient Experience Survey.[5]

* Measure is no longer endorsed by the CBE but was endorsed at time of adoption. Although section 1886(s)(4)(D)(i) of the Act generally requires that any measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

[1] We have proposed updates to the COVID–HCP measure in Section V.E. of this proposed rule.

[2] We have proposed adoption of the Facility Commitment measure in section V.D.2. of this proposed rule.

[3] We have proposed adoption of the Screening for SDOH measure in section V.D.3. of this proposed rule.

[4] We have proposed adoption of the Screen Positive measure in section V.D.4. of this proposed rule.

[5] We have proposed voluntary reporting of the Psychiatric Inpatient Experience measure in section V.D.5. of this proposed rule.

5. IPFQR Program Measures for the FY 2028 Payment Determination

If we finalize our proposals for the FY 2028 payment determination and subsequent years, the measure set would include 16 required measures. This includes the 15 required measures discussed in section V.G.4 and V.G.5 of this proposed rule for the FY 2027 payment determination as well as the measure which we proposed to require beginning with the FY 2028 payment determination. The measures which would be in the program beginning with the FY 2028 payment determination if we finalize these proposals are shown Table 24.

TABLE 24—IPFQR PROGRAM MEASURE SET FOR THE FY 2029 PAYMENT DETERMINATION IF PROPOSALS TO ADOPT NEW REQUIRED AND VOLUNTARY MEASURES ARE FINALIZED

CBE No.	Measure ID	Measure
0640	HBIPS–2	Hours of Physical Restraint Use.
0641	HBIPS–3	Hours of Seclusion Use.
N/A	FAPH	Follow-Up After Psychiatric Hospitalization.
1659	IMM–2	Influenza Immunization.
N/A*	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
N/A*	SUB–3 and SUB–3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB–3a Alcohol and Other Drug Use Disorder Treatment at Discharge.
N/A*	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and TOB–3a Tobacco Use Treatment at Discharge.
N/A*	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
N/A	N/A	Screening for Metabolic Disorders.
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility.
3205	Med Cont	Medication Continuation Following Inpatient Psychiatric Discharge.
N/A	N/A	Modified COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP).[1]
N/A	Facility Commitment	Facility Commitment to Health Equity.[2]
N/A	Screening for SDOH	Screening for Social Drivers of Health.[3]
N/A	Screen Positive	Screen Positive Rate for Social Drivers of Health.[4]
N/A	PIX	Psychiatric Inpatient Experience Survey.[5]

* Measure is no longer endorsed by the CBE but was endorsed at time of adoption. Although section 1886(s)(4)(D)(i) of the Act generally requires that any measures specified by the Secretary shall be endorsed by the entity with a contract under section 1890(a) of the Act, section 1886(s)(4)(D)(ii) states that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

[1] We have proposed updates to the COVID–HCP measure in Section V.E. of this proposed rule.

[2] We have proposed adoption of the Facility Commitment measure in section V.D.2. of this proposed rule.

[3] We have proposed adoption of the Screening for SDOH measure in section V.D.3. of this proposed rule.

[4] We have proposed adoption of the Screen Positive measure in section V.D.4. of this proposed rule.

[5] We have proposed required reporting of the Psychiatric Inpatient Experience measure in section V.D.5. of this proposed rule.

H. Public Display and Review Requirements

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53653 through 53654), we adopted procedures for making data submitted under the IPFQR Program available to the public, after an IPF has the opportunity to review such data prior to public display, as required by section 1886(s)(4)(E) of the Act. We adopted modifications to these procedural requirements in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50897 through 50898), and the FY 2017 IPPS/LTCH PPS final rule (81 FR 57248 through 57249).

Specifically, the IPFQR Program adopted a policy to provide IPFs a 30-day period to review their data, and submit corrections to errors resulting

from CMS calculations, prior to public display on a CMS website. The IPFQR Program notifies IPFs of the exact timeframes for this preview period and public display through subregulatory guidance. We do not propose any changes to these requirements.

We propose to codify the procedural requirements for public reporting of IPFQR Program data at § 412.433(g). If finalized, paragraph (g) would provide that IPFs will have a period of 30 days to review data on quality measures that CMS received under the IPFQR Program, and submit corrections to errors resulting from CMS calculations, prior to CMS publishing this data on a CMS website.

We welcome comments on our proposals to codify these policies.

I. Form, Manner, and Timing of Quality Data Submission for the FY 2024 Payment Determination and Subsequent Years

Procedural Requirements for the FY 2024 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53654 through 53655), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50898 through 50899), the FY 2018 IPPS/LTCH PPS final rule (82 FR 38471 through 38472), and the FY 2022 IPF PPS final rule (86 FR 42656 through 42657) for our previously finalized procedural requirements for participation in, and withdrawal from, the IPFQR Program, as well as data submission requirements. We do not propose any changes to our previously finalized procedural requirements.

We propose to codify these procedural requirements for participation in the IPFQR Program at § 412.433(b) through (d). If finalized, paragraphs (b) through (d) would set forth the procedural requirements for an IPF to register for, or withdraw from, participation in the IPFQR Program and to submit the required data on measures in a form and manner and time specified by CMS.

We welcome comments on our proposal to codify these policies.

2. Data Submission Requirements for the FY 2025 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53655 through 53657), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50899 through 50900), the FY 2018 IPPS/LTCH PPS final rule (82 FR 38472 through 38473), and the FY 2022 IPF PPS final rule (86 FR 42657 through 42661) for our previously finalized data submission requirements.

The measure we propose to modify beginning with the FY 2025 payment determination—the COVID–19 Vaccination Coverage Among HCP measure—requires facilities to report data on the number of HCP who have received a complete vaccination course of a COVID–19 vaccine through the Centers for Disease Control and Prevention's (CDC's) National Healthcare Safety Network (NHSN). We propose to update this measure to no longer refer to ''complete vaccination course'' but instead to refer to ''up-to-date'' vaccination, as described in section V.E. of this proposed rule.

We do not propose any updates to the form, manner, and timing of data submission for the COVID–19 Vaccination Coverage Among HCP measure and refer readers to the FY 2022 IPF PPS final rule (86 FR 42657) for these policies.

3. Data Submission Requirements for the FY 2026 Payment Determination and Subsequent Years

In sections V.D 3 and V.D.4 of this proposed rule, we propose to adopt measures for voluntary reporting for the FY 2026 IPFQR Program and required reporting for the FY 2027 IPFQR Program's payment determination and subsequent years. These measures are the Screening for Social Drivers of Health measure and Screen Positive Rate for Social Drivers of Health measure. We propose that our previously finalized data submission requirements, specifically, our previously finalized data submission requirements for aggregate data reporting described in the FY 2018 IPPS/LTCH PPS final rule (82 FR 38472 through 38473) would apply to these measures.

We invite public comment on this proposal.

4. Data Submission Requirements for the FY 2027 Payment Determination and Subsequent Years

In section V.D.5. of this proposed rule, we are proposing to adopt one patient-reported measure, Psychiatric Inpatient Experience (PIX) measure for voluntary reporting beginning in the FY 2027 program year and required reporting beginning with the FY 2028 payment determination. Because, unlike other patient experience of care measures, this measure is collected by facilities prior to discharge, we are proposing that facilities would report these data using the patient-level data reporting described in the FY 2022 IPF PPS final rule (86 FR 42658 through 42661).

5. Proposed Data Validation Pilot Beginning With Data Submitted in 2025

As discussed in the FY 2019 IPF PPS final rule (83 FR 28607) and in the FY 2022 IPF PPS final rule (86 FR 42661), we are concerned that the ability to detect error is lower for aggregate measure data reporting than for patient-level data reporting (that is, data regarding each patient included in a measure and, for example, whether the patient was included in the numerator and denominator of the measure). In the FY 2022 IPF PPS final rule, we noted that adoption of patient-level data requirements would enable us to adopt a data validation policy for the IPFQR Program in the future (86 FR 42661). We believe that it would be appropriate to develop such a policy incrementally through adoption of a data validation pilot prior to national implementation of data validation within the IPFQR Program. We sought public input on a potential data validation pilot, and many commenters supported the concept of data validation following implementation of patient-level reporting (86 FR 42661). In the FY 2022 IPF PPS final rule, we adopted required patient-level reporting beginning with data submitted in CY 2023 affecting the FY 2024 payment determination and reflecting care provided during CY 2022 (86 FR 42658 through 42661).

We now propose a data validation pilot beginning with data submitted in CY 2024 (reflecting care provided during CY 2023). When we sought public comment on a data validation pilot in the FY 2022 IPF PPS proposed rule (86 FR 19515), we requested input on potential elements of such a pilot, including the number of measures and the number of participating IPFs. As summarized in the FY 2022 IPF PPS final rule (86 FR 42661), one commenter recommended selecting two measures and 200 IPFs for this pilot. We considered that recommendation; however, to align with validation policies in our other quality reporting programs, we decided to request a specific number of charts. Specifically, we are proposing to request eight charts per quarter from each IPF as opposed to requesting all of the charts that each facility used to calculate one or more specific measures. We also decided to initiate our pilot with fewer IPFs than the commenter recommended to limit the burden associated with this pilot.

We also reviewed the validation policies of other quality reporting programs. We specifically reviewed the Hospital IQR Program's chart-abstracted

measure validation policies described in the FY 2017 IPPS/LTCH PPS final rule (81 FR 57179 through 57180), the Hospital IQR Program's pilot for eCQM validation described in the FY 2015 IPPS/LTCH PPS final rule (79 FR 50262 through 50273), the Hospital Outpatient Quality Reporting (OQR) Program's planned pilot of data validation as described in the CY 2009 OPPS/ASC final rule (73 FR 68502), and the Hospital OQR Program's finalized validation policies as described in the CY 2012 OPPS/ASC final rule (76 FR 74485) and the CY 2018 OPPS/ASC final rule (82 FR 59441 through 5944) because these programs are also pay-for-reporting programs, like the IPFQR Program.

Following our review of the validation policies within these programs, we propose a validation pilot in which we would randomly select on an annual basis up to 100 IPFs and request each selected IPF to provide to CMS eight charts per quarter, a total of 32 charts per year, used to calculate all chart-based measures beginning with data submitted in CY 2025. We believe that randomly selecting up to 100 IPFs would provide a sufficiently large set of IPFs to meaningfully test our validation procedures while minimizing burden for IPFs. We would specify the timeline and mechanism for submitting data in our data requests to individual IPFs that have been selected to participate in the validation pilot. We note that consistent with the Hospital IQR Program, we would reimburse IPFs for the cost of submitting charts for validation at a rate of $3.00 per chart (85 FR 58949).

Because this is a voluntary pilot, we recognize that some selected IPFs would not participate; however, we believe that this pilot would be beneficial for IPFs that do participate as an opportunity to receive education and feedback on the data they submit prior to future proposal and adoption of a validation requirement in the IPFQR Program.

We invite comment on our proposal.

6. Quality Measure Sampling Requirements

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53657 through 53658), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50901 through 50902), the FY 2016 IPF PPS final rule (80 FR 46717 through 46719), and the FY 2019 IPF PPS final rule (83 FR 38607 through 38608) for discussions of our previously finalized sampling policies.

Because the Facility Commitment to Health Equity measure proposed in section V.D.2 of this proposed rule is a structural attestation measure, these policies would not apply to that measure. Additionally, because the Screening for Social Drivers of Health measure (described in section V.D.3 of this proposed rule) would apply to all patients and the Screen Positive Rate for Social Drivers of Health measure (described in section V.D.4 of this proposed rule) would apply to all patients who had been screened for health-related social needs (HRSNs), our previously finalized sampling policies would not apply to these two measures. As described in the FY 2022 IPF PPS final rule, our sampling policies do not apply to the COVID–19 Vaccination Coverage Among Healthcare Personnel measure because the denominator is all healthcare personnel (86 FR 42661).

Generally, we have applied our sampling procedures to chart-abstracted measures, where appropriate (that is, where the measure does not require application to the entire patient population). However, because the PIX survey measure is a patient reported measure, we have considered whether our sampling procedures for chart-abstracted measures are appropriate for this measure. After consideration of our current sampling procedures and sampling for patient reported measures in other quality reporting programs (specifically, the requirements for reporting the HCAHPS measure), we are proposing that the PIX survey measure (described in section V.D.5 of this proposed rule) would be eligible for sampling but would not be included in the global sample. Instead, we are proposing that sampling for this measure would align with sampling for the HCAHPS survey measure in acute care hospitals and the Hospital IQR Program as described in the HCAHPS Quality Assurance Guidelines.[232] Specifically, we are proposing to require IPFs to develop sampling plans that ensure that IPFs are able to submit data for 300 completed PIX surveys per year. IPFs would be required to sample from every month throughout the entire reporting period and not stop sampling or curtail ongoing interview activities once a certain number of completed surveys has been attained. IPFs that are unable to reach 300 completed surveys through sampling would be required to submit data on survey results for all eligible patient discharges.

We invite public comment on our proposal.

[232] HCHAPS Quality Assurance Guidelines, Version 17.0. March 2022. Available at: *https://hcahpsonline.org/globalassets/hcahps/quality-assurance/2022_qag_v17.0.pdf.*

7. Non-Measure Data Collection

We refer readers to the FY 2015 IPF PPS final rule (79 FR 45973), the FY 2016 IPF PPS final rule (80 FR 46717), and the FY 2019 IPF PPS final rule (83 FR 38608) for our previously finalized non-measure data collection policies. We do not propose any changes to these policies.

8. Accuracy and Completeness Acknowledgement (DACA) Requirements

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658) for our previously finalized DACA requirements. We do not propose any changes to these policies.

J. Reconsideration and Appeals Procedures

We refer readers to 42 CFR 412.434 for the IPFQR Program's reconsideration and appeals procedures. We do not propose any changes to these policies.

K. Extraordinary Circumstances Exceptions (ECE) Policy

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53659 through 53660), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50903), the FY 2015 IPF PPS final rule (79 FR 45978), and the FY 2018 IPPS/LTCH PPS final rule (82 FR 38473 through 38474) for our previously finalized Extraordinary Circumstances Exceptions policies. We do not propose any changes to these policies.

We propose to codify the ECE policies at § 412.433(f). If finalized, paragraph (f) would provide that we may grant an exception to one or more data submission deadlines and requirements in the event of extraordinary circumstances beyond the control of the IPF either in response to a request by the IPF or at our discretion if we determine an extraordinary circumstance occurred.

We welcome comments on our proposal to codify these policies.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be

approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 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 (see section VI.C of this proposed rule) on each of these issues for the following sections of this document that contain information collection requirements. Comments, if received, will be responded to within the subsequent final rule.

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' (BLS') May 202/1 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 25 presents BLS' mean hourly wage for Medical Records and Health Information Technicians (the occupation title that we have estimated is appropriate for completing data collection and reporting under the IPFQR Program), our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 25—WAGE ASSUMPTIONS FOR THE IPFQR PROGRAM

Occupation title	Occupation code	Median hourly wage ($/hr.)	Fringe benefits and other indirect costs ($/hr.)	Adjusted hourly wage ($/hr.)
Medical Records and Health Information Technician	29–2071	22.43	22.43	44.86

As indicated, we are adjusting our hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate the total cost is a reasonably accurate estimation method.

In the FY 2022 IPF PPS final rule (86 FR 42662), which was the most recent rule in which we adopted updates to the IPFQR Program, we estimated that reporting measures for the IPFQR Program could be accomplished by a Medical Records and Health Information Technician (BLS Occupation Code: 29–2071) with a median hourly wage of $20.50/hour (BLS, May 2019). While we are not changing the respondent's occupation title or occupation code, we are proposing to adjust our cost estimates using BLS' May 2021 median wage rate figure of $22.43/hour, an increase of $1.93/hour ($22.43/hour − $20.50/hour). When factoring in our overhead and other indirect cost adjustments, the wage is increased by $3.86/hour ($44.86/hour − $41.00/hour).

We have also estimated the average hourly cost for beneficiaries undertaking administrative and other tasks on their own time. Based on recommendations from the Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses [233] guidance we have estimated a post-tax wage of $20.71/hr. The Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices identifies the approach for valuing time when individuals undertake activities on their own time. To derive the costs for beneficiaries, a measurement of the usual weekly earnings of wage and salary workers of $998, divided by 40 hours to calculate an hourly pre-tax wage rate of $24.95/hours. This rate is adjusted downwards by an estimate of the effective tax rate for median income households of about 17 percent, resulting in the post-tax hourly wage rate of $20.71/hour. Unlike our State and private sector wage adjustments, we are not adjusting beneficiary wages for fringe benefits and other indirect costs since the individuals' activities, if any, would occur outside the scope of their employment.

B. Proposed Information Collection Requirements (ICRs) Regarding the IPFQR Program

The following proposed requirement and burden changes will be submitted to OMB for review under control number 0938–1171 (CMS–10432). We are not proposing changes that will affect any of data collection instruments that are currently approved under that control number. In section VI.B.1 of this proposed rule, we restate our currently approved burden estimates. In section VI.B.2 of this proposed rule, we estimate the changes in burden associated with the policies proposed in this rule and updated estimates for wage rates, facility counts, and case counts. Then in section VI.B.3 of this proposed rule, we provide an overview of the total estimated burden.

1. Currently Approved Burden

For a detailed discussion of the burden for the IPFQR Program requirements that we have previously adopted, we refer readers to the following rules:

- The FY 2013 IPPS/LTCH PPS final rule (77 FR 53673);
- The FY 2014 IPPS/LTCH PPS final rule (78 FR 50964);
- The FY 2015 IPF PPS final rule (79 FR 45978 through 45980);
- The FY 2016 IPF PPS final rule (80 FR 46720 through 46721);
- The FY 2017 IPPS/LTCH PPS final rule (81 FR 57265 through 57266);
- The FY 2018 IPPS/LTCH PPS final rule (82 FR 38507 through 38508);
- The FY 2019 IPF PPS final rule (83 FR 38609 through 38612);
- The FY 2020 IPF PPS final rule (84 FR 38468 through 38476); and
- The FY 2022 IPF PPS final rule (86 FR 42661 through 42672).

Table 26 provides an overview of our currently approved burden estimates.

[233] *https://aspe.hhs.gov/sites/default/files/private/pdf/257746/VOT.pdf.*

TABLE 26—CURRENTLY APPROVED BURDEN OMB CONTROL NUMBER 0938–1171
[CMS–10432]

Measure/response description	Number respondents (facilities)	Estimated responses per facility	Total annual responses	Time per response (hours)	Annual time per facility (hours)	Total annual time (hours)	Total annual cost ($)
Hours of Physical Restraint Use	1,634	1,346	2,199,364	0.25	336.50	549,841	22,543,481
Hours of Seclusion Use	1,634	1,346	2,199,364	0.25	336.50	549,841	22,543,481
Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Alcohol Use Brief Intervention Provided or Offered (SUB–2 and SUB–2a)	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and Alcohol and Other Drug Use Disorder Treatment at Discharge (SUB–3 and SUB–3a)	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment (TOB–2 and TOB–2a)	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Tobacco Use Treatment Provided or Offered at Discharge and Tobacco Use Treatment at Discharge (TOB–3 and TOB–3a)	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Influenza Immunization	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Screening for Metabolic Disorders	1,634	*609	995,106	0.25	152.25	248,776.5	10,199,836.50
Thirty-day all-cause unplanned readmission following psychiatric hospitalization in an IPF	0	**0	0	0	0	0	0
Medication Continuation Following Inpatient Psychiatric Discharge	0	**0	0	0	0	0	0
COVID–19 Vaccination Rate Among Healthcare Personnel	0	***0	0	0	0	0	0
Follow-Up After Psychiatric Hospitalization	0	**0	0	0	0	0	0
Subtotal	1,634	7,564	12,359,576	N/A	1,891	3,089,894	126,685,654
Non-Measure Data Collection and Reporting	1,634	4	6,536	0.5	2.0	3,268	133,988
Total	1,634	7,568	12,366,112	Varies	1,893	3,093,162	126,819,642

*Under our previously finalized ''global sample'' (80 FR 46717 through 46718) we allow facilities to apply the same sampling methodology to all measures eligible for sampling. In the FY 2016 IPF PPS final rule (80 FR 46718), we finalized that facilities with between 609 and 3,056 cases that choose to participate in the global sample would be required to report data for 609 cases. Because facilities are only required to submit data on a number specified by the global sampling methodology, rather than abstracting data for all patients or applying measure specific sampling methodologies, we believe that the number of cases under the global sample is a good approximation of facility burden associated with these measures. Therefore, for the average IPF discharge rate of 1,346 discharges the global sample requires abstraction of 609 records.

**CMS will collect these data using Medicare Part A and Part B claims; therefore, these measures will not require facilities to submit data on any cases.

***The COVID–19 HCP measure will be calculated using data submitted to the CDC under a separate OMB control number (0920–1317).

2. Adjustments Due to Changes in This Proposed Rule

In this proposed rule, we propose provisions that impact policies beginning with the FY 2025 through FY 2028 payment determinations. For the purposes of calculating burden, we attribute the costs to the year in which the costs begin. For example, data submission for the measures that affect the FY 2025 payment determination occurs during CY 2024 and generally reflects are provided during CY 2023. The following discussion describes the burden changes for proposals attributed to the year in which the costs begin. For the proposals in this proposed rule, those years are CY 2023 through CY 2027.

Additionally, in the FY 2022 IPF PPS final rule (86 FR 42661 through 42672), which is the most recent rule that updated the IPFQR Program policies, we estimated that there were 1,634 participating IPFs and that (for measures that require reporting on the entire patient population) these IPFs will report on an average of 1,346 cases per IPF. In this FY 2024 IPF PPS proposed rule, we are proposing to adjust our IPF count and case estimates by using the most recent data available. Specifically, we estimate that there are now approximately 1,596 facilities (a decrease of 38 facilities) and an average of 1,261 cases per facility (a decrease of 85 cases per facility). We will update our estimates, as applicable, using these revised estimates in the following subsections.

a. Proposals Affecting Data Reporting Beginning in CY 2023

In section V.E of this proposed rule, we propose to modify the COVID–19 Vaccination Coverage Among Healthcare Personnel measure beginning with data reflecting the fourth quarter of CY 2023 affecting the FY 2025 payment determination. We do not believe that the proposed modification (that is, a change in terminology to refer to ''up-to-date'' instead of ''complete vaccination course'') would impact our currently approved IPF information collection requirements or reporting burden. Furthermore, the modified COVID–19 Vaccination Coverage Among HCP measure would be calculated using data submitted to the CDC for healthcare safety surveillance under the CDC's OMB control number 0920–1317. In this regard, the CDC owns the requirements and burden that fall under that control number.

b. Proposals Affecting Burden Beginning With CY 2024

(1) Proposed Updates Affecting Facility Reporting Burden

In section V.F.2 of this proposed rule, we propose to remove two measures beginning with the FY 2025 payment determination. Data for these measures would be submitted in CY 2024, so we are estimating the reduced burden to occur in CY 2024. These two measures are:

- Patients Discharged on Multiple Antipsychotic Medications with

Appropriate Justification (HBIPS–5); and

- Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment (TOB–2 and TOB–2a).

Using our currently approved burden estimates, the change in total burden associated with these proposed measure removals would be minus 1,990,212 responses, minus 497,553 hours, and minus $20,339,673 as depicted in Table 27.

TABLE 27—UPDATES TO BURDEN ASSOCIATED WITH PROPOSED MEASURE REMOVALS

Measure/response description	Number respondents (facilities) (a)	Estimated responses per facility (b)	Total annual responses (c) = (a) × (b)	Time per response (hours) (d)	Annual time per facility (hours) (e) = (b) × (d)	Total annual time (hours) (f) = (a) × (e)	Total annual cost ($) (g) = (f) × $41.00/hr
Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification	1,634	(* 609)	(995,106)	0.25	(152.25)	(248,776.5)	(10,199,836.50)
Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment (TOB–2 and TOB–2a)	1,634	(* 609)	(995,106)	0.25	(152.25)	(248,776.5)	(10,199,836.50)
Total	1,634	(1,218)	(1,990,212)	0.25	(304.5)	(497,553)	(20,339,673)

* Under our previously finalized ''global sample'' (80 FR 46717 through 46718) we allow facilities to apply the same sampling methodology to all measures eligible for sampling. In the FY 2016 IPF PPS final rule (80 FR 46718), we finalized that facilities with between 609 and 3,056 cases that choose to participate in the global sample would be required to report data for 609 cases. Because facilities are only required to submit data on a number specified by the global sampling methodology, rather than abstracting data for all patients or applying measure specific sampling methodologies, we believe that the number of cases under the global sample is a good approximation of facility burden associated with these measures. Therefore, for the average IPF discharge rate of 1,346 discharges the global sample requires abstraction of 609 records.

Additionally, we are applying our updated wage rate, case count, and facility counts to the remaining measure set and program requirements for data submission in CY 2024. See Table 28 and 29 for information on the effects of these updates. Specifically, we estimate that there are now approximately 1,596 facilities (a decrease of 38 facilities) and an average of 1,261 cases per facility (a decrease of 85 cases per facility). We also estimate a wage increase of $3.86/hour as described in section VI.A of this proposed rule. Our previous estimate shows that the two measures which do not allow sampling had 1,346 cases per measure and the six remaining measures which do allow sampling require 609 cases per measure per facility. We have estimated that these measures would take 0.25 hours per case. The effects of the updated wage rate are depicted in Table 28.

TABLE 28—EFFECTS OF UPDATED WAGE RATE

Data collection type	Number of measures	Number of estimated cases per measure per facility	Total number of cases per facility	Effort per case (hours)	Total effort per facility (hours)	Change in cost per facility ($(effort * 3.86/hour wage change)
No-sampling measures	2	1,346	2,692	0.25	673	2,597.78
Sampling measures	6	609	3,654	0.25	913.5	3,526.11
Non-Measure Data	1	4	4	0.5	2	7.72
Total Change per Facility						6,131.61

The remaining calculations will use the updated wage rate to calculate the effects of other updates.

We have previously estimated 1,346 cases for measures which do not allow sampling. Based on more recent data, we are updating our estimate for measures that do not allow sampling to 1,261 cases per IPF (a change of +85 cases for each of these 2 measures). This is equivalent to 138,890 cases across the 1,634 IPFs (85 cases * 1,634 IPFs) in our previous estimate for each measure. We are not changing our estimated case counts for measures that allow sampling. We continue to assume an average of 0.25 hours of effort per case. Therefore, this change in cases reflects a total annual effort of 42.5 hours per facility (2 measures * 85 cases per measure * 0.25 hours per case) at a cost of $1,906.55 (42.5 hours * $44.86/hour).

As indicated above we estimate a reduction of 38 facilities based on updated numbers. Table 29 shows the effects of this reduction in facilities on the reporting burden associated with each measure type.

TABLE 29—EFFECTS OF UPDATED FACILITY COUNTS

Measure type	Number of measures	Number of estimated cases (per measure per facility)	Cases per facility	Effort per case	Effort per facility	Change in annual effort for removing 38 facilities (hours)	Change in annual effort for removing 38 facilities (dollars)
No Sampling	2	1,261	2,522	0.25	630.5	(23,959)	(1,074,800.74)
Sampling	6	609	3,654	0.25	913.5	(34,713)	(1,557,225.18)

TABLE 29—EFFECTS OF UPDATED FACILITY COUNTS—Continued

Measure type	Number of measures	Number of estimated cases (per measure per facility)	Cases per facility	Effort per case	Effort per facility	Change in annual effort for removing 38 facilities (hours)	Change in annual effort for removing 38 facilities (dollars)
Non-Measure Data Collection	1	4	4	0.5	2	(76)	(3,409.36)
Total	9	Varies	6,180	Varies	1,546	(58,748)	(2,635,435.28)

We note that at 6,180 cases per facility, removing 38 facilities from our estimate removes a total of 234,840 cases (6,180 cases per facility * 38 facilities).

The total effects of changes for the CY 2024 calendar year on our burden estimates are summarized in Table 30.

TABLE 30—TOTAL CY 2024 FACILITY INFORMATION COLLECTION BURDEN CHANGES

	Total responses	Total annual time (hours)	Total annual cost ($)
Remove Two Measures	(1,990,212)	(497,553)	(20,339,673)
Update Wage Estimate	N/A	N/A	8,253,147.06
Update Case Estimate	(277,280)	(69,445)	(3,115,302.70)
Update Facility Estimate	(234,840)	(58,748)	(2,635,435.28)
Total	(2,502,332)	(625,746)	(17,837,263.92)

(b) Proposed Updates Affecting Patient Survey Burden

In section V.D.3 of this proposed rule, we propose to adopt the Screening for Social Drivers of Health measure beginning with a voluntary data submission in CY 2025 (reflecting care provided in CY 2024). In this regard, IPFs would be able to collect data and report the measure via multiple methods. For additional information on these methods, we refer readers to section V.D.3.c of this proposed rule. We believe that most IPFs would likely collect data during the patient intake process. Because this measure reflects care provided in CY 2024, the burden for administering the screening to patients would occur during CY 2024.

The Hospital IQR Program, which adopted the Screening for Social Drivers of Health measure, estimated the information collection burden associated with patients responding to the selected screening instrument would require two minutes per patient to complete the screening in the FY 2022 IPPS/LTCH PPS final rule (87 FR 49385 through 49386) under OMB Control Number 0938–1022 (CMS–10210). The Hospital IQR Program also estimated that during the voluntary reporting period roughly 50 percent of hospitals would survey 50 percent of patients (87 FR 49385 through 49386).

We agree with these estimates and believe that a similar proportion of IPFs will participate in the voluntary reporting period. As described in section VI.A of this proposed rule, we estimate the cost of patients' time for completing surveys to be $20.71/hour. Using these estimates, we believe that during the voluntary reporting period the annual burden of surveying IPF patients would be 16,603.59 hours [(1,596 facilities × 50 percent of facilities) × (1,261 patients per facility × 50 percent of patients) × 0.033 hours/response] at a cost of $343,860.29 (16,603.59 hours × 20.71/hour). These estimates are summarized in Table 31.

TABLE 31—TOTAL CY 2024 PATIENT SURVEY BURDEN CHANGES

	Total responses	Total annual time (hours)	Total annual cost ($)
Screening for SDOH	503,139	16,603.59	343,860.29

(c) Proposals Affecting Burden Beginning with CY 2025

(1) Proposed Updates Affecting Facility Reporting Burden

In section V.D.2. of this proposed rule, we propose to adopt the Facility Commitment to Health Equity measure beginning with the FY 2026 payment determination. Data for this attestation measure would be submitted during CY 2025. Consistent with our burden estimate from the Hospital IQR Program, when we adopted the similar Hospital Commitment to Health Equity measure in the FY 2023 IPPS/LTCH PPS final rule, we estimate an average of 10 minutes per facility for a medical records and health information technician to collect and report this information (87 FR 49385). We recognize that some IPFs may take more than 10 minutes to collect this information, especially in the first year of reporting; however, we believe that many IPFs would require less than 10 minutes. In addition, we believe that many IPFs will be able to submit similar responses in future years. Using the estimate of 10 minutes per IPF per year at $44.86/hour for a medical records and health information technician, we estimate that this policy would result in a total annual burden increase of 267 hours across all participating IPFs (0.167 hours × 1,596 IPFs) at a cost of $11,956.63 (267 hours × $44.86/hour).

In sections V.D.3 and V.D.4 of this proposed rule, we propose to adopt the Screening for Social Drivers of Health measure and the associated Screen Positive Rate for Social Drivers of Health measure beginning with a voluntary data submission in CY 2025 (reflecting care provided in CY 2024). We described our anticipated burden for administering the screening in the previous section because this burden would accrue during CY 2024. The burden associated with reporting each of these measures to CMS would occur during CY 2025. We anticipate that the burden for reporting the two measures would be consistent with the burden for other web-based submissions, such as the Facility Commitment to Health Equity measure described previously in this section and for similar measures adopted in the Ambulatory Surgical Center Quality Reporting (ASCQR) Program (OMB control number 0938–1270; CMS–10530), which we have estimated to have a reporting burden of 0.167 hours per IPF. We note that for the voluntary reporting year we have estimated only 50 percent of IPFs would report these data. Therefore, we estimate the burden associated with reporting of each of these measures to be 133 hours (0.167 hr. × 798 IPFs) at a cost of $5,966 (133 hr. × $44.86/hr. for a medical records and health information technician) for the voluntary reporting period. These estimates are summarized in Table 32.

A summary of our estimated changes in information collection burden for CY 2025 is shown in Table 32.

TABLE 32—TOTAL CY 2025 FACILITY INFORMATION COLLECTION BURDEN CHANGES

Measure/response description	Number respondents (facilities)	Estimated responses per facility	Total annual responses	Time per response (hours)	Annual time per facility (hours)	Total annual time (hours)	Total annual cost ($)
Facility Commitment to Health Equity	1,596	1	1,596	0.167	0.167	267	11,956.63
Screening for Social Drivers of	798	1	798	0.167	0.167	133	5,966.38
Health							
Screen Positive Rate for Social Drivers of Health	798	1	798	0.167	0.167	133	5,966.38
Totals	1,596	3	3,192	0.167	0.167	533	23,889.39

(2) Proposed Updates Affecting Patient Survey Burden

Beginning with CY 2025, IPFs would need to screen 100 percent of their patients to prepare for required reporting of the Screening for SDOH measure in CY 2026 (for the FY 2027 payment determination). Therefore, we estimate that 100 percent of IPFs would screen 100 percent of their patients. We recognize that this may be an overestimate as some IPFs may choose not to participate and some patients may opt out of screening or be unable to provide responses; however, we believe that the numbers of IPFs and patients opting out will be relatively small and therefore 100 percent will be a reasonable approximation.

Using the facility counts, patient counts, and average hourly earnings described previously, we estimate the burden of surveying IPF patients for health-related social needs (HRSNs) under the Screening for Social Drivers of Health and Screen Positive Rate for Social Drivers of Health measures will be 66,414 hours (1,596 facilities × 1,261 patients per facility × 0.033 hours) at a cost of $1,375,433.94 (66,414 hours × $20.71/hour). We note that 16,603.59 hours and $343,960.29 of this burden was previously accounted for in our analysis of the burden of the voluntary reporting period. Therefore, the incremental burden of switching to required reporting is 49,810.41 hours and $1,031,473.65.

Additionally, in section V.D.5 of this proposed rule, we are proposing to adopt the Psychiatric Inpatient Experience (PIX) survey measure beginning with voluntary data submission in CY 2026. To prepare for data submission in 2026, IPFs would begin administering this survey in CY 2025. We believe 50 percent of IPFs would begin collecting these data for the voluntary data submission period. We note that we have proposed to allow IPFs with more than 300 eligible discharges to sample, which would require these facilities to survey 300 patients. Because the questions on the PIX survey are similar in content and response options to the questions on the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey, we believe that it would take patients a similar amount of time to respond to these questions. In the Information Collection Request associated with OMB control number 0938–0981 (CMS–10102), we have estimated this time to be 7.25 minutes.

Therefore, we believe that the burden associated with conducting the PIX survey in CY 2025 would be 28,967.4 hours (50 percent of 1,596 facilities × 300 patients/facility × 0.121 hours) at a cost of $599,914.85 (28,967.4hours × $20.71/hour).

Our estimates for the CY 2025 total patient survey burden changes are summarized in Table 33.

TABLE 33—TOTAL CY 2025 PATIENT SURVEY BURDEN CHANGES

	Total responses	Total annual time (hours)	Total annual cost ($)
Screening for SDOH	1,509,417	49,810.41	1,031,473.65
PIX	239,400	28,967.4	599,914.85
Totals	1,748,817	78,777.81	1,631,388.5

(d) Proposals Affecting Burden Beginning With CY 2026

(1) Proposed Updates Affecting Facility Reporting Burden

Beginning with CY 2026 data submission (affecting the FY 2027 payment determination), we estimate that 100 percent of IPFs would submit data on the Screening for Social Drivers of Health measure and Screen Positive Rate for Social Drivers of Health measure. Because we have already accounted for 50 percent of facilities submitting voluntary data on these measures, the incremental burden is the burden associated with the remaining 50 percent of facilities submitting data; that is, we estimate this burden to be 266 hours at a cost of $11,932.76. We also believe that 50 percent of facilities will submit data on the PIX measure for the voluntary reporting period in CY 2025. Because the data for this measure would require calculating an average of scores across a sample of patient surveys, we anticipate that the information collection and reporting burden for this measure would be approximately 15 minutes (0.25 hours) per patient for whom they are reporting data. The burden associated with reporting the Screening for Social Drivers of Health measure, the Screen Positive Rate for Social Drivers of Health measure, and the PIX survey measure to CMS is described in Table 34.

TABLE 34—TOTAL CY 2026 FACILITY INFORMATION COLLECTION BURDEN CHANGES

Measure/response description	Number respondents (facilities)	Estimated responses per facility	Total annual responses	Time per response (hours)	Annual time per facility (hours)	Total annual time (hours)	Total annual cost ($)
Screening for Social Drivers of Health	798	1	798	0.167	0.167	133	5,966.38
Screen Positive Rate for Social 'Drivers of Health	798	1	798	0.167	0.167	133	5,966.38
PIX Survey	798	300	239,400	0.25	75	59,850	2,684,871.00
Totals	798	302	240,996	Varies	75.33	60,116	2,696,803.76

(2) Proposed Updates Affecting Patient Survey Burden

Because reporting the PIX measure would be required for FY 2028 payment determination, the remaining 50 percent of facilities (those which did not participate in the voluntary reporting period) would begin surveying patients in CY 2026. To prepare for data submission of the PIX survey measure in CY 2027, IPFs that had not previously begun administering the PIX survey would begin administering this survey in CY 2026. The incremental burden of these 50 percent of facilities administering the survey would be equivalent to the burden associated with the 50 percent of facilities that participated in the voluntary reporting in CY 2025. These estimates are summarized in Table 35.

TABLE 35—TOTAL CY 2026 PATIENT SURVEY BURDEN CHANGES

	Total responses	Total annual time (hours)	Total annual cost ($)
PIX	239,400	28,967.4	599,914.85

(e.) Proposals Affecting Facility Reporting Burden Beginning With CY 2027

For data submission occurring in CY 2027, submission on the PIX survey measure would be required, therefore, we believe that an additional 50 percent of facilities would report the measure (that is, the 50 percent of facilities not previously accounted for under the voluntary reporting period). Therefore, we estimate that the incremental increase in burden for IPFs associated with this requirement would be reporting by the 50 percent of facilities that had not previously reported the PIX survey measure. This burden is depicted in Table 36.

TABLE 36—TOTAL CY 2027 FACILITY INFORMATION COLLECTION BURDEN CHANGES

Measure/response description	Number respondents (facilities)	Estimated responses per facility	Total annual responses	Time per response (hours)	Annual time per facility (hours)	Total annual time (hours)	Total annual cost ($)
PIX Survey	798	300	239,400	0.25	75	59,850	2,684,871.00

3. Overall Burden Summary

Table 37 summarizes the incremental changes in burden for IPFs associated with proposed policies for data collection and submission in CYs 2024 through 2027 as well as updates to our estimated wage rate, facility counts, and case counts.

TABLE 37—PROPOSED INCREMENTAL CHANGES IN FACILITY BURDEN

	Total responses	Total annual time (hours)	Total annual cost ($)
Changes Associated with CY 2024 Updates	(2,502,332)	(625,746)	(17,837,264)

TABLE 37—PROPOSED INCREMENTAL CHANGES IN FACILITY BURDEN—Continued

	Total responses	Total annual time (hours)	Total annual cost ($)
Changes Associated with CY 2025 Updates	3,192	533	23,889
Changes Associated with CY 2026 Updates	240,996	60,116	2,696,804
Changes Associated with CY 2027 Updates	239,400	59,850	2,684,871
Total	(2,018,744)	(505,247)	(12,431,700)

Table 38 summarizes the incremental changes in burden for patients due to data collection associated with proposed policies for data collection and submission in CYs 2024 through CY 2026.

TABLE 38—PROPOSED INCREMENTAL CHANGES IN SURVEY BURDEN FOR PATIENTS

Changes Associated with CY 2024 Updates	503,139	16,604	343,860
Changes Associated with CY 2025 Updates	1,748,817	78,778	1,631,339
Changes Associated with CY 2026 Updates	239,400	28,967	599,915
Totals	2,491,356	124,349	2,575,114

C. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule's information collection requirements to OMB for their review. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit the CMS website at *https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/pra-listing,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this proposed rule and identify the rule (CMS–1783–P), the ICR's CFR citation, and OMB control number.

VII. 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.

VIII. Regulatory Impact Analysis

A. Statement of Need

This rule proposes updates to the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2024 (October 1, 2023 through September 30, 2024). We propose to apply the proposed 2021-based IPF market basket increase of 3.2 percent, less the productivity adjustment of 0.2 percentage point as required by 1886(s)(2)(A)(i) of the Act for a proposed total FY 2024 payment rate update of 3.0 percent. In this proposed rule, we propose to update the outlier fixed dollar loss threshold amount, update the IPF labor-related share, and update the IPF wage index to reflect the FY 2024 hospital inpatient wage index.

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 Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). 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; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) ($100 million or more in any 1 year). We estimate that the total impact of these changes for FY 2024 payments compared to FY 2023 payments will be a net increase of approximately $55 million. This reflects a $85 million increase from the update to the payment rates (+$90 million from the 4th quarter 2022 IGI forecast of the proposed 2021-based IPF market basket of 3.2 percent, and -$5 million for the productivity adjustment of 0.2 percentage point), as well as a $30 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to change from 3.0 percent in FY 2023 to 2.0 percent of total estimated IPF payments in FY 2024.

Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is ''significant.'' '' per section 3(f)(1) as measured by the $100 million threshold

or more in any 1 year. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed these proposed regulations, and we have provided the following assessment of their impact.

C. Detailed Economic Analysis

In this section, we discuss the historical background of the IPF PPS and the impact of this proposed rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and RY 2007 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. This Budget neutrality factor included the following components: Outlier adjustment, stop loss adjustment, and the behavioral offset. As discussed in the RY 2009 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1 of this proposed rule, we propose to update the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this proposed rule would be due to the market basket update for FY 2024 of 3.2 percent (see section III.A.2 of this proposed rule) less the productivity adjustment of 0.2 percentage point required by section 1886(s)(2)(A)(i) of the Act and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2024 impact will be a net increase of $55 million in payments to IPF providers. This reflects an estimated $85 million increase from the update to the payment rates and a $30 million decrease due to the update to the outlier threshold amount to set total estimated outlier payments at 2.0 percent of total estimated payments in FY 2024. This estimate does not include the implementation of the required 2.0 percentage point reduction of the productivity-adjusted market basket update factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section III.B.2. of this proposed rule).

2. Impact on Providers

To show the impact on providers of the changes to the IPF PPS discussed in this proposed rule, we compare estimated payments under the proposed IPF PPS rates and factors for FY 2024 versus those under FY 2023. We determined the percent change in the estimated FY 2024 IPF PPS payments compared to the estimated FY 2023 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the proposed update to the outlier fixed dollar loss threshold amount; the updated wage index data including the proposed labor-related share; and the proposed market basket update for FY 2024, as reduced by the proposed productivity adjustment according to section 1886(s)(2)(A)(i) of the Act.

To illustrate the impacts of the proposed FY 2024 changes in this proposed rule, our analysis begins with FY 2022 IPF PPS claims (based on the 2022 MedPAR claims, December 2022 update). We estimate FY 2024 IPF PPS payments using these 2022 claims, the finalized FY 2023 IPF PPS Federal per diem base rates, and the finalized FY 2023 IPF PPS patient and facility level adjustment factors (as published in the FY 2023 IPF PPS final rule (87 FR 46846). We then estimate the FY 2024 outlier payments based on these simulated FY 2023 IPF PPS payments using the same methodology as the same methodology that we used to set the initial outlier threshold amount in the RY 2007 IPF PPS final rule (71 FR 27072 and 27073), which is also the same methodology that we used to update the outlier threshold amounts for years 2008 through 2022, where total outlier payments are maintained at 2 percent of total estimated FY 2023 IPF PPS payments. We note that in the FY 2023 final rule (87 FR 46862 through 46864) we excluded providers from our simulation of IPF PPS payments for FY 2022 and FY 2023 if their change in estimated average cost per day was outside 3 standard deviations from the mean. As discussed in section III.E.2 of this FY 2024 IPF PPS proposed rule, we are not proposing to apply this methodology for FY 2024.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The proposed update to the outlier fixed dollar loss threshold amount.
- The proposed FY 2024 IPF wage index, and the proposed FY 2024 labor-related share.
- The proposed market basket update for FY 2024 of 3.2 percent less the proposed productivity adjustment of 0.2 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act for a payment rate update of 3.0 percent.

Our proposed column comparison in Table 39 illustrates the percent change in payments from FY 2023 (that is, October 1, 2022, to September 30, 2023) to FY 2024 (that is, October 1, 2023, to September 30, 2024) including all the proposed payment policy changes.

TABLE 39—FY 2024 IPF PPS PROPOSED PAYMENT IMPACTS

Facility by type	Number of facilities	Outlier	Wage index FY24, LRS, and 5% Cap	Total percent change[1]
(1)	(2)	(3)	(4)	(5)
All Facilities	1,481	−1.0	0.0	1.9
Total Urban	1,209	−1.1	0.1	2.0
Urban unit	695	−1.6	0.2	1.6
Urban hospital	514	−0.5	0.0	2.5
Total Rural	272	−0.6	−0.8	1.5
Rural unit	211	−0.6	−0.8	1.6
Rural hospital	61	−0.7	−0.9	1.3

TABLE 39—FY 2024 IPF PPS PROPOSED PAYMENT IMPACTS—Continued

Facility by type	Number of facilities	Outlier	Wage index FY24, LRS, and 5% Cap	Total percent change[1]
(1)	(2)	(3)	(4)	(5)
By Type of Ownership:				
Freestanding IPFs				
Urban Psychiatric Hospitals				
Government	117	−1.8	0.1	1.2
Non-Profit	98	−0.5	0.5	3.0
For-Profit	299	−0.3	−0.2	2.5
Rural Psychiatric Hospitals				
Government	31	−1.3	−0.6	1.1
Non-Profit	13	−2.4	−0.2	0.3
For-Profit	17	0.0	−1.3	1.6
IPF Units				
Urban				
Government	100	−2.9	0.6	0.6
Non-Profit	455	−1.5	0.4	1.9
For-Profit	140	−0.7	−0.6	1.6
Rural				
Government	51	−0.4	−0.7	1.9
Non-Profit	118	−0.7	−0.7	1.6
For-Profit	42	−0.4	−1.1	1.4
By Teaching Status:				
Non-teaching	1,283	−0.8	−0.2	2.0
Less than 10% interns and residents to beds	101	−1.8	0.9	2.1
10% to 30% interns and residents to beds	67	−2.4	0.4	1.0
More than 30% interns and residents to beds	30	−2.1	0.5	1.4
By Region:				
New England	105	−1.4	−0.7	0.9
Mid-Atlantic	204	−1.7	1.1	2.4
South Atlantic	228	−0.6	0.1	2.5
East North Central	243	−0.6	−0.3	2.1
East South Central	149	−0.7	−0.8	1.4
West North Central	105	−1.9	−0.3	0.7
West South Central	215	−0.6	−0.1	2.3
Mountain	106	−0.6	−0.9	1.4
Pacific	126	−1.3	0.4	2.1
By Bed Size:				
Psychiatric Hospitals				
Beds: 0–24	92	−0.8	−0.4	1.7
Beds: 25–49	84	−0.2	−0.8	2.1
Beds: 50–75	86	−0.1	−0.2	2.7
Beds: 76+	313	−0.6	0.1	2.5
Psychiatric Units				
Beds: 0–24	487	−1.1	−0.3	1.6
Beds: 25–49	241	−1.2	0.3	2.1
Beds: 50–75	106	−1.8	0.0	1.1
Beds: 76+	72	−2.2	0.7	1.5

[1] This column includes the impact of the updates in columns (3) through (4) above, and of the proposed IPF market basket update factor for FY 2024 (3.2 percent), reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act.

3. Impact Results

Table 39 displays the results of our analysis. The table groups IPFs into the categories listed here based on characteristics provided in the Provider of Services file, the IPF PSF, and cost report data from the Healthcare Cost Report Information System:

- Facility Type.
- Location.
- Teaching Status Adjustment.
- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,481 IPFs included in the analysis. In column 2, we present the number of facilities of each type that had information available in the PSF, had claims in the MedPAR dataset for FY 2022.

In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 3.0 percent in FY 2023. Therefore, we propose to adjust the outlier threshold amount to set total estimated outlier payments equal to 2.0 percent of total payments in FY 2024. The estimated change in total IPF payments for FY 2024, therefore, includes an approximate 1.0 percent decrease in payments because we would expect the outlier portion of total payments to decrease from approximately 3.0 percent to 2.0 percent.

The overall impact of the estimated decrease to payments due to updating the outlier fixed dollar loss threshold (as shown in column 3 of Table 3), across all hospital groups, is a 1.0 percent decrease. The largest decrease in payments due to this change is estimated to be 2.9 percent for urban government unit IPFs.

In column 4, we present the effects of the proposed budget-neutral update to the IPF wage index, the proposed Labor-Related Share (LRS), and the 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year. This represents the effect of using the concurrent hospital wage data as discussed in section III.D.1.a of this proposed rule. That is, the impact represented in this column reflects the proposed update from the FY 2023 IPF wage index to the proposed FY 2024 IPF wage index, which includes basing the FY 2024 IPF wage index on the FY 2024 pre-floor, pre-reclassified IPPS hospital wage index data, applying a 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, and updating the LRS from 77.4 percent in FY 2023 to 78.5 percent in FY 2024. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4; however, there would be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 1.1 percent for Mid-Atlantic IPFs, and the largest decrease in payments to be 1.3 percent for freestanding rural for-profit IPFs.

Column 5 incorporates the proposed market basket update of 3.2 percent reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act. This includes the proposal to rebase the IPF PPS market basket to reflect a 2021 base year.

Overall, IPFs are estimated to experience a net increase in payments as a result of the updates in this proposed rule. IPF payments are estimated to increase by 2.0 percent in urban areas and 1.5 percent in rural areas. The largest payment increases are estimated at 3.0 percent for freestanding urban non-profit IPFs.

4. Effect on Beneficiaries

Under the FY 2024 IPF PPS, IPFs will continue to receive payment based on the average resources consumed by patients for each day. Our longstanding payment methodology reflects the differences in patient resource use and costs among IPFs, as required under section 124 of the BBRA. We expect that updating IPF PPS rates in this proposed rule will improve or maintain beneficiary access to high quality care by ensuring that payment rates reflect the best available data on the resources involved in inpatient psychiatric care and the costs of these resources. We continue to expect that paying prospectively for IPF services under the FY 2024 IPF PPS will enhance the efficiency of the Medicare program.

As discussed in sections V.D.3 and V.D.4 of this proposed rule, we expect that additional proposed IPFQR Program measures will support improving care for patients with health-related social needs. We also believe that our proposed data validation pilot is an important step towards ensuring that the data beneficiaries and their caregivers access on Care Compare (or a successor CMS website) are accurate and reliable. Based on the input from patients and their caregivers regarding the importance of having a patient experience care measure for the IPF setting in which they note many benefits (including, but not limited to helping patients select facilities in which to receive care, providing patients an opportunity to be heard, and increasing alignment between general acute and acute psychiatric settings). We believe that our proposed PIX survey measure will have positive effects on patients and their caregivers. Therefore, we expect that the proposed updates to the IPFQR Program will improve quality for beneficiaries.

5. Effects of the Updates to the IPFQR Program

In section V.D.3 of this proposed rule, we propose to adopt the Screening for Social Drivers of Health measure for the IPFQR Program beginning with voluntary reporting of CY 2024 data, and with required reporting of CY 2025 data for the FY 2027 payment determination. For IPFs that are not currently administering some screening mechanism and elect to begin doing so as a result of this policy, there will be some non-recurring costs associated with changes in workflow and information systems to collect the data. The extent of these costs is difficult to quantify as different facilities may utilize different modes of data collection (for example, paper-based, electronically patient-directed and clinician-facilitated). In addition, depending on the method of data collection utilized, the time required to complete the survey may add a negligible amount of time to patient visits.

In section V.D.5 of this proposed rule, we are proposing to adopt the Psychiatric Inpatient Experience (PIX) survey measure. There may be some non-recurring costs associated with changes in workflow and information systems to administer this survey and collect the data. The extent of these costs is difficult to quantify as different facilities currently have different practices for surveying patients to gather information on their experiences of care.

In addition, for the IPFQR Program, we propose to adopt the Facility Commitment to Health Equity measure and the Screen Positive for Social Drivers of Health measure, as well as to update the COVID–19 Vaccination Coverage Among HCP measure. These updates would not impact providers workflows or information systems to collect or report the data, and because they represent processes of care or structural data that the IPFs would already have in place, we do not believe they would incur costs for providers beyond the recurring information collection costs (described in section VI.A of this proposed rule).

Finally, we propose to remove two chart-abstracted measures from the IPFQR Program. We believe that the impact of removing the Tobacco Use Brief Intervention Provided or Offered and Tobacco Use Brief Intervention Provided (TOB–2/2a) measure would be minimal as we do not believe that IPFs would update their workflow to no longer provide brief tobacco cessation interventions to patients who use tobacco. However, we believe that there may be some simplification of workflows and clinical documentation associated with the removal of the Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification (HBIPS–5) measure because IPFs would no longer have to ensure the presence of appropriate documentation for the use of multiple antipsychotics. For more information on the updated clinical guidelines regarding polypharmacy for patients with schizophrenia, we refer

readers to section V.F.2.a of this proposed rule.

As discussed in section III.B.2 of this proposed rule and in accordance with section 1886(s)(4)(A)(i) of the Act, we will apply a 2-percentage point reduction to the FY 2024 market basket update for IPFs that have failed to comply with the IPFQR Program requirements for FY 2024, including reporting on the required measures. In section III.B.2 of this proposed rule, we discuss how the 2-percentage point reduction will be applied. For the FY 2023 payment determination, of the 1,596 IPFs eligible for the IPFQR Program, 6 IPFs did not receive the full market basket update because of the IPFQR Program; 2 of these IPFs chose not to participate and 4 did not meet the requirements of the program. Thus, we estimate that the IPFQR Program will have a negligible impact on overall IPF payments for FY 2024.

Based on the IPFQR Program proposals in this proposed rule, we estimate a total decrease in burden of 505,247 hours across all IPFs, resulting in a total decrease in information collection cost of $12,431,700 across all IPFs. Further information on these estimates can be found in section VI.A of this proposed rule.

We intend to closely monitor the effects of the IPFQR Program on IPFs and help facilitate successful reporting outcomes through ongoing stakeholder education, national trainings, and a technical help desk.

6. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will be directly impacted and will review this proposed rule, we assume that the total number of unique commenters on the most recent IPF proposed rule will be the number of reviewers of this proposed rule. For this FY 2024 IPF PPS proposed rule, the most recent IPF proposed rule was the FY 2023 IPF PPS proposed rule, and we received 396 unique comments on this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2023 IPF proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons, we thought that the number of commenters would be a fair estimate of the number of reviewers who are directly impacted by this proposed rule. We are soliciting comments on this assumption.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule; therefore, for the purposes of our estimate, we assume that each reviewer reads approximately 50 percent of this proposed rule. Using the May, 2021 mean (average) wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this proposed rule is $115.22 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes119111.htm*. Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 138 minutes (2.30 hours) for the staff to review half of this proposed rule (34,500), which contains a total of approximately 69,000 words. For each IPF that reviews the proposed rule, the estimated cost is (2.30 × $115.22) or $265.01. Therefore, we estimate that the total cost of reviewing this proposed rule is $104,943.96 ($265.01 × 396 reviewers).

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. We continue to believe it is appropriate to routinely update the IPF PPS so that it reflects the best available data about differences in patient resource use and costs among IPFs as required by the statute. Therefore, we propose to: Update the IPF PPS using the methodology published in the November 2004 IPF PPS final rule; apply the proposed 2021-based IPF PPS market basket update for FY 2024 of 3.2 percent, reduced by the statutorily required proposed productivity adjustment of 0.2 percentage point along with the proposed wage index budget neutrality adjustment to update the payment rates; and use a FY 2024 IPF wage index which uses the FY 2024 pre-floor, pre-reclassified IPPS hospital wage index as its basis.

Lastly, we considered and are soliciting comments on alternative methodologies that could be appropriate for establishing the FY 2024 outlier fixed dollar loss threshold.

E. Accounting Statement

As required by OMB Circular A–4 (*www.whitehous.gov/sites/whitehouse.gov/files/omb/circulars/A4/A-4/pdf*), in Table 40, we have prepared an accounting statement showing the classification of the expenditures associated with the updates to the IPF wage index and payment rates in this proposed rule. Table 40 provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this proposed rule and is based on 1,481 IPFs with data available in the PSF and with claims in our FY 2022 MedPAR claims dataset. Lastly, Table 40 also includes our best estimate of the costs of reviewing and understanding this proposed rule.

TABLE 40—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND TRANSFERS

Category	Primary estimate ($million/year)	Units	
		Year dollars	Period covered
Regulatory Review Costs	.11	FY 2021	FY 2024.
Annualized Monetized Transfers from Federal Government to IPF Medicare Providers.	55	FY 2024	FY 2024.

F. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $8 million to $41.5 million or less in any 1 year.

Individuals and states are not included in the definition of a small entity.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities.

The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 39, we estimate that the overall revenue impact of this proposed rule on all IPFs is to increase estimated Medicare payments by approximately 1.9 percent. As a result, since the estimated impact of this proposed rule is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this proposed rule will have a positive revenue impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in section VIII.C.2 of this proposed rule, the rates and policies set forth in this proposed rule will not have an adverse impact on the rural hospitals based on the data of the 211 rural excluded psychiatric units and 61 rural psychiatric hospitals in our database of 1,481 IPFs for which data were available. Therefore, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandate Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. This proposed rule does not mandate any requirements for State, local, or Tribal governments, or for the private sector. This proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $177 million in any 1 year.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule does not impose substantial direct costs on State or local governments or preempt State law.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on March 30, 2023.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 412 as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 412.25 is amended by revising paragraph (c)(2) to read as follows:

§ 412.25 Excluded hospital units: Common requirements.

* * * * *

(c) * * *

(2) The status of an IPF unit may be changed from not excluded to excluded or excluded to not excluded at any time during a cost reporting period, but only if the hospital notifies the fiscal intermediary and the CMS Regional Office in writing of the change at least 30 days before the date of the change, and maintains the information needed to accurately determine costs that are or are not attributable to the IPF unit. A change in the status of an IPF unit from not excluded to excluded or excluded to not excluded that is made during a cost reporting period must remain in effect for the rest of that cost reporting period.

* * * * *

■ 3. Section 412.433 is added to read as follows:

§ 412.433 Procedural requirements under the IPFQR Program.

(a) *Statutory authority.* Section 1886(s)(4) of the Act requires the Secretary to implement a quality reporting program for inpatient psychiatric hospitals and psychiatric units. Under section 1886(s)(4) of the act, for an IPF paid under the IPF PPS that fails to submit data required for the quality measures selected by the Secretary in a form and manner and at a time specified by the Secretary, we reduce the otherwise applicable annual update to the standard Federal rate by 2.0 percentage points with respect to the applicable fiscal year.

(b) *Participation in the IPFQR Program.* To participate in the IPFQR Program, an IPF (as defined under § 412.402) that is paid under the IPF PPS must:

(1) Register on the QualityNet website before beginning to report data;

(2) Identify and register a QualityNet security official as part of the registration process under paragraph (b)(1) of this section; and

(3) Submit a notice of participation (NOP).

(c) *Withdrawal from the IPFQR Program.* An IPF may withdraw from the IPFQR Program by changing the NOP status in the secure portion of the QualityNet website. The IPF may withdraw at any time up to and including August 15 before the beginning of each respective payment determination year. A withdrawn IPF is subject to a reduced annual payment update as specified under paragraph (a) of this section and is required to renew participation as specified in paragraph (b) of this section in order to participate in any future year of the IPFQR Program.

(d) *Submission of IPFQR Program data.* General rule. Except as provided in paragraph (f) of this section, IPFs that participate in the IPFQR Program must submit to CMS data on measures selected under section 1886(s)(4)(D) of the Act and specified non-measure data in a form and manner, and at a time specified by CMS.

(e) *Quality measure updates, retention, and removal.* (1) CMS uses rulemaking to make substantive updates to the specifications of measures used in the IPFQR Program

(2) General rule for the retention of Quality Measures. Quality measures adopted for the IPFQR Program measure set for a previous payment determination year are retained for use in subsequent payment determination years, except when they are removed, suspended, or modified as set forth in paragraph (3) of this section.

(3) Measure removal, suspension, or modification through the rulemaking process. CMS will use the regular rulemaking process to remove, suspend, or modify quality measures in the IPFQR Program to allow for public comment.

(i) *Factors for consideration in removal or replacement of quality measures.* CMS will weigh whether to remove or modify measures based on the following factors:

(A) *Factor 1:* Measure performance among IPFs is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made;

(B) *Factor 2:* Measure does not align with current clinical guidelines or practice;

(C) *Factor 3:* Measure can be replaced by a more broadly applicable measure (across settings or populations) or a measure that is more proximal in time to desired patient outcomes for the particular topic;

(D) *Factor 4:* Measure performance or improvement does not result in better patient outcomes;

(E) *Factor 5:* Measure can be replaced by a measure that is more strongly associated with desired patient outcomes for the particular topic;

(F) *Factor 6:* Measure collection or public reporting leads to negative unintended consequences other than patient harm;

(G) *Factor 7:* Measure is not feasible to implement as specified; and

(H) *Factor 8:* The costs associated with a measure outweigh the benefit of its continued use in the program.

(ii) *Retention.* CMS may retain a quality measure that meets one or more of the measure removal factors described in paragraph (i) of this subsection if the continued collection of data on the quality measure would align with other CMS and HHS policy goals, align with other CMS programs, or support efforts to move IPFs toward reporting electronic measures.

(f) *Extraordinary circumstances exception.* CMS may grant an exception to one or more data submissions deadlines and requirements in the event of extraordinary circumstances beyond the control of the IPF, such as when an act of nature affects an entire region or locale or a systemic problem with one of CMS's data collection systems directly or indirectly affects data submission. CMS may grant an exception as follows:

(1) Upon request by the IPF.

(2) At the discretion of CMS. CMS may grant exceptions to IPFs that have not requested them when CMS determines that an extraordinary circumstance has occurred.

(g) *Public reporting of IPFQR Program data.* Data that an IPF submits to CMS for the IPFQR Program will be made publicly available on a CMS website after providing the IPF an opportunity to review the data to be made public. IPFs will have a period of 30 days to review and submit corrections to errors resulting from CMS calculations prior to the data being made public.

Dated: March 31, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–07122 Filed 4–4–23; 4:15 pm]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 413, 488, et al.

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 413, 488, and 489

[CMS–1779–P]

RIN 0938–AV02

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would update payment rates, including implementing the second phase of the Patient Driven Payment Model (PDPM) parity adjustment recalibration. This proposed rule also proposes updates to the diagnosis code mappings used under PDPM, the SNF Quality Reporting Program (QRP), and the SNF Value-Based Purchasing (VBP) Program. We are also proposing to eliminate the requirement for facilities to actively waive their right to a hearing in writing, instead treating the failure to submit a timely request for a hearing as a constructive waiver.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by June 5, 2023.

ADDRESSES: In commenting, please refer to file code CMS–1779–P.

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–1779–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1779–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

PDPM@cms.hhs.gov for issues related to the SNF PPS.

Heidi Magladry, (410) 786–6034, for information related to the skilled nursing facility quality reporting program.

Alexandre Laberge, (410) 786–8625, for information related to the skilled nursing facility value-based purchasing program.

Lorelei Kahn, (443) 803–8643, for information related to the Civil Money Penalties Waiver of Hearing.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the internet on the CMS website. The wage index tables for this proposed rule can be accessed on the SNF PPS Wage Index home page, at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Readers who experience any problems accessing any of these online SNF PPS wage index tables should contact Kia Burwell at (410) 786–7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

I. Executive Summary

A. Purpose

This proposed rule would update the SNF prospective payment rates for fiscal year (FY) 2024, as required under section 1888(e)(4)(E) of the Social Security Act (the Act). It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication of certain specified information relating to the payment update (see section II.C. of this proposed rule) in the **Federal Register** before the August 1 that precedes the start of each FY. In addition, this proposed rule includes proposals for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) for the FY 2025, FY 2026, and FY 2027 program years. This proposed rule would add three new measures to the SNF QRP, remove three measures from the SNF QRP, and modify one measure in the SNF QRP. This proposed rule would also make policy changes to the SNF QRP, and begin public reporting of four measures. In addition, this proposed rule includes an update on our health equity efforts and requests information on principles we would use to select and prioritize SNF QRP quality measures in future years. Finally, this proposed rule includes proposals for the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP), including adopting new quality measures for the SNF VBP Program, proposing several updates to the Program's scoring methodology, including a Health Equity Adjustment, and proposing new processes to validate SNF VBP data. We are proposing changes to the current long-term care (LTC) facility requirements that would simplify and streamline the current requirements and thereby increase provider flexibility and reduce unnecessary administrative burden, while also allowing facilities to focus on providing healthcare to residents to meet their needs. This proposal was previously proposed and published in the July 18, 2019 **Federal Register** in the proposed rule entitled, ''Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency'' (84 FR 34718). We are re-proposing this proposed revision for a facility to waive its hearing rights and receive a reduction in civil money penalties in an effort to gather additional feedback from interested parties.

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the Federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2023 (87 FR 47502, August 3, 2022). In addition, this proposed rule includes a forecast error adjustment for FY 2024 and includes the second phase of the PDPM parity adjustment recalibration. This proposed rule also proposes updates to the diagnosis code mappings used under the PDPM.

Beginning with the FY 2025 SNF QRP, we propose to modify the COVID–19 Vaccination Coverage among Healthcare Personnel measure, adopt the Discharge Function Score measure, and remove the (1) Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function measure, (2) the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients measure, and (3) the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients measure. Beginning with the FY 2026 SNF QRP, we propose to adopt the CoreQ: Short Stay Discharge measure and the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure. We also propose changes to the SNF QRP data completion thresholds for the Minimum Data Set (MDS) data items beginning with the FY 2026 SNF QRP and to make certain revisions to regulation text at § 413.360. This proposed rule also contains proposals pertaining to the public reporting of the (1) Transfer of Health Information to the Patient-Post-Acute Care measure, (2) the Transfer of Health Information to the Provider-PAC measure, (3) the Discharge Function Score measure, and (4) the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure. In addition, we are seeking information on principles for selecting and prioritizing SNF QRP quality measures and concepts and provide an update on our continued efforts to close the health equity gap, including under the SNF QRP.

We are proposing several updates for the SNF VBP Program We are proposing to adopt a Health Equity Adjustment that rewards top tier performing SNFs that serve higher proportions of SNF residents with dual eligibility status, effective with the FY 2027 program year and to adopt a variable payback percentage to maintain an estimated payback percentage for all SNFs of no less than 60 percent. We are proposing to adopt four new quality measures to the SNF VBP Program, one taking effect beginning with the FY 2026 program year and three taking effect beginning with the FY 2027 program year. We are also proposing to refine the Skilled Nursing Facility 30-Day Potentially Preventable Readmission (SNFPPR) measure specifications and update the name to the Skilled Nursing Facility Within-Stay Potentially Preventable Readmission (SNF WS PPR) measure effective with the FY 2028 program year. We are proposing to adopt new processes to validate SNF VBP program data.

In addition, we are proposing to eliminate the requirement for facilities facing a civil money penalty to actively waive their right to a hearing in writing in order to receive a penalty reduction. We would create, in its place, a constructive waiver process that would operate by default when CMS has not received a timely request for a hearing. The accompanying 35 percent penalty reduction would remain. This proposed revision would result in lower administrative costs for most LTC facilities facing civil money penalties (CMPs), and would streamline and reduce the administrative burden for CMS. This proposal was previously proposed and published in the July 18, 2019 **Federal Register**.

C. Summary of Cost and Benefits

TABLE 1—COST AND BENEFITS

Provision description	Total transfers/costs
FY 2024 SNF PPS payment rate update.	The overall economic impact of this proposed rule is an estimated increase of $1.2 billion in aggregate payments to SNFs during FY 2024.
FY 2025 SNF QRP changes	The overall economic impact of this proposed rule to SNFs is an estimated benefit of $1,037,261 to SNFs during FY 2025.

TABLE 1—COST AND BENEFITS—Continued

Provision description	Total transfers/costs
FY 2026 SNF QRP changes	The overall economic impact of this proposed rule to SNFs who would be exempt from the proposed CoreQ: Short Stay Discharge measure reporting requirements and the increase in burden from the addition of the Patient/Resident COVID–19 Vaccine measure is an estimated increase in aggregate cost from FY 2025 of $866,772. The overall economic impact of this proposed rule to SNFs who participate in the proposed CoreQ: Short Stay Discharge measure reporting requirements and the increase in burden from the addition of the Patient/Resident COVID–19 Vaccine measure is an estimated increase in aggregate cost from FY 2025 of $61,580,090.
FY 2027 SNF QRP changes	The overall economic impact of this proposed rule to SNFs who would be exempt from the proposed CoreQ: Short Stay Discharge measure reporting requirements is an estimated increase in aggregate cost from FY 2026 of $88,181. The overall economic impact of this proposed rule to SNFs who participate in the proposed CoreQ: Short Stay Discharge measure reporting requirements is an estimated increase in aggregate cost from FY 2026 of $63,344,417.
FY 2024 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of $184.85 million in aggregate payments to SNFs during FY 2024.
FY 2026 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of $196.50 million in aggregate payments to SNFs during FY 2026.
FY 2027 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of $166.86 million in aggregate payments to SNFs during FY 2027.
FY 2028 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of $170.98 million in aggregate payments to SNFs during FY 2028.
FY 2024 Enforcement Provisions for LTC Facilities Requirements Changes.	The overall impact of this regulatory change is an estimated administrative cost savings of $2,299,716 to LTC facilities and $772,044 to the Federal Government during FY 2024.

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their digital health information.

To further interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with interested parties to develop Health Level Seven International® (HL7) Fast Healthcare Interoperability Resource® (FHIR) standards. These standards could support the exchange and reuse of patient assessment data derived from the post-acute care (PAC) setting assessment tools, such as the minimum data set (MDS), inpatient rehabilitation facility -patient assessment instrument (IRF–PAI), Long-Term Care Hospital (LTCH) continuity assessment record and evaluation (CARE) Data Set (LCDS), outcome and assessment information set (OASIS), and other sources.[1] [2] The PACIO Project has focused on HL7 FHIR implementation guides for: functional status, cognitive status and new use cases on advance directives, re-assessment timepoints, and Speech, language, swallowing, cognitive communication and hearing (SPLASCH) pathology.[3] We encourage PAC provider and health IT vendor participation as the efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as a resource for PAC assessment data elements and their associated mappings to health IT standards such as Logical Observation Identifiers Names and Codes (LOINC) and Systematized Nomenclature of Medicine Clinical Terms (SNOMED).[4] The DEL furthers CMS' goal of data standardization and interoperability. Standards in the DEL can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2023 ISA is available at *https://www.healthit.gov/sites/isa/files/inline-files/2023%20Reference%20Edition_ISA_508.pdf.*

We are also working with ONC to advance the United States Core Data for Interoperability (USCDI), a standardized set of health data classes and constituent data elements for nationwide, interoperable health information exchange.[5] We are collaborating with ONC and other Federal agencies to define and prioritize additional data standardization needs and develop consensus on recommendations for future versions of the USCDI. We are also directly collaborating with ONC to build requirements to support data standardization and alignment with requirements for quality measurement. ONC has launched the USCDI+ initiative to support the identification and establishment of domain specific datasets that build on the core USCDI foundation.[6] The USCDI+ quality measurement domain currently being developed aims to support defining additional data specifications for quality measurement that harmonize, where possible, with other Federal agency data needs and inform supplemental standards necessary to support quality measurement, including the needs of programs supporting quality measurement for long-term and post-acute care.

The 21st Century Cures Act (Cures Act) (Public Law 114–255, enacted December 13, 2016) required HHS and ONC to take steps to promote adoption and use of electronic health record (EHR) technology.[7] Specifically, section

[1] HL7 FHIR Release 4. Available at *https://www.hl7.org/fhir/.*

[2] HL7 FHIR. PACIO Functional Status Implementation Guide. Available at *https://paciowg.github.io/functional-status-ig/.*

[3] PACIO Project. Available at *http://pacioproject.org/about/.*

[4] Centers for Medicare & Medicaid Services. Newsroom. Fact sheet: CMS Data Element Library Fact Sheet. June 21, 2018. Available at *https://www.cms.gov/newsroom/fact-sheets/cms-data-element-library-fact-sheet.*

[5] USCDI. Available at *https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi.*

[6] USCDI+. Available at *https://www.healthit.gov/topic/interoperability/uscdi-plus.*

[7] Sections 4001 through 4008 of Public Law 114–255. Available at *https://www.govinfo.gov/content/*

4003(b) of the Cures Act required ONC to take steps to advance interoperability through the development of a Trusted Exchange Framework and Common Agreement aimed at establishing full network-to network exchange of health information nationally. On January 18, 2022, ONC announced a significant milestone by releasing the Trusted Exchange Framework [8] and Common Agreement Version 1.[9] The Trusted Exchange Framework is a set of non-binding principles for health information exchange, and the Common Agreement is a contract that advances those principles. The Common Agreement and the Qualified Health Information Network Technical Framework Version 1 (incorporated by reference into the Common Agreement) establish the technical infrastructure model and governing approach for different health information networks and their users to securely share clinical information with each other, all under commonly agreed to terms. The technical and policy architecture of how exchange occurs under the Common Agreement follows a network-of-networks structure, which allows for connections at different levels and is inclusive of many different types of entities at those different levels, such as health information networks, healthcare practices, hospitals, public health agencies, and Individual Access Services (IAS) Providers.[10] On February 13, 2023, HHS marked a new milestone during an event at HHS headquarters,[11] which recognized the first set of applicants accepted for onboarding to the Common Agreement as Qualified Health Information Networks (QHINs). QHINs will be entities that will connect directly to each other to serve as the core for nationwide interoperability.[12] For more information, we refer readers to *https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement.*

We invite providers to learn more about these important developments and how they are likely to affect SNFs.

II. Background on SNF PPS

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA 1997) (Pub. L. 105–33, enacted August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physicians' services) for which payment may otherwise be made under Part B and which are furnished to Medicare beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In addition, a detailed discussion of the legislative history of the SNF PPS is available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf.*

Section 215(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93, enacted April 1, 2014) added section 1888(g) to the Act requiring the Secretary to specify an all-cause all-condition hospital readmission measure and an all-condition risk-adjusted potentially preventable hospital readmission measure for the SNF setting. Additionally, section 215(b) of PAMA added section 1888(h) to the Act requiring the Secretary to implement a VBP program for SNFs. Finally, section 2(c)(4) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 (Pub. L. 113–185, enacted October 6, 2014) amended section 1888(e)(6) of the Act, which requires the Secretary to implement a QRP for SNFs under which SNFs report data on measures and resident assessment data. Finally, section 111 of the Consolidated Appropriations Act, 2021 (CAA 2021) updated section 1888(h) of the Act, authorizing the Secretary to apply up to nine additional measures to the VBP program for SNFs.

B. Initial Transition for the SNF PPS

Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first 3 cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted Federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2023 (87 FR 47502, August 3, 2022).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** the following:

- The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.

pkg/PLAW-114publ255/html/PLAW-114publ255.htm.

[8] The Trusted Exchange Framework (TEF): Principles for Trusted Exchange (Jan. 2022). Available at *https://www.healthit.gov/sites/default/files/page/2022-01/Trusted_Exchange_Framework_0122.pdf.*

[9] Common Agreement for Nationwide Health Information Interoperability Version 1 (Jan. 2022). Available at *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

[10] The Common Agreement defines Individual Access Services (IAS) as ''with respect to the Exchange Purposes definition, the services provided utilizing the Connectivity Services, to the extent consistent with Applicable Law, to an Individual with whom the QHIN, Participant, or Subparticipant has a Direct Relationship to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information that is then maintained by or for any QHIN, Participant, or Subparticipant.'' The Common Agreement defines ''IAS Provider'' as: ''Each QHIN, Participant, and Subparticipant that offers Individual Access Services.'' *See* Common Agreement for Nationwide Health Information Interoperability Version 1, at 7 (Jan. 2022), *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

[11] ''Building TEFCA,'' Micky Tripathi and Mariann Yeager, Health IT Buzz Blog. February 13, 2023. *https://www.healthit.gov/buzz-blog/electronic-health-and-medical-records/interoperability-electronic-health-and-medical-records/building-tefca.*

[12] The Common Agreement defines a QHIN as ''to the extent permitted by applicable SOP(s), a Health Information Network that is a U.S. Entity that has been Designated by the RCE and is a party to the Common Agreement countersigned by the RCE.'' *See* Common Agreement for Nationwide Health Information Interoperability Version 1, at 10 (Jan. 2022), *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

- The case-mix classification system to be applied for these services during the upcoming FY.
- The factors to be applied in making the area wage adjustment for these services.

Along with other revisions discussed later in this preamble, this proposal would set out the required annual updates to the per diem payment rates for SNFs for FY 2024.

III. Proposed SNF PPS Rate Setting Methodology and FY 2024 Update

A. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem Federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated a Part B add-on, which is an estimate of the amounts that, prior to the SNF PPS, would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket, and then standardized for geographic variations in wages and for the costs of facility differences in case-mix. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA 1997 prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas and adjusted the portion of the Federal rate attributable to wage-related costs by a wage index to reflect geographic variations in wages.

B. SNF Market Basket Update

1. SNF Market Basket

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we rebased and revised the SNF market basket, which included updating the base year from FY 2010 to 2014. In the SNF PPS final rule for FY 2022 (86 FR 42444 through 42463), we rebased and revised the SNF market basket, which included updating the base year from 2014 to 2018.

The SNF market basket is used to compute the market basket percentage increase that is used to update the SNF Federal rates on an annual basis, as required by section 1888(e)(4)(E)(ii)(IV) of the Act. This market basket percentage increase is adjusted by a forecast error adjustment, if applicable, and then further adjusted by the application of a productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act and described in section III.B.4. of this proposed rule.

As outlined in this proposed rule, we propose a FY 2024 SNF market basket percentage increase of 2.7 percent based on IHS Global Inc.'s (IGI's) fourth quarter 2022 forecast of the 2018-based SNF market basket (before application of the forecast error adjustment and productivity adjustment). We also propose that if more recent data subsequently become available (for example, a more recent estimate of the market basket and/or the productivity adjustment), we would use such data, if appropriate, to determine the FY 2024 SNF market basket percentage increase, labor-related share relative importance, forecast error adjustment, or productivity adjustment in the SNF PPS final rule.

2. Market Basket Update Factor for FY 2024

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage increase as the percentage change in the SNF market basket from the midpoint of the previous FY to the midpoint of the current FY. For the Federal rates outlined in this proposed rule, we use the percentage change in the SNF market basket to compute the update factor for FY 2024. This factor is based on the FY 2024 percentage increase in the 2018-based SNF market basket reflecting routine, ancillary, and capital-related expenses. Sections 1888(e)(4)(E)(ii)(IV) and (e)(5)(B)(i) of the Act require that the update factor used to establish the FY 2024 unadjusted Federal rates be at a level equal to the SNF market basket percentage increase. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2022 through September 30, 2023 to the average market basket level for the period of October 1, 2023 through September 30, 2024. This process yields a percentage increase in the 2018-based SNF market basket of 2.7 percent.

As further explained in section III.B.3. of this proposed rule, as applicable, we adjust the percentage increase by the forecast error adjustment from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual percentage increase in the market basket exceeds a 0.5 percentage point threshold in absolute terms. Additionally, section 1888(e)(5)(B)(ii) of the Act requires us to reduce the market basket percentage increase by the productivity adjustment (the 10-year moving average of changes in annual economy-wide private nonfarm business total factor productivity (TFP) for the period ending September 30, 2024) which is estimated to be 0.2 percentage point, as described in section III.B.4. of this proposed rule.

We also note that section 1888(e)(6)(A)(i) of the Act provides that, beginning with FY 2018, SNFs that fail to submit data, as applicable, in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for a fiscal year will receive a 2.0 percentage point reduction to their market basket update for the fiscal year involved, after application of section 1888(e)(5)(B)(ii) of the Act (the productivity adjustment) and section 1888(e)(5)(B)(iii) of the Act (the market basket increase). In addition, section 1888(e)(6)(A)(ii) of the Act states that application of the 2.0 percentage point reduction (after application of section 1888(e)(5)(B)(ii) and (iii) of the Act) may result in the market basket percentage change being less than zero for a fiscal year, and may result in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Section 1888(e)(6)(A)(iii) of the Act further specifies that the 2.0 percentage point reduction is applied in a noncumulative manner, so that any reduction made under section 1888(e)(6)(A)(i) of the Act applies only to the fiscal year involved, and that the reduction cannot be taken into account in computing the payment amount for a subsequent fiscal year.

3. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4,

2003 final rule (68 FR 46057 through 46059), § 413.337(d)(2) provides for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004 and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data and apply the difference between the forecasted and actual change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent FYs. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058), the adjustment will reflect both upward and downward adjustments, as appropriate.

For FY 2022 (the most recently available FY for which there is final data), the forecasted or estimated increase in the SNF market basket was 2.7 percent, and the actual increase for FY 2022 is 6.3 percent, resulting in the actual increase being 3.6 percentage points higher than the estimated increase. Accordingly, as the difference between the estimated and actual amount of change in the market basket exceeds the 0.5 percentage point threshold, under the policy previously described (comparing the forecasted and actual market basket percentage increase), the FY 2024 market basket percentage increase of 2.7 percent would be adjusted upward to account for the forecast error adjustment of 3.6 percentage points, resulting in a SNF market basket percentage increase of 6.3 percent, which is then reduced by the productivity adjustment of 0.2 percentage point, discussed in section III.B.4. of this proposed rule. This results in a proposed SNF market basket update for FY 2024 of 6.1 percent.

Table 2 shows the forecasted and actual market basket increases for FY 2022.

TABLE 2—DIFFERENCE BETWEEN THE ACTUAL AND FORECASTED MARKET BASKET INCREASES FOR FY 2022

Index	Forecasted FY 2022 increase *	Actual FY 2022 increase **	FY 2022 difference
SNF	2.7	6.3	3.6

* Published in **Federal Register**; based on second quarter 2021 IGI forecast (2018-based SNF market basket).
** Based on the fourth quarter 2022 IGI forecast (2018-based SNF market basket).

4. Productivity Adjustment

Section 1888(e)(5)(B)(ii) of the Act, as added by section 3401(b) of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) requires that, in FY 2012 and in subsequent FYs, the market basket percentage under the SNF payment system (as described in section 1888(e)(5)(B)(i) of the Act) is to be reduced annually by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, in turn, defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost-reporting period, or other annual period).

The U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measure of productivity for the U.S. We note that previously the productivity measure referenced at section 1886(b)(3)(B)(xi)(II) of the Act was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term MFP with TFP. BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is now published by BLS as private nonfarm business total factor productivity. We refer readers to the BLS website at *www.bls.gov* for the BLS historical published TFP data. A complete description of the TFP projection methodology is available on our website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.* In addition, in the FY 2022 SNF final rule (86 FR 42429) we noted that, effective with FY 2022 and forward, we changed the name of this adjustment to refer to it as the ''productivity adjustment,'' rather than the ''MFP adjustment.''

Per section 1888(e)(5)(A) of the Act, the Secretary shall establish a SNF market basket that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the productivity adjustment may result in the market basket percentage being less than zero for a FY and may result in payment rates under section 1888(e) of the Act being less than such payment rates for the preceding fiscal year. Thus, if the application of the productivity adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) of the Act results in a productivity-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted Federal per diem rates under section 1888(e)(4)(E)(ii) of the Act would be negative, and such rates would decrease relative to the prior FY.

Based on the data available for this FY 2024 SNF PPS proposed rule, the current proposed productivity adjustment (the 10-year moving average of changes in annual economy-wide private nonfarm business TFP for the period ending September 30, 2024) is projected to be 0.2 percentage point.

Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2), and as discussed previously in section III.B.1. of this proposed rule, the proposed market basket percentage for FY 2024 for the SNF PPS is based on IGI's fourth quarter 2022 forecast of the SNF market basket percentage, which is estimated to be 2.7 percent. This market basket percentage

is then increased by 3.6 percentage points, due to application of the forecast error adjustment discussed earlier in section III.B.3. of this proposed rule. Finally, as discussed earlier in section III.B.4. of this proposed rule, we are applying a proposed 0.2 percentage point productivity adjustment to the FY 2024 SNF market basket percentage. Therefore, the resulting proposed productivity-adjusted FY 2024 SNF market basket update is equal to 6.1 percent, which reflects a market basket percentage increase of 2.7 percent, plus the 3.6 percentage points forecast error adjustment, and less the 0.2 percentage point to account for the productivity adjustment. Thus, we propose to apply a net SNF market basket update factor of 6.1 percent in our determination of the FY 2024 SNF PPS unadjusted Federal per diem rates.

5. Unadjusted Federal Per Diem Rates for FY 2024

As discussed in the FY 2019 SNF PPS final rule (83 FR 39162), in FY 2020 we implemented a new case-mix classification system to classify SNF patients under the SNF PPS, the PDPM. As discussed in section V.B.1. of that final rule (83 FR 39189), under PDPM, the unadjusted Federal per diem rates are divided into six components, five of which are case-mix adjusted components (Physical Therapy (PT), Occupational Therapy (OT), Speech-Language Pathology (SLP), Nursing, and Non-Therapy Ancillaries (NTA)), and one of which is a non-case-mix component, as existed under the previous RUG–IV model. We propose to use the SNF market basket, adjusted as described previously in sections III.B.1. through III.B.4. of this proposed rule, to adjust each per diem component of the Federal rates forward to reflect the change in the average prices for FY 2024 from the average prices for FY 2023. We also propose to further adjust the rates by a wage index budget neutrality factor, described later in section III.D. of this proposed rule.

Further, in the past, we used the revised Office of Management and Budget (OMB) delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos. 15–01 and 17–01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed in the FY 2021 SNF PPS proposed and final rules, we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) to identify a facility's urban or rural status effective beginning with FY 2021.

Tables 3 and 4 reflect the updated unadjusted Federal rates for FY 2024, prior to adjustment for case-mix.

TABLE 3—FY 2024 UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	PT	OT	SLP	Nursing	NTA	Non-case-mix
Per Diem Amount	$70.08	$65.23	$26.16	$122.15	$92.16	$109.39

TABLE 4—FY 2024 UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	PT	OT	SLP	Nursing	NTA	Non-case-mix
Per Diem Amount	$79.88	$73.36	$32.96	$116.71	$88.05	$111.41

C. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the Federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the FY 2019 final rule (83 FR 39162, August 8, 2018), we finalized a new case-mix classification model, the PDPM, which took effect beginning October 1, 2019. The previous RUG–IV model classified most patients into a therapy payment group and primarily used the volume of therapy services provided to the patient as the basis for payment classification, thus creating an incentive for SNFs to furnish therapy regardless of the individual patient's unique characteristics, goals, or needs. PDPM eliminates this incentive and improves the overall accuracy and appropriateness of SNF payments by classifying patients into payment groups based on specific, data-driven patient characteristics, while simultaneously reducing the administrative burden on SNFs.

The PDPM uses clinical data from the MDS to assign case-mix classifiers to each patient that are then used to calculate a per diem payment under the SNF PPS, consistent with the provisions of section 1888(e)(4)(G)(i) of the Act. As discussed in section IV.A. of this proposed rule, the clinical orientation of the case-mix classification system supports the SNF PPS's use of an administrative presumption that considers a beneficiary's initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the timeframes for MDS completion in our Resident Assessment Instrument (RAI) Manual. As we have stated in prior rules, for an MDS to be considered valid for use in determining payment, the MDS assessment should be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS website at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html.*

Under section 1888(e)(4)(H) of the Act, each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The FY 2024 payment rates set forth in this proposed rule reflect the use of the PDPM case-mix classification system from October 1, 2023, through September 30, 2024. The case-mix adjusted PDPM payment rates for FY 2024 are listed separately for urban and rural SNFs, in Tables 5 and 6 with corresponding case-mix values.

Given the differences between the previous RUG–IV model and PDPM in terms of patient classification and billing, it was important that the format of Tables 5 and 6 reflect these differences. More specifically, under both RUG–IV and PDPM, providers use a Health Insurance Prospective Payment System (HIPPS) code on a claim to bill for covered SNF services. Under RUG–IV, the HIPPS code included the three-character RUG–IV group into which the patient classified, as well as a two-character assessment indicator code that represented the assessment used to generate this code. Under PDPM, while providers still use a HIPPS code, the characters in that code represent different things. For example, the first character represents the PT and OT group into which the patient classifies. If the patient is classified into the PT and OT group ''TA'', then the first character in the patient's HIPPS code would be an A. Similarly, if the patient is classified into the SLP group ''SB'', then the second character in the patient's HIPPS code would be a B. The third character represents the Nursing group into which the patient classifies. The fourth character represents the NTA group into which the patient classifies. Finally, the fifth character represents the assessment used to generate the HIPPS code.

Tables 5 and 6 reflect the PDPM's structure. Accordingly, Column 1 of Tables 5 and 6 represents the character in the HIPPS code associated with a given PDPM component. Columns 2 and 3 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant PT group. Columns 4 and 5 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant OT group. Columns 6 and 7 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant SLP group. Column 8 provides the nursing case-mix group (CMG) that is connected with a given PDPM HIPPS character. For example, if the patient qualified for the nursing group CBC1, then the third character in the patient's HIPPS code would be a ''P.'' Columns 9 and 10 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant nursing group. Finally, columns 11 and 12 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant NTA group.

Tables 5 and 6 do not reflect adjustments which may be made to the SNF PPS rates as a result of the SNF VBP Program, discussed in section VII. of this proposed rule, or other adjustments, such as the variable per diem adjustment. Further, in the past, we used the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos, 15–01 and 17–01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed in the FY 2021 SNF PPS final rule (85 FR 47594), we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) to identify a facility's urban or rural status effective beginning with FY 2021.

In the FY 2023 SNF PPS final rule (87 FR 47502), we finalized a proposal to recalibrate the PDPM parity adjustment over 2 years starting in FY 2023, which means that, for each of the PDPM case-mix adjusted components, we lowered the PDPM parity adjustment factor from 46 percent to 42 percent in FY 2023 and we would further lower the PDPM parity adjustment factor from 42 percent to 38 percent in FY 2024. Following this methodology, which is further described in the FY 2023 SNF PPS final rule (87 FR 47525 through 47534), Tables 5 and 6 incorporate the second phase of the PDPM parity adjustment recalibration.

TABLE 5—PDPM CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—URBAN
[Including the parity adjustment recalibration]

PDPM group	PT CMI	PT rate	OT CMI	OT rate	SLP CMI	SLP rate	Nursing CMG	Nursing CMI	Nursing rate	NTA CMI	NTA rate
A	1.45	$101.62	1.41	$91.97	0.64	$16.74	ES3	3.84	$469.06	3.06	$282.01
B	1.61	112.83	1.54	100.45	1.72	45.00	ES2	2.90	354.24	2.39	220.26
C	1.78	124.74	1.60	104.37	2.52	65.92	ES1	2.77	338.36	1.74	160.36
D	1.81	126.84	1.45	94.58	1.38	36.10	HDE2	2.27	277.28	1.26	116.12
E	1.34	93.91	1.33	86.76	2.21	57.81	HDE1	1.88	229.64	0.91	83.87
F	1.52	106.52	1.51	98.50	2.82	73.77	HBC2	2.12	258.96	0.68	62.67
G	1.58	110.73	1.55	101.11	1.93	50.49	HBC1	1.76	214.98	.....	.....
H	1.10	77.09	1.09	71.10	2.7	70.63	LDE2	1.97	240.64	.....	.....
I	1.07	74.99	1.12	73.06	3.34	87.37	LDE1	1.64	200.33	.....	.....
J	1.34	93.91	1.37	89.37	2.83	74.03	LBC2	1.63	199.10	.....	.....
K	1.44	100.92	1.46	95.24	3.5	91.56	LBC1	1.35	164.90	.....	.....
L	1.03	72.18	1.05	68.49	3.98	104.12	CDE2	1.77	216.21	.....	.....
M	1.20	84.10	1.23	80.23	.....	.....	CDE1	1.53	186.89	.....	.....
N	1.40	98.11	1.42	92.63	.....	.....	CBC2	1.47	179.56	.....	.....
O	1.47	103.02	1.47	95.89	.....	.....	CA2	1.03	125.81	.....	.....
P	1.02	71.48	1.03	67.19	.....	.....	CBC1	1.27	155.13	.....	.....
Q	.....	.....	.....	.....	.....	.....	CA1	0.89	108.71	.....	.....
R	.....	.....	.....	.....	.....	.....	BAB2	0.98	119.71	.....	.....
S	.....	.....	.....	.....	.....	.....	BAB1	0.94	114.82	.....	.....
T	.....	.....	.....	.....	.....	.....	PDE2	1.48	180.78	.....	.....
U	.....	.....	.....	.....	.....	.....	PDE1	1.39	169.79	.....	.....
V	.....	.....	.....	.....	.....	.....	PBC2	1.15	140.47	.....	.....
W	.....	.....	.....	.....	.....	.....	PA2	0.67	81.84	.....	.....
X	.....	.....	.....	.....	.....	.....	PBC1	1.07	130.70	.....	.....
Y	.....	.....	.....	.....	.....	.....	PA1	0.62	75.73	.....	.....

TABLE 6—PDPM CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—RURAL
[Including the parity adjustment recalibration]

PDPM group	PT CMI	PT rate	OT CMI	OT rate	SLP CMI	SLP rate	Nursing CMG	Nursing CMI	Nursing rate	NTA CMI	NTA rate
A	1.45	$115.83	1.41	$103.44	0.64	$21.09	ES3	3.84	$448.17	3.06	$269.43

TABLE 6—PDPM CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—RURAL—Continued
[Including the parity adjustment recalibration]

PDPM group	PT CMI	PT rate	OT CMI	OT rate	SLP CMI	SLP rate	Nursing CMG	Nursing CMI	Nursing rate	NTA CMI	NTA rate
B	1.61	128.61	1.54	112.97	1.72	56.69	ES2	2.90	338.46	2.39	210.44
C	1.78	142.19	1.60	117.38	2.52	83.06	ES1	2.77	323.29	1.74	153.21
D	1.81	144.58	1.45	106.37	1.38	45.48	HDE2	2.27	264.93	1.26	110.94
E	1.34	107.04	1.33	97.57	2.21	72.84	HDE1	1.88	219.41	0.91	80.13
F	1.52	121.42	1.51	110.77	2.82	92.95	HBC2	2.12	247.43	0.68	59.87
G	1.58	126.21	1.55	113.71	1.93	63.61	HBC1	1.76	205.41	.....	.....
H	1.10	87.87	1.09	79.96	2.7	88.99	LDE2	1.97	229.92	.....	.....
I	1.07	85.47	1.12	82.16	3.34	110.09	LDE1	1.64	191.40	.....	.....
J	1.34	107.04	1.37	100.50	2.83	93.28	LBC2	1.63	190.24	.....	.....
K	1.44	115.03	1.46	107.11	3.5	115.36	LBC1	1.35	157.56	.....	.....
L	1.03	82.28	1.05	77.03	3.98	131.18	CDE2	1.77	206.58	.....	.....
M	1.20	95.86	1.23	90.23	.....	.....	CDE1	1.53	178.57	.....	.....
N	1.40	111.83	1.42	104.17	.....	.....	CBC2	1.47	171.56	.....	.....
O	1.47	117.42	1.47	107.84	.....	.....	CA2	1.03	120.21	.....	.....
P	1.02	81.48	1.03	75.56	.....	.....	CBC1	1.27	148.22	.....	.....
Q	.....	.....	.....	.....	.....	.....	CA1	0.89	103.87	.....	.....
R	.....	.....	.....	.....	.....	.....	BAB2	0.98	114.38	.....	.....
S	.....	.....	.....	.....	.....	.....	BAB1	0.94	109.71	.....	.....
T	.....	.....	.....	.....	.....	.....	PDE2	1.48	172.73	.....	.....
U	.....	.....	.....	.....	.....	.....	PDE1	1.39	162.23	.....	.....
V	.....	.....	.....	.....	.....	.....	PBC2	1.15	134.22	.....	.....
W	.....	.....	.....	.....	.....	.....	PA2	0.67	78.20	.....	.....
X	.....	.....	.....	.....	.....	.....	PBC1	1.07	124.88	.....	.....
Y	.....	.....	.....	.....	.....	.....	PA1	0.62	72.36	.....	.....

D. Wage Index Adjustment

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. We propose to continue this practice for FY 2024, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data under the inpatient prospective payment system (IPPS) also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. As in previous years, we would continue to use the pre-reclassified IPPS hospital wage data, without applying the occupational mix, rural floor, or outmigration adjustment, as the basis for the SNF PPS wage index. For FY 2024, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2019 and before October 1, 2020 (FY 2020 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554, enacted December 21, 2000) gave the Secretary the discretion to establish a geographic reclassification procedure specific to SNFs, but only after collecting the data necessary to establish a SNF PPS wage index that is based on wage data from nursing homes. To date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of the data. More specifically, auditing all SNF cost reports, similar to the process used to audit inpatient hospital cost reports for purposes of the IPPS wage index, would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. Adopting such an approach would require a significant commitment of resources by CMS and the Medicare Administrative Contractors, potentially far in excess of those required under the IPPS, given that there are nearly five times as many SNFs as there are inpatient hospitals. While we continue to believe that the development of such an audit process could improve SNF cost reports in such a manner as to permit us to establish a SNF-specific wage index, we do not believe this undertaking is feasible at this time.

In addition, we propose to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2022 SNF PPS wage index. For rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment, we propose to continue using the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2024, there are no rural geographic areas that do not have hospitals, and thus, this methodology will not be applied. For rural Puerto Rico, we propose not to apply this methodology due to the distinct economic circumstances there; due to the close proximity of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas. Instead, we would continue using the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we propose to continue using the average wage indexes of all urban areas within the State to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2024, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas. In adopting the CBSA geographic designations, we

provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), after the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a 1-year transition with a blended wage index for FY 2015. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided minor updates to and superseded OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013 and were adopted under the SNF PPS in the FY 2017 SNF PPS final rule (81 FR 51983, August 5, 2016). In addition, on August 15, 2017, OMB issued Bulletin No. 17–01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300) which was adopted in the SNF PPS final rule for FY 2019 (83 FR 39173, August 8, 2018).

As discussed in the FY 2021 SNF PPS final rule (85 FR 47594), we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5 percent cap on any decrease in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the SNF PPS.

In the FY 2023 SNF PPS final rule (87 FR 47521 through 47525), we finalized a policy to apply a permanent 5 percent cap on any decreases to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. Additionally, we finalized a policy that a new SNF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied because a new SNF would not have a wage index in the prior FY. We amended the SNF PPS regulations at 42 CFR 413.337(b)(4)(ii) to reflect this permanent cap on wage index decreases. A full discussion of the adoption of this policy is found in the FY 2023 SNF PPS final rule.

As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. OMB issued further revised CBSA delineations in OMB Bulletin No. 20–01, on March 6, 2020 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). However, we determined that the changes in OMB Bulletin No. 20–01 do not impact the CBSA-based labor market area delineations adopted in FY 2021. Therefore, CMS did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20 01 for FY 2022 or 2023, and for these reasons CMS is likewise not making such a proposal for FY 2024.The wage index applicable to FY 2024 is set forth in Tables A and B available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Once calculated, we would apply the wage index adjustment to the labor-related portion of the Federal rate. Each year, we calculate a labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are labor-intensive and vary with the local labor market) in the input price index. In the SNF PPS final rule for FY 2022 (86 FR 42437), we finalized a proposal to revise the labor-related share to reflect the relative importance of the 2018-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a proportion of Capital-Related expenses. The methodology for calculating the labor-related portion beginning in FY 2022 is discussed in detail in the FY 2022 SNF PPS final rule (86 FR 42461 through 42463).

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2024. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2024 than the base year weights from the SNF market basket. We calculate the labor-related relative importance for FY 2024 in four steps. First, we compute the FY 2024 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2024 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2024 relative importance for each cost category by multiplying this ratio by the base year (2018) weight. Finally, we add the FY 2024 relative importance for each of the labor-related cost categories (Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a portion of Capital-Related expenses) to produce the FY 2024 labor-related relative importance.

Table 7 summarizes the proposed labor-related share for FY 2024, based on IGI's fourth quarter 2022 forecast of the 2018-based SNF market basket, compared to the labor-related share that was used for the FY 2023 SNF PPS final rule.

TABLE 7—LABOR-RELATED SHARE, FY 2023 AND FY 2024

	Relative importance, labor-related share, FY 2023 22:2 forecast [1]	Proposed relative importance, labor-related share, FY 2024 22:4 forecast [2]
Wages and salaries	51.9	52.2
Employee benefits	9.5	9.5
Professional fees: Labor-related	3.5	3.4
Administrative & facilities support services	0.6	0.6
Installation, maintenance & repair services	0.4	0.4
All other: Labor-related services	2.0	2.0
Capital-related (.391)	2.9	2.9
Total	70.8	71.0

[1] Published in the **Federal Register**; Based on the second quarter 2022 IHS Global Inc. forecast of the 2018-based SNF market basket.
[2] Based on the fourth quarter 2022 IHS Global Inc. forecast of the 2018-based SNF market basket.

To calculate the labor portion of the case-mix adjusted per diem rate, we would multiply the total case-mix adjusted per diem rate, which is the sum of all five case-mix adjusted components into which a patient classifies, and the non-case-mix component rate, by the FY 2024 labor-related share percentage provided in Table 7. The remaining portion of the rate would be the non-labor portion. Under the previous RUG–IV model, we included tables which provided the case-mix adjusted RUG–IV rates, by RUG–IV group, broken out by total rate, labor portion and non-labor portion, such as Table 9 of the FY 2019 SNF PPS final rule (83 FR 39175). However, as we discussed in the FY 2020 final rule (84 FR 38738), under PDPM, as the total rate is calculated as a combination of six different component rates, five of which are case-mix adjusted, and given the sheer volume of possible combinations of these five case-mix adjusted components, it is not feasible to provide tables similar to those that existed in the prior rulemaking.

Therefore, to aid interested parties in understanding the effect of the wage index on the calculation of the SNF per diem rate, we have included a hypothetical rate calculation in Table 9.

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than would otherwise be made if the wage adjustment had not been made. For FY 2024 (Federal rates effective October 1, 2023), we apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a budget neutrality factor, equal to the ratio of the weighted average wage adjustment factor for FY 2023 to the weighted average wage adjustment factor for FY 2024. For this calculation, we would use the same FY 2022 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor portion of the rate component multiplied by the wage index plus the non-labor portion of the rate component. The proposed budget neutrality factor for FY 2024 is 0.9998.

We note that if more recent data become available (for example, revised wage data), we would use such data, as appropriate, to determine the wage index budget neutrality factor in the SNF PPS final rule.

We invite public comment on the proposed SNF wage adjustment for FY 2024.

E. SNF Value-Based Purchasing Program

Beginning with payment for services furnished on October 1, 2018, section 1888(h) of the Act requires the Secretary to reduce the adjusted Federal per diem rate determined under section 1888(e)(4)(G) of the Act otherwise applicable to a SNF for services furnished during a fiscal year by 2 percent, and to adjust the resulting rate for a SNF by the value-based incentive payment amount earned by the SNF based on the SNF's performance score for that fiscal year under the SNF VBP Program. To implement these requirements, we finalized in the FY 2019 SNF PPS final rule the addition of § 413.337(f) to our regulations (83 FR 39178).

Please see section VII. of this proposed rule for further discussion of our proposed updates to the SNF VBP Program.

F. Adjusted Rate Computation Example

Tables 8 through 10 provide examples generally illustrating payment calculations during FY 2024 under PDPM for a hypothetical 30-day SNF stay, involving the hypothetical SNF XYZ, located in Frederick, MD (Urban CBSA 23224), for a hypothetical patient who is classified into such groups that the patient's HIPPS code is NHNC1. Table 8 shows the adjustments made to the Federal per diem rates (prior to application of any adjustments under the SNF VBP Program as discussed previously and taking into account the second phase of the parity adjustment recalibration discussed in section III.C. of this proposed rule) to compute the provider's case-mix adjusted per diem rate for FY 2024, based on the patient's PDPM classification, as well as how the variable per diem (VPD) adjustment factor affects calculation of the per diem rate for a given day of the stay. Table 9 shows the adjustments made to the case-mix adjusted per diem rate from Table 8 to account for the provider's wage index. The wage index used in this example is based on the FY 2024 SNF PPS wage index that appears in Table A available on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.* Finally, Table 10 provides the case-mix and wage index adjusted per-diem rate for this patient for each day of the 30-day stay, as well as the total payment for this stay. Table 10 also includes the VPD adjustment factors for each day of the patient's stay, to clarify why the patient's per diem rate changes for certain days of the stay. As illustrated in Table 10, SNF XYZ's total PPS payment for this particular patient's stay would equal $21,677.34.

TABLE 8—PDPM CASE-MIX ADJUSTED RATE COMPUTATION EXAMPLE

Per diem rate calculation				
Component	Component group	Component rate	VPD adjustment factor	VPD adj. rate
PT	N	$98.11	1.00	$98.11
OT	N	92.63	1.00	92.63
SLP	H	70.63	1.00	70.63
Nursing	N	179.56	1.00	179.56
NTA	C	160.36	3.00	481.08
Non-Case-Mix		109.39		109.39
Total PDPM Case-Mix Adj. Per Diem				1,031.40

TABLE 9—WAGE INDEX ADJUSTED RATE COMPUTATION EXAMPLE

PDPM wage index adjustment calculation						
HIPPS code	PDPM case-mix adjusted per diem	Labor portion	Wage index	Wage index adjusted rate	Non-labor portion	Total case mix and wage index adj. rate
NHNC1	$1,031.40	$732.29	0.9648	$706.51	$299.11	$1,005.62

TABLE 10—ADJUSTED RATE COMPUTATION EXAMPLE

Day of stay	NTA VPD adjustment factor	PT/OT VPD adjustment factor	Case mix and wage index adjusted per diem rate
1	3.0	1.0	$1,005.62
2	3.0	1.0	1,005.62
3	3.0	1.0	1,005.62
4	1.0	1.0	692.92
5	1.0	1.0	692.92
6	1.0	1.0	692.92
7	1.0	1.0	692.92
8	1.0	1.0	692.92
9	1.0	1.0	692.92
10	1.0	1.0	692.92
11	1.0	1.0	692.92
12	1.0	1.0	692.92
13	1.0	1.0	692.92
14	1.0	1.0	692.92
15	1.0	1.0	692.92
16	1.0	1.0	692.92
17	1.0	1.0	692.92
18	1.0	1.0	692.92
19	1.0	1.0	692.92
20	1.0	1.0	692.92
21	1.0	0.98	689.20
22	1.0	0.98	689.20
23	1.0	0.98	689.20
24	1.0	0.98	689.20
25	1.0	0.98	689.20
26	1.0	0.98	689.20
27	1.0	0.98	689.20
28	1.0	0.96	685.48
29	1.0	0.96	685.48
30	1.0	0.96	685.48
Total Payment			21,677.34

IV. Additional Aspects of the SNF PPS

A. SNF Level of Care—Administrative Presumption

The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system discussed in section III.C. of this proposed rule. This

approach includes an administrative presumption that utilizes a beneficiary's correct assignment, at the outset of the SNF stay, of one of the case-mix classifiers designated for this purpose to assist in making certain SNF level of care determinations.

In accordance with § 413.345, we include in each update of the Federal payment rates in the **Federal Register** a discussion of the resident classification system that provides the basis for case-mix adjustment. We also designate those specific classifiers under the case-mix classification system that represent the required SNF level of care, as provided in 42 CFR 409.30. This designation reflects an administrative presumption that those beneficiaries who are correctly assigned one of the designated case-mix classifiers on the initial Medicare assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date (ARD) for that assessment.

A beneficiary who does not qualify for the presumption is not automatically classified as either meeting or not meeting the level of care definition, but instead receives an individual determination on this point using the existing administrative criteria. This presumption recognizes the strong likelihood that those beneficiaries who are correctly assigned one of the designated case-mix classifiers during the immediate post-hospital period would require a covered level of care, which would be less likely for other beneficiaries.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure. The FY 2018 final rule (82 FR 36544) further specified that we would henceforth disseminate the standard description of the administrative presumption's designated groups via the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html* (where such designations appear in the paragraph entitled ''Case Mix Adjustment''), and would publish such designations in rulemaking only to the extent that we actually intend to propose changes in them. Under that approach, the set of case-mix classifiers designated for this purpose under PDPM was finalized in the FY 2019 SNF PPS final rule (83 FR 39253) and is posted on the SNF PPS website (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html*), in the paragraph entitled ''Case Mix Adjustment.''

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that any services prompting the assignment of one of the designated case-mix classifiers (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations where the sole classifier that triggers the presumption is itself assigned through the receipt of services that are subsequently determined to be not reasonable and necessary. Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the ARD of the initial Medicare assessment.

B. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA 1997) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor (MAC) for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) of the Act places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

Effective with services furnished on or after January 1, 2024, section 4121(a)(4) of the Consolidated Appropriations Act, 2023 (CAA 2023) added marriage and family therapists and mental health counselors to the list of practitioners at section 1888(e)(2)(A)(ii) of the Act whose services are excluded from the consolidated billing provision. We note that there are no rate adjustments required to the per diem to offset these exclusions, as payments for services made under section 1888(e)(2)(A)(ii) of the Act are not specified under the requirement at section 1888(e)(4)(G)(iii) of the Act as services for which the Secretary must ''provide for an appropriate proportional reduction . . . equal to the aggregate increase in payments attributable to the exclusion''. See section IV.D. of this proposed rule for a discussion of the proposed regulatory updates implementing this change.

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf*. In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA 1999) (Pub. L. 106–113, enacted November 29, 1999) amended section 1888(e)(2)(A)(iii) of the Act by further excluding a number of individual high-cost, low probability services, identified by HCPCS codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA 1999 amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.gov/transmittals/downloads/ab001860.pdf*.

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA 1999 not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary the authority to designate additional, individual services for exclusion within each of these four specified service categories. In the proposed rule for FY 2001, we also noted that the BBRA 1999 Conference report (H.R. Conf. Rep. No. 106–479 at 854 (1999)) characterizes the

individual services that this legislation targets for exclusion as high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment SNFs receive under the PPS. According to the conferees, section 103(a) of the BBRA 1999 is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs. By contrast, the amendments enacted in section 103 of the BBRA 1999 do not designate for exclusion any of the remaining services within those four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as is consistent with our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA 1999: they must fall within one of the four service categories specified in the BBRA 1999; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA 1999 Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice) (65 FR 46791).

Effective with items and services furnished on or after October 1, 2021, section 134 in Division CC of the CAA 2021 established an additional category of excluded codes in section 1888(e)(2)(A)(iii)(VI) of the Act, for certain blood clotting factors for the treatment of patients with hemophilia and other bleeding disorders along with items and services related to the furnishing of such factors under section 1842(o)(5)(C) of the Act. Like the provisions enacted in the BBRA 1999, section 1888(e)(2)(A)(iii)(VI) of the Act gives the Secretary the authority to designate additional items and services for exclusion within the category of items and services related to blood clotting factors, as described in that section. Finally, as noted previously in this proposed rule, section 4121(a)(4) CAA 2023 amended section 1888(e)(2)(A)(ii) of the Act to exclude marriage and family therapist services and mental health counselor services from consolidated billing effective January 1, 2024.

In this proposed rule, we specifically invite public comments identifying HCPCS codes in any of these five service categories (chemotherapy items, chemotherapy administration services, radioisotope services, customized prosthetic devices, and blood clotting factors) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing. We may consider excluding a particular service if it meets our criteria for exclusion as specified previously. We request that commenters identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for requesting that the identified HCPCS code(s) be excluded.

We note that the original BBRA amendment and the CAA 2021 identified a set of excluded items and services by means of specifying individual HCPCS codes within the designated categories that were in effect as of a particular date (in the case of the BBRA 1999, July 1, 1999, and in the case of the CAA 2021, July 1, 2020), as subsequently modified by the Secretary. In addition, as noted in this section of the preamble, the statute (sections 1888(e)(2)(A)(iii)(II) through (VI) of the Act) gives the Secretary authority to identify additional items and services for exclusion within the five specified categories of items and services described in the statute, which are also designated by HCPCS code. Designating the excluded services in this manner makes it possible for us to utilize program issuances as the vehicle for accomplishing routine updates to the excluded codes to reflect any minor revisions that might subsequently occur in the coding system itself, such as the assignment of a different code number to a service already designated as excluded, or the creation of a new code for a type of service that falls within one of the established exclusion categories and meets our criteria for exclusion.

Accordingly, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, October 1, 2023). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions. The latest list of excluded codes can be found on the SNF Consolidated Billing website at *https://www.cms.gov/Medicare/Billing/SNFConsolidatedBilling.*

C. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, SNF-level services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this proposed rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. As finalized in the FY 2010 SNF PPS final rule (74 FR 40356 through 40357), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. As discussed in the FY 2019 SNF PPS final rule (83 FR 39235), revisions were made to the swing bed assessment to support implementation of PDPM, effective October 1, 2019. A discussion of the assessment schedule and the MDS effective beginning FY 2020 appears in the FY 2019 SNF PPS final rule (83 FR 39229 through 39237). The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html.*

D. Revisions to the Regulation Text

We propose to make the following revisions in the regulation text. To reflect the recently-enacted exclusion of marriage and family therapist services and mental health counselor services from SNF consolidated billing at section 1888(e)(2)(A)(ii) of the Act (as discussed in section IV.B of this proposed rule), we propose to redesignate current § 411.15(p)(2)(vi) through (xviii) as §§ 411.15(p)(2)(viii) through (xx),

respectively. In addition, we propose to redesignate § 489.20(s)(6) through (18) as § 489.20(s)(8) through (20), respectively. We also propose to add new regulation text at §§ 411.15(p)(2)(vi) and (vii) and 489.20(s)(6) and (7). Specifically, proposed new §§ 411.15(p)(2)(vi) and 489.20(s)(6) would reflect the exclusion of services performed by a marriage and family therapist, as defined in section 1861(lll)(2) of the Act. Proposed new §§ 411.15(p)(2)(vii) and 489.20(s)(7) would reflect the exclusion of services performed by a mental health counselor, as defined in section 1861(lll)(4) of the Act.

V. Other SNF PPS Issues

A. Technical Updates to PDPM ICD–10 Mappings

1. Background

In the FY 2019 SNF PPS final rule (83 FR 39162), we finalized the implementation of the Patient Driven Payment Model (PDPM), effective October 1, 2019. The PDPM utilizes the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM, hereafter referred to as ICD–10) codes in several ways, including using the patient's primary diagnosis to assign patients to clinical categories under several PDPM components, specifically the PT, OT, SLP and NTA components. While other ICD–10 codes may be reported as secondary diagnoses and designated as additional comorbidities, the PDPM does not use secondary diagnoses to assign patients to clinical categories. The ICD–10 code to clinical category mapping used under PDPM (hereafter referred to as PDPM ICD–10 code mapping) are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.*

In the FY 2020 SNF PPS final rule (84 FR 38750), we outlined the process by which we maintain and update the PDPM ICD–10 code mapping, as well as the SNF Grouper software and other such products related to patient classification and billing, to ensure that they reflect the most up to date codes. Beginning with the updates for FY 2020, we apply nonsubstantive changes to the PDPM ICD–10 code mapping through a subregulatory process consisting of posting the updated PDPM ICD–10 code mapping on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* Such nonsubstantive changes are limited to those specific changes that are necessary to maintain consistency with the most current PDPM ICD–10 code mapping.

On the other hand, substantive changes that go beyond the intention of maintaining consistency with the most current PDPM ICD–10 code mapping, such as changes to the assignment of a code to a clinical category or comorbidity list, will be proposed through notice and comment rulemaking because they are changes that affect policy. We note that, in the case of any diagnoses that are either currently mapped to Return to Provider or that we are proposing to classify into this category, this is not intended to reflect any judgment on the importance of recognizing and treating these conditions. Rather, we believe that there are more specific or appropriate diagnoses that would better serve as the primary diagnosis for a Part–A covered SNF stay.

2. Proposed Clinical Category Changes for New ICD–10 Codes for FY 2023

Each year, we review the clinical category assigned to new ICD–10 diagnosis codes and propose changing the assignment to another clinical category if warranted. This year, we are proposing changing the clinical category assignment for the following five new ICD–10 codes that were effective on October 1, 2022:

- D75.84 *Other platelet-activating anti-platelet factor 4 (PF4) disorders* is mapped to the clinical category of Return to Provider. Patients with anti-PF4 disorders have blood clotting disorders. Examples of disorders to be classified with D75.84 are spontaneous heparin-induced thrombocytopenia (without heparin exposure), thrombosis with thrombocytopenia syndrome, and vaccine-induced thrombotic thrombocytopenia. Due to the similarity of this code to other anti-PF4 disorders, we propose to change the assignment to Medical Management.
- F43.81 *Prolonged grief disorder* and F43.89 *Other reactions to severe stress* are mapped to the clinical category of Medical Management. However, while we believe that SNFs serve an important role in providing services to those beneficiaries suffering from mental illness, the SNF setting is not the setting that would be most beneficial to treat a patient for whom these diagnoses are coded as the patient's primary diagnosis. For this reason, we propose changing the clinical category of both codes to Return to Provider. We would encourage providers to continue reporting these codes as secondary diagnoses, to ensure that we are able to identify these patients and that they are receiving appropriate care.
- G90.A *Postural orthostatic tachycardia syndrome (POTS)* is mapped to the clinical category of Acute Neurologic. POTS is a type of orthostatic intolerance that causes the heart to beat faster than normal when transitioning from sitting or lying down to standing up, causing changes in blood pressure, increase in heart rate, and lightheadedness. The treatment for POTS involves hydration, physical therapy, and vasoconstrictor medications, which are also treatments for codes such as E86.0 *Dehydration* and E86.1 *Hypovolemia* that are mapped to the Medical Management category. Since the medical interventions are similar, we propose changing the assignment for POTS to Medical Management.
- K76.82 *Hepatic encephalopathy* is mapped to the clinical category of Return to Provider. Hepatic encephalopathy is a condition resulting from severe liver disease, where toxins build up in the blood that can affect brain function and lead to a change in medical status. Prior to the development of this code, multiple codes were used to characterize this condition such as K76.6 *Portal hypertension,* K76.7 *Hepatorenal syndrome,* and K76.89 *Other unspecified diseases of liver,* which are mapped to the Medical Management category. Since these codes describe similar liver conditions, we propose to change the assignment to Medical Management.

We invite comments on the proposed substantive changes to the PDPM ICD–10 code mapping discussed in this section, as well as comments on additional substantive and nonsubstantive changes that commenters believe are necessary.

3. Proposed Clinical Category Changes for Unspecified Substance Use Disorder Codes

Effective with stays beginning on and after October 1, 2022, ICD–10 diagnosis codes F10.90 *Alcohol use, unspecified, uncomplicated,* F10.91 *Alcohol use, unspecified, in remission,* F11.91 *Opioid use, unspecified, in remission,* F12.91 *Cannabis use, unspecified, in remission,* F13.91 *Sedative, hypnotic or anxiolytic use, unspecified, in remission,* and F14.91 *Cocaine use, unspecified, in remission* went into effect and were mapped to the clinical category of Medical Management. We reviewed these 6 unspecified substance use disorder (SUD) codes and propose changing the assignment from Medical Management to Return to Provider because the codes are not specific as to if they refer to abuse or dependence, and there are other specific codes

available for each of these conditions that would be more appropriate as a primary diagnosis for a SNF stay. For example, diagnosis code F10.90 *Alcohol use, unspecified, uncomplicated* is not specific as to whether the patient has alcohol abuse or alcohol dependence. There are more specific codes that could be used instead, such as F10.10 *Alcohol abuse, uncomplicated* or F10.20 *Alcohol dependence, uncomplicated,* that may serve as the primary diagnosis for a SNF stay and are appropriately mapped to the clinical category of Medical Management.

Moreover, we believe that increased accuracy of coding primary diagnoses aligns with CMS' broader efforts to ensure better quality of care. Therefore, we reviewed all 458 ICD–10 SUD codes from code categories F10 to F19 and propose reassigning 162 additional unspecified SUD codes to Return to Provider from Medical Management because the codes are not specific as to if they refer to abuse or dependence. We would note that this policy change would not affect a large number of SNF stays. Our data from FY 2021 show that the 162 unspecified SUD codes were used as primary diagnoses for only 323 SNF stays (0.02 percent) and as secondary diagnoses for 9,537 SNF stays (0.54 percent). The purpose of enacting this policy is to continue an ongoing effort to refine the PDPM ICD–10 code mapping each year to ensure more accurate coding of primary diagnoses. We would encourage providers to continue reporting these codes as secondary diagnoses, to ensure that we are able to identify these patients and that they are receiving appropriate care.

Table 1, *Proposed Clinical Category Changes for Unspecified Substance Use Disorder Codes,* which lists all 168 codes included in this proposal, is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* We invite comments on the proposed substantive changes to the PDPM ICD–10 code mapping discussed in this section, as well as comments on additional substantive and nonsubstantive changes that commenters believe are necessary.

3. Proposed Clinical Category Changes for Certain Subcategory Fracture Codes

Each year, we invite comments on additional substantive and nonsubstantive changes that commenters believe are necessary to the PDPM ICD–10 code mapping. In the FY 2023 final rule (87 FR 47524), we described how one commenter recommended that CMS consider revising the PDPM ICD–10 code mapping to reclassify certain subcategory S42.2—humeral fracture codes. The commenter highlighted that certain encounter codes for humeral fractures, such as those ending in the 7th character of A for an initial encounter for fracture, are permitted the option to be mapped to a surgical clinical category, denoted on the PDPM ICD–10 code mapping as May be Eligible for One of the Two Orthopedic Surgery Categories (that is, major joint replacement or spinal surgery, or orthopedic surgery) if the resident had a major procedure during the prior inpatient stay that impacts the SNF care plan. However, the commenter noted that other encounter codes within the same code family, such as those ending in the 7th character of D for subsequent encounter for fracture with routine healing, are mapped to the Non-Surgical Orthopedic/Musculoskeletal without the surgical option. The commenter requested that we review all subcategory S42.2—fracture codes to ensure that the appropriate surgical clinical category could be selected for joint aftercare. Since then, the commenter has also contacted CMS with a similar suggestion for M84.552D *Pathological fracture in neoplastic disease, left femur,* subsequent encounter for fracture with routine healing.

We have since reviewed the suggested code subcategories to determine the most efficient manner for addressing this discrepancy. We propose adding the surgical option that allows 45 subcategory S42.2—codes for displaced fractures to be eligible for one of two orthopedic surgery categories. However, we note that this proposal does not extend to subcategory S42.2—codes for nondisplaced fractures, which typically do not require surgery. We also propose adding the surgical option to subcategory 46 M84.5—codes for pathological fractures to certain major weight-bearing bones to be eligible for one of two orthopedic surgery categories.

Table 2, *Proposed Clinical Category Changes for S42.2 and M84.5 Fracture Codes,* which lists all 91 codes included in this proposal, is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* We invite comments on the proposed substantive changes to the PDPM ICD–10 code mapping discussed in this section, as well as comments on additional substantive and nonsubstantive changes that commenters believe are necessary.

4. Proposed Clinical Category Changes for Unacceptable Principal Diagnosis Codes

In the FY 2023 final rule (87 FR 47525) we described how several commenters referred to instances when SNF claims were denied for including a primary diagnosis code that is listed on the PDPM ICD–10 code mapping as a valid code, but that is not accepted by some Medicare Administrative Contractors (MACs) that use the Hospital Inpatient Prospective Payment System (IPPS) Medicare Code Editor (MCE) lists when evaluating the primary diagnosis codes listed on SNF claims. In the IPPS, a patient's diagnosis is entered into the Medicare claims processing systems and subjected to a series of automated screens called the MCE. The MCE lists are designed to identify cases that require further review before classification into an MS–DRG. We note that all codes on the MCE lists are able to be reported; however, a code edit may be triggered that the MAC may either choose to bypass or return to the provider to resubmit. Updates to the MCE lists are proposed on an annual basis and discussed through IPPS rulemaking when new codes or policies involving existing codes are introduced.

Commenters recommended that CMS seek to align the PDPM ICD–10 code mapping with the MCE in treating diagnoses that are Return to Provider, specifically referring to the *Unacceptable Principal Diagnosis* edit code list in the Definition of Medicare Code Edits, which is available on the CMS website at *https://www.cms.gov/medicare/medicare-fee-for-service-payment/acuteinpatientpps/ms-drg-classifications-and-software.* The *Unacceptable Principal Diagnosis* edit code list contains selected codes that describe a circumstance that influences an individual's health status but not a current illness or injury, or codes that are not specific manifestations but may be due to an underlying cause, and which are considered unacceptable as a principal diagnosis.

We have identified 95 codes from the MCE *Unacceptable Principal Diagnosis* edit code list that are mapped to a valid clinical category on the PDPM ICD–10 code mapping, and that were coded as primary diagnoses for 14,808 SNF stays (0.84 percent) in FY 2021. Table 3, *Proposed Clinical Category Changes for Unacceptable Principal Diagnosis Codes,* which lists all 95 codes included in this proposal, is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM.* As stated previously in this section of this

proposed rule, we note that reporting these codes as a primary diagnosis for a SNF stay may trigger an edit that the MAC may either choose to bypass or return to the provider to resubmit, and therefore not all of these 14,808 stays were denied by the MACs.

After clinical review, we concur that these 95 codes listed in Table 3 on the CMS website should be assigned to Return to Provider. For the diagnosis codes listed in Table 3 on the CMS website that are from the category B95 to B97 range and contain the suffix ''as the cause of diseases classified elsewhere'', the ICD–10 coding convention for such etiology and manifestation codes, where certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology, dictates that the underlying condition should be sequenced first, followed by the manifestation. The ICD–10 coding guidelines also state that codes from subcategory G92.0—*Immune effector cell-associated neurotoxicity syndrome,* subcategory R40.2—*Coma scale,* and subcategory S06.A—*Traumatic brain injury* should only be reported as secondary diagnoses, as there are more specific codes that should be sequenced first. Additionally, the ICD–10 coding guidelines state that diagnosis codes in categories Z90 and Z98 are status codes, indicating that a patient is either a carrier of a disease or has the sequelae or residual of a past disease or condition, and are not reasons for a patient to be admitted to a SNF. Lastly, our clinicians determined that diagnosis code Z43.9 *Encounter for attention to unspecified artificial opening* should be assigned to the clinical category Return to Provider because there are more specific codes that identify the site for the artificial opening.

Therefore, we propose to reassign the 95 codes listed in Table 3 on the CMS website from the current default clinical category on the PDPM ICD–10 code mapping to Return to Provider. We also propose to make future updates to align the PDPM ICD–10 code mapping with the MCE *Unacceptable Principal Diagnosis* edit code list on a subregulatory basis going forward. Moreover, we are soliciting comment on aligning with the MCE *Manifestation codes not allowed as principal diagnosis* edit code list, which contains diagnosis codes that are the manifestation of an underlying disease, not the disease itself, and therefore should not be used as a principal diagnosis, and the *Questionable admission codes* edit code list, which contains diagnoses codes that are not usually sufficient justification for admission to an acute care hospital. While these MCE lists were not mentioned by commenters, we believe that some MACs may be applying these edit lists to SNF claims and this could cause continued differences between the PDPM ICD–10 code mapping and the IPPS MCE. If finalized, we also propose to make future updates to align the PDPM ICD–10 code mapping with the MCE *Manifestation codes not allowed as principal diagnosis* edit code list and the *Questionable admission codes* edit code list on a subregulatory basis going forward.

We invite comments on the proposed substantive changes to the PDPM ICD–10 code mapping discussed in this section, as well as comments on additional substantive and nonsubstantive changes that commenters believe are necessary.

VI. Skilled Nursing Facility Quality Reporting Program (SNF QRP)

A. Background and Statutory Authority

The Skilled Nursing Facility Quality Reporting Program (SNF QRP) is authorized by section 1888(e)(6) of the Act, and it applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-critical access hospital (CAH) swing-bed rural hospitals. Section 1888(e)(6)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual market basket percentage increase described in section 1888(e)(5)(B)(i) of the Act applicable to a SNF for a fiscal year (FY), after application of section 1888(e)(5)(B)(ii) of the Act (the productivity adjustment) and section 1888(e)(5)(B)(iii) of the Act, in the case of a SNF that does not submit data in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for that FY. Section 1890A of the Act requires that the Secretary establish and follow a pre-rulemaking process, in coordination with the consensus-based entity (CBE) with a contract under section 1890(a) of the Act, to solicit input from certain groups regarding the selection of quality and efficiency measures for the SNF QRP. We have codified our program requirements in our regulations at 42 CFR part 413.

In this proposed rule, we are proposing to adopt three new measures, remove three existing measures, and modify one existing measure. Second, we are seeking information on principles we could use to select and prioritize SNF QRP quality measures in future years. Third, we are providing an update on our health equity efforts. Fourth, we are proposing several administrative changes, including a change to the SNF QRP data completion thresholds and a data submission method for the proposed CoreQ: Short Stay Discharge questionnaire. Finally, we are proposing to begin public reporting of four measures. These proposals are further specified below.

B. General Considerations Used for the Selection of Measures for the SNF QRP

For a detailed discussion of the considerations we use for the selection of SNF QRP quality, resource use, or other measures, we refer readers to the FY 2016 SNF (PPS) final rule (80 FR 46429 through 46431).

1. Quality Measures Currently Adopted for the FY 2024 SNF QRP

The SNF QRP currently has 16 measures for the FY 2024 program year, which are listed in Table 11. For a discussion of the factors used to evaluate whether a measure should be removed from the SNF QRP, we refer readers to § 413.360(b)(2).

TABLE 11—QUALITY MEASURES CURRENTLY ADOPTED FOR THE FY 2024 SNF QRP

Short name	Measure name & data source
Resident Assessment Instrument Minimum Data Set (Assessment-Based)	
Pressure Ulcer/Injury.	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury.
Application of Falls.	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay).
Application of Functional Assessment/ Care Plan.	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function.
Change in Mobility Score.	Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients.
Discharge Mobility Score.	Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients.
Change in Self-Care Score.	Application of the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients.
Discharge Self-Care Score.	Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients.

TABLE 11—QUALITY MEASURES CURRENTLY ADOPTED FOR THE FY 2024 SNF QRP—Continued

Short name	Measure name & data source
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues–Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
TOH-Provider*	Transfer of Health (TOH) Information to the Provider Post-Acute Care (PAC).
TOH-Patient*	Transfer of Health (TOH) Information to the Patient Post-Acute Care (PAC).
Claims-Based	
MSPB SNF	Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
DTC	Discharge to Community (DTC)—Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).
SNF HAI	SNF Healthcare-Associated Infections (HAI) Requiring Hospitalization.
NHSN	
HCP COVID–19 Vaccine.	COVID–19 Vaccination Coverage among Healthcare Personnel (HCP).
HCP Influenza Vaccine.	Influenza Vaccination Coverage among Healthcare Personnel (HCP).

*In response to the public health emergency (PHE) for the Coronavirus Disease 2019 (COVID–19), we released an Interim Final Rule (85 FR 27595 through 27597) which delayed the compliance date for collection and reporting of the Transfer of Health (TOH) Information measures for at least 2 full fiscal years after the end of the PHE. The compliance date for the collection and reporting of the Transfer of Health Information measures was revised to October 1, 2023 in the FY 2023 SNF PPS final rule (87 FR 47547 through 47551).

C. SNF QRP Quality Measure Proposals

In this proposed rule, we include SNF QRP proposals for the FY 2025, FY 2026, and FY 2027 program years. This proposed rule would add new measures to the SNF QRP as well as remove measures from the SNF QRP. Beginning with the FY 2025 SNF QRP, we are proposing to (1) modify the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure, (2) adopt the Discharge Function Score measure,[13] which we are specifying under section 1888(e)(6)(B)(i) of the Act, and (3) remove three current measures: (i) the Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function measure, (ii) the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients measure, and (iii) the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients measure.

We are proposing to adopt two new measures beginning with the FY 2026 SNF QRP: (i) the CoreQ: Short Stay Discharge measure which we are specifying under section 1899B(d)(1) of the Act, and (ii) the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure, which we are specifying under section 1899B(d)(1) of the Act.

1. SNF QRP Quality Measure Proposals Beginning With the FY 2025 SNF QRP

a. Proposed Modification of the COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP) Measure Beginning With the FY 2025 SNF QRP

(1) Background

On January 31, 2020, the Secretary declared a public health emergency (PHE) for the United States in response to the global outbreak of SARS–CoV–2, a novel (new) coronavirus that causes a disease named ''coronavirus disease 2019'' (COVID–19).[14] Subsequently, in the FY 2022 SNF PPS final rule (86 FR 42480 through 42489), we adopted the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) (HCP COVID–19 Vaccine) measure for the SNF QRP. The HCP COVID–19 Vaccine measure requires each SNF to submit data on the percentage of HCP eligible to work in the SNF for at least one day during the reporting period, excluding persons with contraindications to FDA-authorized or -approved COVID–19 Vaccines, who have received a complete vaccination course against SARS–CoV–2. Since that time, COVID–19 has continued to spread domestically and around the world with more than 102.7 million cases and 1.1 million deaths in the United States as of February 13, 2023.[15] In recognition of the ongoing significance and complexity of COVID–19, the Secretary has renewed the PHE on April 21, 2020, July 23, 2020, October 2, 2020, January 7, 2021, April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, July 15, 2022, October 13, 2022, January 11, 2023, and February 9, 2023.[16] The Department of Health and Human Services (HHS) announced plans to let the PHE expire on May 11, 2023 and stated that the public health response to COVID–19 remains a public health priority with a whole of government approach to combating the virus, including through vaccination efforts.[17]

In the FY 2022 SNF PPS final rule (86 FR 42480 through 42489) and in the Revised Guidance for Staff Vaccination Requirements,[18] we stated that vaccination is a critical part of the nation's strategy to effectively counter the spread of COVID–19. We continue to believe it is important to incentivize and track HCP vaccination in SNFs through quality measurement in order to protect HCP, residents, and caregivers, and to help sustain the ability of SNFs to continue serving their communities throughout the PHE and beyond. At the time we issued the FY 2022 SNF PPS final rule, the Food and Drug Administration (FDA) had issued emergency use authorizations (EUAs) for COVID–19 vaccines manufactured

[13] This measure was submitted to the Measures Under Consideration (MUC) List as the Cross-Setting Discharge Function Score. Subsequent to the MAP Workgroup meetings, the measure developer modified the name. Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report. *https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[14] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response. Determination that a Public Health Emergency Exists. January 31, 2020. *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[15] Centers for Disease Control and Prevention. COVID Data Tracker. February 13, 2023. *https://covid.cdc.gov/covid-data-tracker/#datatracker-home.*

[16] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response. Renewal of Determination that a Public Health Emergency Exists. February 9, 2023. *https://aspr.hhs.gov/legal/PHE/Pages/COVID19-9Feb2023.aspx.*

[17] U.S. Department of Health and Human Services. Fact Sheet: COVID–19 Public Health Emergency Transition Roadmap. February 9, 2023. *https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*

[18] Centers for Medicare & Medicaid Services. Revised Guidance for Staff Vaccination Requirements QSO–23–02–ALL. October 26, 2022. *https://www.cms.gov/files/document/qs0-23-02-all.pdf.*

by Pfizer-BioNTech,[19] Moderna,[20] and Janssen.[21] The Pfizer-BioNTech vaccine was authorized for ages 12 and older and the Moderna and Janssen vaccines for ages 18 and older. Shortly following the publication of the final rule, on August 23, 2021, the FDA issued an approval for the Pfizer-BioNTech vaccine, marketed as Comirnaty.[22] The FDA issued approval for the Moderna vaccine, marketed as Spikevax, on January 31, 2022 [23] and an EUA for the Novavax vaccine, on July 13, 2022.[24] The FDA also issued EUAs for single booster doses of the then authorized COVID–19 vaccines. As of November 19, 2021 [25] [26] [27] a single booster dose of each COVID–19 vaccine was authorized for all eligible individuals 18 years of age and older. EUAs were subsequently issued for a second booster dose of the Pfizer-BioNTech and Moderna vaccines in certain populations in March 2022.[28] FDA first authorized the use of a booster dose of bivalent or ''updated'' COVID–19 vaccines from Pfizer-BioNTech and Moderna in August 2022.[29]

(a) Measure Importance

While the impact of COVID–19 vaccines on asymptomatic infection and transmission is not yet fully known, there are now robust data available on COVID–19 vaccine effectiveness across multiple populations against severe illness, hospitalization, and death. Two-dose COVID–19 vaccines from Pfizer-BioNTech and Moderna were found to be 88 percent and 93 percent effective against hospitalization for COVID–19, respectively, over 6 months for adults over age 18 without immunocompromising conditions.[30] During a SARS–CoV–2 surge in the spring and summer of 2021, 92 percent of COVID–19 hospitalizations and 91 percent of COVID–19-associated deaths were reported among persons not fully vaccinated.[31] Real-world studies of population-level vaccine effectiveness indicated similarly high rates of efficacy in preventing SARS–CoV–2 infection among frontline workers in multiple industries, with a 90 percent effectiveness in preventing symptomatic and asymptomatic infection from December 2020 through August 2021.[32] Vaccines have also been highly effective in real-world conditions at preventing COVID–19 in HCP with up to 96 percent efficacy for fully vaccinated HCP, including those at risk for severe infection and those in racial and ethnic groups disproportionately affected by COVID–19.[33] In the presence of high community prevalence of COVID–19, residents of nursing homes with low staff vaccination coverage had cases of COVID–19 related deaths 195 percent higher than those among residents of nursing homes with high staff vaccination coverage.[34] Overall, data demonstrate that COVID–19 vaccines are effective and prevent severe disease, hospitalization, and death.

As SARS–CoV–2 persists and evolves, our COVID–19 vaccination strategy must remain responsive. When we adopted the HCP COVID–19 Vaccine measure in the FY 2022 SNF PPS final rule, we stated that the need for booster doses of COVID–19 vaccine had not been established and no additional doses had been recommended (86 FR 42484 through 42485). We also stated that we believed the numerator was sufficiently broad to include potential future boosters as part of a ''complete vaccination course'' and that the measure was sufficiently specified to address boosters (86 FR 42485). Since we adopted the HCP COVID–19 Vaccine measure in the FY 2022 SNF PPS final rule, new variants of SARS–CoV–2 have emerged around the world and within the United States. Specifically, the Omicron variant (and its related subvariants) is listed as a variant of concern by the Centers for Disease Control and Prevention (CDC) because it spreads more easily than earlier variants.[35] Vaccine manufacturers have responded to the Omicron variant by developing bivalent COVID–19 vaccines, which include a component of the original virus strain to provide broad protection against COVID–19 and a component of the Omicron variant to provide better protection against COVID–19 caused by the Omicron

[19] Food and Drug Administration. FDA Takes Key Action in Fight Against COVID–19 By Issuing Emergency Use Authorization for First COVID–19 Vaccine. December 11, 2020. *https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19.*

[20] Food and Drug Administration. FDA Takes Additional Action in Fight Against COVID–19 By Issuing Emergency Use Authorization for Second COVID–19 Vaccine. December 18, 2020. *https://www.fda.gov/news-events/press-announcements/fda-takes-additional-action-fight-against-covid-19-issuing-emergency-use-authorization-second-covid.*

[21] Food and Drug Administration. FDA Issues Emergency Use Authorization for Third COVID–19 Vaccine. February 27, 2021. *https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine.*

[22] Food and Drug Administration. FDA Approves First COVID–19 Vaccine. August 23, 2021. *https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine.*

[23] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Takes Key Action by Approving Second COVID–19 Vaccine. January 31, 2022. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-key-action-approving-second-covid-19-vaccine.*

[24] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Authorizes Emergency Use of Novavax COVID–19 Vaccine, Adjuvanted. July 13, 2022. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-emergency-use-novavax-covid-19-vaccine-adjuvanted.*

[25] Food and Drug Administration. FDA Authorizes Booster Dose of Pfizer-BioNTech COVID–19 Vaccine for Certain Populations. September 22, 2021. *https://www.fda.gov/news-events/press-announcements/fda-authorizes-booster-dose-pfizer-biontech-covid-19-vaccine-certain-populations.*

[26] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID–19 Vaccines. October 20, 2021. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-additional-actions-use-booster-dose-covid-19-vaccines.*

[27] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Expands Eligibility for COVID–19 Vaccine Boosters. November 19, 2021. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-expands-eligibility-covid-19-vaccine-boosters.*

[28] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Authorizes Second Booster Dose of Two COVID–19 Vaccines for Older and Immunocompromised Individuals. March 29, 2022. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-second-booster-dose-two-covid-19-vaccines-older-and.*

[29] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Authorizes Moderna, Pfizer-BioNTech Bivalent COVID–19 Vaccines for Use as a Booster Dose. August 31, 2022. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-moderna-pfizer-biontech-bivalent-covid-19-vaccines-use.*

[30] Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). Comparative Effectiveness of Moderna, Pfizer-BioNTech, and Janssen (Johnson & Johnson) Vaccines in Preventing COVID–19 Hospitalizations Among Adults Without Immunocompromising Conditions—United States, March–August 2021. September 24, 2021. *https://cdc.gov/mmwr/volumes/70/wr/mm7038e1.htm?s_cid=mm7038e1_w.*

[31] Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). Monitoring Incidence of COVID–19 Cases, Hospitalizations, and Deaths, by Vaccination Status—13 U.S. Jurisdictions, April 4–July 17, 2021. September 10, 2021. *https://cdc.gov.mmwr/volumes/70/wr/mm7037e1.htm?s_cid=mm7037e1_w.*

[32] Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). Effectiveness of COVID–19 Vaccines in Preventing SARS–CoV–2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance—Eight U.S. Locations, December 2020–August 2021. August 27, 2021. *https://cdc.gov/mmwr/volume/70/wr/mm7034e4.htm?s_cid=mm7034e4_w.*

[33] Pilishvili T., Gierke R., Fleming-Dutra K.E., et al. Effectiveness of mRNA Covid–19 Vaccine among U.S. Health Care Personnel. N Engl J Med. 2021 Dec 16;385(25):e90. doi: 10.1056/NEJMoa2106599. PMID: 34551224; PMCID: PMC8482809.

[34] McGarry B.E., Barnett M.L., Grabowski D.C., Gandhi A.D. Nursing Home Staff Vaccination and Covid–19 Outcomes. N Engl J Med. 2022 Jan 27;386(4):397–398. doi: 10.1056/NEJMc2115674. PMID: 34879189; PMCID: PMC8693685.

[35] Centers for Disease Control and Prevention. Variants of the Virus. *https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html.*

variant.[36] These booster doses of the bivalent COVID–19 vaccines have been shown to increase immune response to SARS–CoV–2 variants, including Omicron, particularly in individuals that are more than 6 months removed from receipt of their primary series.[37] The FDA issued EUAs for booster doses of two bivalent COVID–19 vaccines, one from Pfizer-BioNTech [38] and one from Moderna,[39] and strongly encourages anyone who is eligible to consider receiving a booster dose with a bivalent COVID–19 vaccine to provide better protection against currently circulating variants.[40] COVID–19 booster doses are associated with a greater reduction in infections among HCP relative to those who only received primary series vaccination, with a rate of breakthrough infections among HCP who received only a two-dose regimen of 21.4 percent compared to a rate of 0.7 percent among boosted HCP.[41] [42]

We believe that vaccination remains the most effective means to prevent the severe consequences of COVID–19, including severe illness, hospitalization, and death. Given the availability of vaccine efficacy data, EUAs issued by the FDA for bivalent boosters, the continued presence of SARS–CoV–2 in the United States, and variance among rates of booster dose vaccination, it is important to update the specifications of the HCP COVID–19 Vaccine measure to reflect recent updates that explicitly specify for HCP to receive primary series and booster vaccine doses in a timely manner. Given the persistent spread of COVID–19, we continue to believe that monitoring and surveillance is important and provides residents, beneficiaries, and their caregivers with information to support informed decision making. Beginning with the FY 2025 SNF QRP, we propose to modify the HCP COVID–19 Vaccine measure to replace the term ''complete vaccination course'' with the term ''up to date'' in the HCP vaccination definition. We also propose to update the numerator to specify the time frames within which an HCP is considered up to date with recommended COVID–19 vaccines, including booster doses, beginning with the FY 2025 SNF QRP.

(b) Measure Testing

The CDC conducted beta testing of the modified HCP COVID–19 Vaccine measure by assessing if the collection of information on additional/booster vaccine doses received by HCP was feasible, as information on receipt of booster vaccine doses is required for determining if HCP are up to date with the current COVID–19 vaccination. Feasibility was assessed by calculating the proportion of facilities that reported additional/booster doses of the COVID–19 vaccine. The assessment was conducted in various facility types, including SNFs, using vaccine coverage data for the first quarter of calendar year (CY) 2022 (January–March), which was reported through the CDC's National Healthcare Safety Network (NHSN). Feasibility of reporting additional/booster doses of vaccine is evident by the fact that 99.2 percent of SNFs reported vaccination additional/booster coverage data to the NHSN for the first quarter of 2022.[43] Additionally, HCP COVID–19 Vaccine measure scores calculated using January 1–March 31, 2022 data had a median of 31.8 percent and an interquartile range of 18.9 to 49.7 percent, indicating a measure performance gap as there are clinically significant differences in booster/additional dose vaccination coverage rates among SNFs.[44]

(2) Competing and Related Measures

Section 1899B(e)(2)(A) of the Act requires that, absent an exception under section 1899B(e)(2)(B) of the Act, measures specified under section 1899B of the Act be endorsed by a consensus-based entity (CBE) with a contract under section 1890(a). In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1899B(e)(2)(B) permits the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

The current version of the HCP COVID–19 Vaccine (''Quarterly Reporting of COVID–19 Vaccination Coverage Among Healthcare Personnel'') measure recently received endorsement by the CBE on July 26, 2022.[45] However, this measure received endorsement based on its specifications depicted in the FY 2022 SNF PPS final rule (86 FR 42480 through 42489), and does not capture information about whether HCP are up to date with their COVID–19 vaccinations. The proposed modification of this measure utilizes the term up to date in the HCP vaccination definition and updates the numerator to specify the time frames within which an HCP is considered up to date with recommended COVID–19 vaccines, including booster doses. We were unable to identify any CBE-endorsed measures for SNFs that captured information on whether HCP are up to date with their COVID–19 vaccinations, and we found no other feasible and practical measure on this topic.

Therefore, after consideration of other available measures, we find that the exception under section 1899B(e)(2)(B) of the Act applies and are proposing the modified measure, HCP COVID–19 Vaccine, beginning with the FY 2025 SNF QRP. The CDC, the measure developer, is pursuing CBE endorsement for this modified version of the measure.

[36] Food and Drug Administration. COVID–19 Bivalent Vaccine Boosters. *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-bivalent-vaccine-boosters.*

[37] Chalkias S., Harper C., Vrbicky K., et al. A Bivalent Omicron-Containing Booster Vaccine Against COVID–19. N Engl J Med. 2022 Oct 6;387(14):1279–1291. doi: 10.1056/NEJMoa2208343. PMID: 36112399; PMCID: PMC9511634.

[38] Food and Drug Administration. Pfizer-BioNTech COVID–19 Vaccines. *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccines.*

[39] Food and Drug Administration. Moderna COVID–19 Vaccines. *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccines.*

[40] Food and Drug Administration. Coronavirus (COVID–19) Update: FDA Authorizes Moderna, Pfizer-BioNTech Bivalent COVID–19 Vaccines for Use as a Booster Dose. August 31, 2022. *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-moderna-pfizer-biontech-bivalent-covid-19-vaccines-use.*

[41] Prasad N., Derado G., Nanduri S.A., et al. Effectiveness of a COVID–19 Additional Primary or Booster Vaccine Dose in Preventing SARS–CoV–2 Infection Among Nursing Home Residents During Widespread Circulation of the Omicron Variant—United States, February 14–March 27, 2022. Morbidity and Mortality Weekly Report (MMWR). 2022 May 6;71(18):633–637. doi: 10.15585/mmwr.mm7118a4. PMID: 35511708; PMCID: PMC9098239.

[42] Oster Y., Benenson S., Nir-Paz R., Buda I., Cohen M.J. The Effect of a Third BNT162b2 Vaccine on Breakthrough Infections in Health Care Workers: a Cohort Analysis. Clin Microbiol Infect. 2022 May;28(5):735.e1–735.e3. doi: 10.1016/j.cmi.2022.01.019. PMID: 35143997; PMCID: PMC8820100.

[43] National Quality Forum. Measure Application Partnership (MAP) Post-Acute Care/Long-Term Care: 2022–2023 Measures Under Consideration (MUC) Cycle Measure Specifications. December 1, 2022. *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=97883.*

[44] National Quality Forum. Measure Application Partnership (MAP) Post-Acute Care/Long-Term Care: 2022–2023 Measures Under Consideration (MUC) Cycle Measure Specifications. December 1, 2022. *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=97883.*

[45] National Quality Forum. 3636 Quarterly Reporting of COVID–19 Vaccination Coverage among Healthcare Personnel. Accessed February 6, 2023. Available at *https://www.qualityforum.org/QPS/3636.*

(3) Measure Applications Partnership (MAP) Review

We refer readers to the FY 2022 SNF PPS final rule (86 FR 42482) for more information on the initial review of the HCP COVID–19 Vaccine measure by the Measure Application Partnership (MAP).

In accordance with section 1890A of the Act, the pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures Under Consideration (MUC) List, that the Secretary is considering adopting for use in the Medicare program(s), including our quality reporting programs. This allows interested parties to provide recommendations to the Secretary on the measures included on the MUC List. We submitted the updated version of the HCP COVID–19 Vaccine measure on the MUC List entitled ''List of Measures under Consideration for December 1, 2022'' [46] for the 2022–2023 pre-rulemaking cycle for consideration by the MAP. Interested parties submitted four comments to the MAP during the pre-rulemaking process on the proposed modifications of the HCP COVID–19 Vaccine measure. Three commenters noted that it is important that HCP be vaccinated against COVID–19 and supported measurement and reporting as an important strategy to help healthcare organizations assess their performance in achieving high rates of up to date vaccination of their HCP. One of these commenters noted that the measure would provide valuable information to the government as part of its ongoing response to the pandemic. The other two commenters do not believe it should be used in a pay-for-performance program, and one raised concerns of potential unintended consequences, such as frequency of reporting and the potential State regulations with which such a requirement might conflict. One commenter did not support the measure, raising several concerns with the measure, including that the data have never been tested for validity or reliability. Finally, three of the four commenters raised concern about the difficulty of defining up to date for purposes of the modified measure.

Shortly after publication of the MUC List, several MAP workgroups met to provide input on the measure. First, the MAP Health Equity Advisory Group convened on December 6–7, 2022. The MAP Health Equity Advisory Group questioned whether the measure excludes residents with contraindications to FDA authorized or approved COVID–19 vaccines, and whether the measure will be stratified by demographic factors. The measure developer (that is the CDC) confirmed that HCP with contraindications to the vaccines are excluded from the measure denominator, but the measure will not be stratified since the data are submitted at an aggregate rather than an individual level.

The MAP Rural Health Advisory Group met on December 8–9, 2022, during which a few members expressed concerns about data collection burden, given that small rural hospitals may not have employee health software. The measure developer acknowledged the challenge of getting adequate documentation and emphasized their goal is to ensure the measures do not present a burden on the provider. The measure developer also noted that the model used for the HCP COVID–19 Vaccine measure is based on the Influenza Vaccination Coverage among HCP measure (CBE #0431), and it intends to utilize a similar approach to the modified HCP COVID–19 Vaccine measure if vaccination strategy becomes seasonal. The measure developer acknowledged that if COVID–19 becomes seasonal, the measure model could evolve to capture seasonal vaccination.

Next, the MAP Post-Acute Care/Long-Term Care (PAC/LTC) workgroup met on December 12, 2022 and provided input on the on the modification for the HCP COVID–19 Vaccine measure. The MAP PAC/LTC workgroup noted that the previous version of the measure received endorsement from the CBE (CBE #3636),[47] and that the CDC intends to submit the updated measure for endorsement. The PAC/LTC workgroup voted to support the staff recommendation of conditional support for rulemaking pending testing indicating the measure is reliable and valid, and endorsement by the CBE.

Following the PAC/LTC workgroup meeting, a public comment period was held in which interested parties commented on the PAC/LTC workgroup's preliminary recommendations, and the MAP received three comments. Two supported the update to the measure, one of which strongly supported the vaccination of HCP against COVID–19. Although these commenters supported the measure, one commenter recommended CBE endorsement for the updated measure, and encouraged us to monitor any unintended consequences from the measure. Two commenters noted the challenges associated with the measure's specifications. Specifically, one noted the broad definition of the denominator and another recommended a vaccination exclusion or exception due to religious beliefs. Finally, one commenter raised issues related to the time lag between data collection and public reporting on Care Compare and encouraged us to provide information as to whether the measure is reflecting vaccination rates accurately and encouraging HCP vaccination.

The MAP Coordinating Committee convened on January 24–25, 2023, during which the measure was placed on the consent calendar and received a final recommendation of conditional support for rulemaking pending testing indicating the measure is reliable and valid, and endorsement by the CBE. We refer readers to the final MAP recommendations, titled *2022–2023 MAP Final Recommendations.*[48]

(4) Quality Measure Calculation

The HCP COVID–19 Vaccine measure is a process measure developed by the CDC to track COVID–19 vaccination coverage among HCP in facilities such as SNFs. The HCP COVID–19 Vaccine measure is a process measure and is not risk-adjusted.

The denominator would be the number of HCP eligible to work in the facility for at least one day during the reporting period, excluding persons with contraindications to COVID–19 vaccination that are described by the CDC.[49] SNFs report the following four categories of HCP to NHSN, and the first three categories are included in the measure denominator:

- *Employees:* This includes all persons who receive a direct paycheck from the reporting facility (that is, on the facility's payroll), regardless of clinical responsibility or patient contact.
- *Licensed independent practitioners (LIPs):* This includes physicians (MD, DO), advanced practice nurses, and physician assistants who are affiliated with the reporting facility, but are not directly employed by it (that is, they do not receive a paycheck from the

[46] Centers for Medicare & Medicaid Services. Overview of the List of Measures Under Consideration for December 1, 2022. *https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf.*

[47] National Quality Forum. 3636 Quarterly Reporting of COVID–19 Vaccination Coverage among Healthcare Personnel. Accessed February 6, 2023. *https://www.qualityforum.org/QPS/3636.*

[48] 2022–2023 MAP Final Recommendations. *https://mmshub.cms.gov/sites/default/files/2022-2023-MAP-Final-Recommendations-508.xlsx.*

[49] Centers for Disease Control and Prevention. Contraindications and precautions. *https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications.*

facility), regardless of clinical responsibility or patient contact. Post-residency fellows are also included in this category if they are not on the facility's payroll.

• *Adult students/trainees and volunteers:* This includes all medical, nursing, or other health professional students, interns, medical residents, or volunteers aged 18 or over who are affiliated with the healthcare facility, but are not directly employed by it (that is, they do not receive a direct paycheck from the facility), regardless of clinical responsibility or patient contact.

• *Other contract personnel:* Contract personnel are defined as persons providing care, treatment, or services at the facility through a contract who do not fall into any of the above-mentioned denominator categories. This also includes vendors providing care, treatment, or services at the facility who may or may not be paid through a contract. Facilities are required to enter data on other contract personnel for submission in the NHSN application, but data from this category are not included in the HCP COVID–19 Vaccine measure.[50]

The denominator excludes denominator-eligible individuals with contraindications as defined by the CDC.[51] We are not proposing any changes to the denominator exclusions.

The numerator would be the cumulative number of HCP in the denominator population who are considered up to date with CDC-recommended COVID–19 vaccines. Providers should refer to the definition of up to date as of the first day of the applicable reporting quarter, which can be found at *https://www.cdc.gov/nhsn/pdfs/hps/covidvax/UpToDateGuidance-508.pdf.* For example, for the proposed updated measure, HCP would be considered up to date during the quarter four of the CY 2022 reporting period for the SNF QRP if they met one of the following criteria:

1. Individuals who received an updated bivalent[52] booster dose, or

2a. Individuals who received their last booster dose less than 2 months ago, or

2b. Individuals who completed their primary series[53] less than 2 months ago.

We note that for purposes of NHSN surveillance, the CDC used this definition of up to date during quarter 4 2022 surveillance period (September 26, 2022–December 25, 2022).

We refer readers to *https://www.cdc.gov/nhsn/nqf/index.html* for more details on the measure specifications.

While we are not proposing any changes to the data submission or reporting process for the HCP COVID–19 Vaccine measure, we are proposing that for purposes of meeting FY 2025 SNF QRP compliance, SNFs would report individuals who are up to date beginning in quarter four of CY 2023. Under the data submission and reporting process, SNFs would collect the numerator and denominator for the modified HCP COVID–19 Vaccine measure for at least one self-selected week during each month of the reporting quarter and submit the data to the NHSN Healthcare Personnel Safety (HPS) Component before the quarterly deadline. If a SNF submits more than one week of data in a month, the most recent week's data would be used to calculate the measure. Each quarter, the CDC would calculate a single quarterly HCP COVID–19 vaccination coverage rate for each SNF, which would be calculated by taking the average of the data from the three weekly rates submitted by the SNF for that quarter. Beginning with the FY 2026 SNF QRP, SNFs would be required to submit data for the entire calendar year.

We are also proposing that public reporting of the modified version of the HCP COVID–19 Vaccine measure would begin with the October 2024 Care Compare refresh or as soon as technically feasible.

We invite public comment on our proposal to modify the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure beginning with the FY 2025 SNF QRP.

b. Proposed Adoption of the Discharge Function Score Measure Beginning With the FY 2025 SNF QRP

(1) Background

SNFs provide short-term skilled nursing care and rehabilitation services, including physical and occupational therapy and speech-language pathology services. The most common resident conditions are septicemia, joint replacement, heart failure and shock, hip and femur procedures (not including major joint replacement), and pneumonia.[54] Septicemia progressing to sepsis is often associated with long-term functional deficits and increased mortality in survivors.[55] Rehabilitation of function, however, has been shown to be effective and is associated with reducing mortality and improving quality of life.[56] [57]

Section 1888(e)(6)(B)(i) of the Act, cross-referencing subsections (b), (c), and (d) of section 1899B of the Act, requires CMS to develop and implement standardized quality measures from five quality measure domains, including the domain of functional status, cognitive function, and changes in function and cognitive function across the post-acute care (PAC) settings, including SNFs. To satisfy this requirement, we adopted the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure, for the SNF QRP in the FY 2016 SNF PPS final rule (80 FR 46444 through 46453). While this process measure allowed for the standardization of functional assessments across assessment instruments and facilitated cross-setting data collection, quality measurement, and interoperable data exchange, we believe it is now topped out and are proposing to remove it in section VI.C.1.c. of this proposed rule. While there are other outcome measures addressing functional status[58] that can

[50] For more details on the reporting of other contract personnel, we refer readers to the NHSN COVID–19 Vaccination Protocol, Weekly COVID–19 Vaccination Module for Healthcare Personnel, *https://www.cdc.gov/nhsn/pdfs/hps/covidvax/protocol-hcp-508.pdf.*

[51] Centers for Disease Control and Prevention. Contraindications and precautions. Available at *https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications.*

[52] The updated (bivalent) Moderna and Pfizer-BioNTech boosters target the most recent Omicron subvariants. The updated (bivalent) boosters were recommended by the CDC on September 2, 2022. As of this date, the original, monovalent mRNA vaccines are no longer authorized as a booster dose for people ages 12 years and older.

[53] Completing a primary series means receiving a two-dose series of a COVID–19 vaccine or a single dose of Janssen/J&J COVID–19 vaccine.

[54] Medicare Payment Advisory Commission. Report to the Congress: Medicare and the Health Care Delivery System. June 2021. *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/jun21_medpac_report_to_congress_sec.pdf.*

[55] Winkler D., Rose N., Freytag A., Sauter W., Spoden M., Schettler A., Wedekind L., Storch J., Ditscheid B., Schlattmann P., Reinhart K., Günster C., Hartog C.S., Fleischmann-Struzek C. The Effect of Post-acute Rehabilitation on Mortality, Chronic Care Dependency, Health Care Use and Costs in Sepsis Survivors. Ann Am Thorac Soc. 2022 Oct 17. doi: 10.1513/AnnalsATS.202203-195OC. Epub ahead of print. PMID: 36251451.

[56] Chao P.W., Shih C.J., Lee Y.J., Tseng C.M., Kuo S.C., Shih Y.N., Chou K.T., Tarng D.C., Li S.Y., Ou S.M., Chen Y.T. Association of Post discharge Rehabilitation with Mortality in Intensive Care Unit Survivors of Sepsis. Am J Respir Crit Care Med. 2014 Nov 1;190(9):1003-11. doi: 10.1164/rccm.201406-1170OC. PMID: 25210792.

[57] Taito S., Taito M., Banno M., Tsujimoto H., Kataoka Y., Tsujimoto Y. Rehabilitation for Patients with Sepsis: A Systematic Review and Meta-Analysis. PLoS One. 2018 Jul 26;13(7):e0201292. doi: 10.1371/journal.pone.0201292. Erratum in: PLoS One. 2019 Aug 21;14(8):e0221224. PMID: 30048540; PMCID: PMC6062068.

[58] The measures include: IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients, IRF Functional Outcome

Continued

reliably distinguish performance among providers in the SNF QRP, these outcome measures are not cross-setting in nature because they rely on functional status items not collected in all PAC settings. In contrast, a cross-setting functional outcome measure would align measure specifications across settings, including the use of a common set of standardized functional assessment data elements.

(a) Measure Importance

Maintenance or improvement of physical function among older adults is increasingly an important focus of health care. Adults age 65 years and older constitute the most rapidly growing population in the United States, and functional capacity in physical (non-psychological) domains has been shown to decline with age.[59] Moreover, impaired functional capacity is associated with poorer quality of life and an increased risk of all-cause mortality, postoperative complications, and cognitive impairment, the latter of which can complicate the return of a resident to the community from post-acute care.[60 61 62] Nonetheless, evidence suggests that physical functional abilities, including mobility and self-care, are modifiable predictors of resident outcomes across PAC settings, including functional recovery or decline after post-acute care,[63 64 65 66 67] rehospitalization rates,[68 69 70] discharge to community,[71 72] and falls.[73]

The implementation of interventions that improve residents' functional outcomes and reduce the risks of associated undesirable outcomes as a part of a resident-centered care plan is essential to maximizing functional improvement. For many people, the overall goals of SNF care may include optimizing functional improvement, returning to a previous level of independence, maintaining functional abilities, or avoiding institutionalization. Studies have suggested that rehabilitation services provided in SNFs can improve residents' mobility and functional independence for residents with various diagnoses, including cardiovascular and pulmonary conditions, orthopedic conditions, and stroke.[74 75] Moreover, studies found an association between the level of therapy intensity and better functional improvement, suggesting that assessment of functional status as a health outcome in SNFs can provide valuable information in determining treatment decisions throughout the care continuum, such as the need for rehabilitation services, and discharge planning,[76 77 78] as well as provide information to consumers about the effectiveness of skilled nursing services and rehabilitation services delivered. Because evidence shows that older adults experience aging heterogeneously and require individualized and comprehensive health care, functional status can serve as a vital component in informing the provision of health care and thus indicate a SNF's quality of care.[79 80]

Measure: Change in Mobility Score for Medical Rehabilitation Patients, IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients, IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients.

[59] High K.P., Zieman S., Gurwitz J., Hill C., Lai J., Robinson T., Schonberg M., Whitson H. Use of Functional Assessment to Define Therapeutic Goals and Treatment. J Am Geriatr Soc. 2019 Sep;67(9):1782–1790. doi: 10.1111/jgs.15975. Epub 2019 May 13. PMID: 31081938; PMCID: PMC6955596.

[60] Clouston S.A., Brewster P., Kuh D., Richards M., Cooper R., Hardy R., Rubin M.S., Hofer S.M. The dynamic relationship between physical function and cognition in longitudinal aging cohorts. Epidemiol Rev. 2013;35(1):33–50. doi: 10.1093/epirev/mxs004. Epub 2013 Jan 24. PMID: 23349427; PMCID: PMC3578448.

[61] Michael Y.L., Colditz G.A., Coakley E., Kawachi I. Health behaviors, social networks, and healthy aging: cross-sectional evidence from the Nurses' Health Study. Qual Life Res. 1999 Dec;8(8):711–22. doi: 10.1023/a:1008949428041. PMID: 10855345.

[62] High K.P., Zieman S., Gurwitz J., Hill C., Lai J., Robinson T., Schonberg M., Whitson H. Use of Functional Assessment to Define Therapeutic Goals and Treatment. J Am Geriatr Soc. 2019 Sep;67(9):1782–1790. doi: 10.1111/jgs.15975. Epub 2019 May 13. PMID: 31081938; PMCID: PMC6955596.

[63] Deutsch A., Palmer L., Vaughan M., Schwartz C., McMullen T. Inpatient Rehabilitation Facility Patients' Functional Abilities and Validity Evaluation of the Standardized Self-Care and Mobility Data Elements. Arch Phys Med Rehabil. 2022 Feb 11:S0003–9993(22)00205–2. doi: 10.1016/j.apmr.2022.01.147. Epub ahead of print. PMID: 35157893.

[64] Hong I., Goodwin J.S., Reistetter T.A., Kuo Y.F., Mallinson T., Karmarkar A., Lin Y.L., Ottenbacher K.J. Comparison of Functional Status Improvements Among Patients With Stroke Receiving Postacute Care in Inpatient Rehabilitation vs Skilled Nursing Facilities. JAMA Netw Open. 2019 Dec 2;2(12):e1916646. doi: 10.1001/jamanetworkopen.2019.16646. PMID: 31800069; PMCID: PMC6902754.

[65] Alcusky M., Ulbricht C.M., Lapane K.L. Postacute Care Setting, Facility Characteristics, and Poststroke Outcomes: A Systematic Review. Arch Phys Med Rehabil. 2018;99(6):1124–1140.e9. doi:10.1016/j.apmr.2017.09.005. PMID: 28965738; PMCID: PMC5874162.

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We are proposing to adopt the Discharge Function Score (DC Function) measure [81] in the SNF QRP beginning with the FY 2025 SNF QRP. This assessment-based outcome measure evaluates functional status by calculating the percentage of Medicare Part A SNF residents who meet or exceed an expected discharge function score. If finalized, this measure would replace the topped-out Application of Functional Assessment/Care Plan process measure. Like the cross-setting process measure we are proposing to remove in section VI.C.1.c. of this proposed rule, the proposed DC Function measure is calculated using standardized resident assessment data from the current SNF assessment tool, the Minimum Data Set (MDS).

The DC Function measure supports our current priorities. Specifically, the measure aligns with the Streamline Quality Measurement domain in CMS's Meaningful Measurement 2.0 Framework in two ways. First, the proposed outcome measure would further our objective to prioritize outcome measures by replacing the current cross-setting process measure (see section VI.C.1.c of this proposed rule). This proposed DC Function measure uses a set of cross-setting assessment items which would facilitate data collection, quality measurement, outcome comparison, and interoperable data exchange among PAC settings; existing functional outcome measures do not use a set of cross-setting assessment items. Second, this measure adds no additional provider burden since it would be calculated using data from the MDS that SNFs are already required to collect.

The proposed DC Function measure would also follow a calculation approach similar to the existing functional outcome measures, which are CBE endorsed, with some modifications.[82] Specifically, the proposed measure (1) considers two dimensions of function (self-care and mobility activities) and (2) accounts for missing data by using statistical imputation to improve the validity of measure performance. The statistical imputation approach recodes missing functional status data to the *most likely value* had the status been assessed, whereas the current imputation approach implemented in existing functional outcome measures recodes missing data to the *lowest* functional status. A benefit of statistical imputation is that it uses resident characteristics to produce an unbiased estimate of the score on each item with a missing value. In contrast, the current approach treats residents with missing values and residents who were coded to the lowest functional status similarly, despite evidence suggesting varying measure performance between the two groups, which can lead to less accurate measure performances.

(b) Measure Testing

Our measure developer conducted testing using FY 2019 data on the DC Function measure to assess validity, reliability, and reportability, all of which informed interested parties' feedback and Technical Expert Panel (TEP) input (see section VI.C.1.b.(3) of this proposed rule). Validity was assessed for the measure performance, the risk adjustment model, face validity, and statistical imputation models. Validity testing of measure performance entailed determining Spearman's rank correlations between the proposed measure's performance for providers with 20 or more stays and the performance of other publicly reported SNF quality measures. Results indicated that the measure captures the intended outcome based on the directionalities and strengths of correlation coefficients and are further detailed below in Table 12.

TABLE 12—SPEARMAN'S RANK CORRELATION RESULTS OF DC FUNCTION MEASURE WITH PUBLICLY REPORTED SNF QUALITY MEASURES

Measure—long name	Measure—short name	ρ
Discharge to Community—PAC SNF QRP	Discharge to Community	0.16
Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients.	Change in Self-Care Score	0.75
Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients.	Change in Mobility Score	0.78
Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients.	Discharge Self-Care Score	0.78
Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients.	Discharge Mobility Score	0.80
Potentially Preventable 30-Day Post-Discharge Readmission Measure—SNF QRP	Potentially Preventable Readmissions within 30 Days Post-Discharge.	−0.10
Medicare Spending Per Beneficiary—PAC SNF QRP	Medicare Spending Per Beneficiary	−0.07

Validity testing of the risk adjustment model showed good model discrimination as the measure model has the predictive ability to distinguish residents with low expected functional capabilities from those with high expected functional capabilities.[83] The ratios of observed-to-predicted discharge function score across eligible stays, by deciles of expected functional capabilities, ranged from 0.99 to 1.01. Both the Cross-Setting Discharge Function TEPs and resident-family feedback showed strong support for the face validity and importance of the proposed measure as an indicator of quality of care (see section VI.C.1.b.(3) of this proposed rule). Lastly, validity

Ther. 2022 April/June;45(2):70–75. doi: 10.1519/JPT.0000000000000342. PMID: 35384940.

[80] Cogan A.M., Weaver J.A., McHarg M., Leland N.E., Davidson L., Mallinson T. Association of Length of Stay, Recovery Rate, and Therapy Time per Day With Functional Outcomes After Hip Fracture Surgery. JAMA Netw Open. 2020 Jan 3;3(1):e1919672. doi: 10.1001/jamanetworkopen.2019.19672. PMID: 31977059; PMCID: PMC6991278.

[81] This measure was submitted to the Measures Under Consideration (MUC) List as the Cross-Setting Discharge Function Score. Subsequent to the MAP workgroup meetings, CMS modified the name. For more information, refer to the Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report. *https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[82] The existing measures are the IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients measure (Discharge Self-Care Score), and the Inpatient Rehabilitation Facility (IRF) Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients measure (Discharge Mobility Score).

[83] ''Expected functional capabilities'' is defined as the predicted discharge function score.

testing of the measure's statistical imputation models indicated that the models demonstrate good discrimination and produce more precise and accurate estimates of function scores for items with missing scores when compared to the current imputation approach implemented in SNF QRP functional outcome measures, specifically the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients measure (Change in Self-Care Score), the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients measure (Change in Mobility Score), the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients measure (Discharge Self-Care Score), and the Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients measure (Discharge Mobility Score) measures.

Reliability and reportability testing also yielded results that support the measure's scientific acceptability. Split-half testing revealed the proposed measure's good reliability, indicated by an intraclass correlation coefficient value of 0.81. Reportability testing indicated high reportability (85 percent) of SNFs meeting the public reporting threshold of 20 eligible stays. For additional measure testing details, we refer readers to the document titled *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report.*[84]

(2) Competing and Related Measures

Section 1899B(e)(2)(A) of the Act requires that, absent an exception under section 1899B(e)(2)(B) of the Act, measures specified under section 1899B of the Act be endorsed by the CBE with a contract under section 1890(a) of the Act. In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1899B(e)(2)(B) of the Act permits the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to measures that have been endorsed or adopted by a CBE identified by the Secretary.

The proposed DC Function measure is not CBE endorsed, so we considered whether there are other available measures that: (1) assess both functional domains of self-care and mobility in SNFs and (2) satisfy the requirement of the Act to specify quality measures with respect to functional status, cognitive function, and changes in function and cognitive function across the PAC settings. While the Application of Functional Assessment/Care Plan measure assesses both functional domains and satisfies the Act's requirement, this cross-setting process measure is not CBE endorsed and the measure's performance among SNFs is so high and unvarying across most SNFs that the measure no longer offers meaningful distinctions in performance. Additionally, after review of other CBE endorsed measures, we were unable to identify any CBE endorsed measures for SNFs that meet the aforementioned requirements. While the SNF QRP includes CBE endorsed outcome measures addressing functional status,[85] they each assess a single domain of function, and are not cross-setting in nature because they rely on functional status items not collected in all PAC settings.

Therefore, after consideration of other available measures, we find that the exception under section 1899B(e)(2)(B) of the Act applies and are proposing to adopt the DC Function measure, beginning with the FY 2025 SNF QRP. We intend to submit the proposed measure to the CBE for consideration of endorsement when feasible.

(3) Interested Parties and Technical Expert Panel (TEP) Input

In our development and specification of this measure, we employed a transparent process in which we sought input from interested parties and national experts and engaged in a process that allowed for pre-rulemaking input, in accordance with section 1890A of the Act. To meet this requirement, we provided the following opportunities for input from interested parties: a focus group of patient and family/caregiver advocates (PFAs), two TEPs, and public comments through a request for information (RFI).

First, the measure development contractor convened a PFA focus group, during which residents and caregivers provided support for the proposed measure concept. Participants emphasized the importance of measuring functional outcomes and found self-care and mobility to be critical aspects of care. Additionally, they expressed an interest in measures assessing the number of residents discharged from particular facilities with improvements in self-care and mobility, and their views of self-care and mobility aligned with the functional domains captured by the proposed measure. All feedback was used to inform measure development efforts.

The measure development contractor for the DC Function measure subsequently convened TEPs on July 14–15, 2021 and January 26–27, 2022 to obtain expert input on the development of a cross-setting function measure for use in the SNF QRP. The TEPs consisted of interested parties with a diverse range of expertise, including SNF and PAC subject matter knowledge, clinical expertise, resident and family perspectives, and measure development experience. The TEPs supported the proposed measure concept and provided substantive feedback regarding the measure's specifications and measure testing data.

First, the TEP was asked whether they prefer a cross-setting measure that is modeled after the currently adopted Discharge Mobility Score and Discharge Self-Care Score measures, or one that is modeled after the currently adopted Change in Mobility Score and Change in Self-Care Score measures. With the Discharge Mobility Score and Change in Mobility Score measures and the Discharge Self-Care Score and Change in Self-Care Score measures being both highly correlated and not appearing to measure unique concepts, the TEP favored the Discharge Mobility Score and Discharge Self-Care Score measures over the Change in Mobility Score and Change in Self-Care Score measures and recommended moving forward with utilizing the Discharge Mobility Score and Discharge Self-Care Score measures' concepts for the development of a cross-setting measure.

Second, in deciding the standardized functional assessment data elements to include in the cross-setting measure, the TEP recommended removing redundant data elements. Strong correlations between scores of functional items within the same functional domain suggested that certain items may be redundant in eliciting information about resident function and inclusion of these items could lead to overrepresentation of a particular functional area. Subsequently, our measure development contractor focused on the Discharge Mobility Score measure as a starting point for cross-setting development due to the greater number of cross-setting standardized functional assessment data elements for mobility

[84] *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report. https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[85] The measures include: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), Change in Mobility for Medical Rehabilitation Patients (NQF #2634), Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635), Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).

while also identifying redundant functional items that could be removed from a cross-setting functional measure.

Third, the TEP supported including the cross-setting self-care items such that the cross-setting function measure would capture both self-care and mobility. Panelists agreed that self-care items added value to the measure and are clinically important to function. Lastly, the TEP provided refinements to imputation strategies to more accurately represent functional performance across all PAC settings, including the support of using statistical imputation over the current imputation approach implemented in existing functional outcome measures in the PAC QRPs. We considered all recommendations from the TEPs and we applied their recommendations where technically feasible and appropriate. Summaries of the TEP proceedings titled *Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures Summary Report* (July 2021 TEP) [86] and *Technical Expert Panel (TEP) for Cross-Setting Function Measure Development Summary Report* (January 2022 TEP) [87] are available on the CMS Measures Management System (MMS) Hub.

Finally, we solicited feedback from interested parties on the importance, relevance, and applicability of a cross-setting functional outcome measure for SNFs through an RFI in the FY 2023 SNF PPS proposed rule (87 FR 22754). Commenters were supportive of a cross-setting functional outcome measure that is inclusive of both self-care and mobility items, but also provided information related to potential risk-adjustment methodologies, as well as other measures that could be used to capture functional outcomes across PAC settings (87 FR 47553).

(4) Measure Applications Partnership (MAP) Review

In accordance with section 1890A of the Act, our pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures Under Consideration (MUC) List, that the Secretary is considering adopting for use in Medicare programs. This allows interested parties to provide recommendations to the Secretary on the measures included on the list.

We included the DC Function measure under the SNF QRP in the publicly available MUC List for December 1, 2022.[88] After the MUC List was published, the CBE-convened MAP received three comments from interested parties in the industry on the 2022 MUC List. Two commenters were supportive of the measure and one was not. Among the commenters in support of the measure, one commenter stated that function scores are the most meaningful outcome measure in the SNF setting, as they not only assess resident outcomes but also can be used for clinical improvement processes. Additionally, this commenter noted the measure's good reliability and validity and that the measure is feasible to implement. The second commenter noted that the DC Function measure is modeled on an NQF-endorsed measure and has undergone an extensive formal development process. In addition, the second commenter noted that the DC Function measure improves on the existing functional outcome measures, and recommended replacing the existing function measures with the DC Function measure.

One commenter did not support the DC Function measure and raised the following concerns: the ''gameability'' of the expected discharge score, the measure's complexity, and the difficulty of implementing a composite functional score.

Shortly after, several NQF-convened MAP workgroups met to provide input on the DC Function measure. First, the MAP Health Equity Advisory Group convened on December 6–7, 2022. The MAP Health Equity Advisory Group did not share any health equity concerns related to the implementation of the DC Function measure, and only requested clarification regarding measure specifications from the measure steward. The MAP Rural Health Advisory Group met on December 8–9, 2022, during which some of the group's members provided support for the DC Function measure and other group members did not express rural health concerns regarding the DC Function measure.

The MAP PAC/LTC workgroup met on December 12, 2022 and provided input on the DC Function measure. During this meeting, we were able to address several concerns raised by interested parties after the publication of the MUC List. Specifically, we clarified that the expected discharge scores are not calculated using self-reported functional goals, and are simply calculated by risk-adjusting the observed discharge scores (see section VI.C.1.b.(5) of this proposed rule). Therefore, we believe that these scores cannot be ''gamed'' by reporting less-ambitious functional goals. We also pointed out that the measure is highly usable as it is similar in design and complexity to existing function measures and that the data elements used in this measure are already in use on the MDS submitted by SNFs. Lastly, we clarified that the DC Function measure is intended to supplement, rather than replace, existing SNF QRP measures for self-care and mobility and implements improvements on the existing Discharge Self-Care Score and Discharge Mobility Score measures that make the measure more valid and harder to game.

The MAP PAC/LTC workgroup went on to discuss other concerns with the DC Function measure, including (1) whether the measure is cross-setting due to denominator populations that differ among settings, (2) whether the measure would adequately represent the full picture of function, especially for residents who may have a limited potential for functional gain, and (3) that the range of expected scores was too large to offer a valid facility-level score. We clarified that the denominator population in each measure setting represents the assessed population within the setting and that the measure satisfies the requirement of section 1888(e)(6) of the Act for a cross-setting measure in the functional status domain specified under section 1899B(c)(1) of the Act. Additionally, we noted that the TEP had reviewed the item set and determined that all the self-care and mobility items were suitable for all settings. Further, we clarified that, because the DC Function measure would assess whether a resident met *or* exceeded their expected discharge score, it accounts for residents who are not expected to improve. Lastly, we noted that the DC Function measure has a high degree of correlation with the existing function measures and that the range of expected scores is consistent with the range of observed scores. The PAC/LTC workgroup voted to support the NQF staff recommendation of

[86] *Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures Summary Report* (July 2021 TEP) is available at *https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf.*

[87] *Technical Expert Panel (TEP) for Cross-Setting Function Measure Development Summary Report* (January 2022 TEP) is available at *https://mmshub.cms.gov/sites/default/files/PAC-Function-TEP-Summary-Report-Jan2022-508.pdf.*

[88] Centers for Medicare & Medicaid Services. Overview of the List of Measures Under Consideration for December 1, 2022. *CMS.gov. https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf.*

conditional support for rulemaking, with the condition that we seek CBE endorsement.

In response to the PAC/LTC workgroup's preliminary recommendation, the CBE received two more comments supporting the recommendation and one comment that did not. Among the commenters in support of the DC Function measure, one supported the measure under the condition that it be reviewed and refined such that its implementation supports resident autonomy and results in care that aligns with residents' personal functional goals. The second commenter supported the DC Function measure under the condition that it produces statistically meaningful information that can inform improvements in care processes. This commenter also expressed concern that the DC Function measure is not truly cross-setting because it utilizes different resident populations and risk-adjustment models with setting-specific covariates across settings. Additionally, this commenter noted that using a single set of cross-setting section GG items is not appropriate since the items in our standardized patient/resident assessment data instruments may not be relevant across varying resident-setting populations. The commenter who did not support the DC Function measure raised concern with the usability of a composite functional score for improving functional performance, and expressed support for using individual measures, such as the current Change in Mobility Score and Change in Self-Care Score measures, to attain this goal.

Finally, the MAP Coordinating Committee convened on January 24–25, 2023, during which NQF received one comment not in support of the PAC/LTC workgroup's preliminary recommendation for conditional support of the DC Function measure. The commenter expressed concern that the DC Function measure competes with existing self-care and mobility measures in the SNF QRP. We noted that we monitor measures to determine if they meet any of the measure removal factors, set forth in § 413.360(b)(2), and when identified, we may remove such measure(s) through the rulemaking process. We noted again that the TEP had reviewed the item set and determined that all self-care and mobility items were suitable for all settings. The MAP Coordinating Committee members expressed support for reviewing existing measures for removal as well as support for the DC Function measure, favoring the implementation of a single, standardized function measure across PAC settings. The MAP Coordinating Committee unanimously upheld the PAC/LTC workgroup recommendation of conditional support for rulemaking. We refer readers to the final MAP recommendations, titled *2022–2023 MAP Final Recommendations.*[89]

(5) Quality Measure Calculation

The proposed DC Function measure is an outcome measure that estimates the percentage of Medicare Part A SNF residents who meet or exceed an expected discharge score during the reporting period. The proposed DC Function measure's numerator is the number of SNF stays with an observed discharge function score that is equal to or greater than the calculated expected discharge function score. The observed discharge function score is the sum of individual function items values at discharge. The expected discharge function score is computed by risk-adjusting the observed discharge function score for each SNF stay. Risk adjustment controls for resident characteristics such as admission function score, age, and clinical conditions. The denominator is the total number of SNF stays with an MDS record in the measure target period (four rolling quarters) that do not meet the measure exclusion criteria. For additional details regarding the numerator, denominator, risk adjustment, and exclusion criteria, refer to the *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report.*[90]

The proposed measure implements a statistical imputation approach for handling ''missing'' standardized functional assessment data elements. The coding guidance for standardized functional assessment data elements allows for using ''Activity Not Attempted'' (ANA) codes, resulting in ''missing'' information about a resident's functional ability on at least some items, at admission and/or discharge, for a substantive portion of SNF residents. Currently, functional outcome measures in the SNF QRP use a simple imputation method whereby all ANA codes or otherwise missing scores, on both admission and discharge records, are recoded to ''1'' or ''most dependent.'' Statistical imputation, on the other hand, replaces these missing values with a variable based on the values of other, non-missing variables in the assessment and on the values of other assessments which are otherwise similar to the assessment with a missing value. Specifically, this proposed DC Function measure's statistical imputation allows missing values (for example, the ANA codes) to be replaced with any value from 1 to 6, based on a resident's clinical characteristics and codes assigned on other standardized functional assessment data elements. The measure implements separate imputation models for each standardized functional assessment data element used in the construction of the discharge score and the admission score. Relative to the current simple imputation method, this statistical imputation approach increases precision and accuracy and reduces the bias in estimates of missing item values. We refer readers to the *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report*[91] for measure specifications and additional details.

We invite public comment on our proposal to adopt the Discharge Function Score measure beginning with the FY 2025 SNF QRP.

c. Proposed Removal of the Application of Percent of Long-Term Care Hospital Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function Beginning With the FY 2025 SNF QRP

We are proposing to remove the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure from the SNF QRP beginning with the FY 2025 SNF QRP. Section 413.360(b)(2) of our regulations describes eight factors we consider for measure removal from the SNF QRP, and we believe this measure should be removed because it satisfies two of these factors.

First, the Application of Functional Assessment/Care Plan measure meets the conditions for measure removal factor one: measure performance among SNFs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.[92] Second, this measure

[89] 2022–2023 MAP Final Recommendations. *https://mmshub.cms.gov/sites/default/files/2022-2023-MAP-Final-Recommendations-508.xlsx.*

[90] *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report. https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[91] *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report. https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[92] For more information on the factors CMS uses to base decisions for measure removal, we refer readers to the Code of Federal Regulations, § 413.360(b)(2). *https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-413/subpart-J/section-413.360.*

meets the conditions for measure removal factor six: there is an available measure that is more strongly associated with desired resident functional outcomes. We believe the proposed DC Function measure discussed in section VI.C.1.b. of this proposed rule better measures functional outcomes than the current Application of Functional Assessment/Care Plan measure. We discuss each of these reasons in more detail below.

In regard to removal factor one, the Application of Functional Assessment/Care Plan measure has become topped out,[93] with average performance rates reaching nearly 100 percent over the past 3 years (ranging from 99.1 percent to 98.9 percent during CYs 2019–2021).[94] [95] [96] For the 12-month period of Q3 2020 through Q2 2021 (July 1, 2020 through June 30, 2021), SNFs had an average score for this measure of 98.8 percent, with nearly 70 percent of SNFs scoring 100 percent [97] and for CY 2021, SNFs had an average score of 98.9 percent, with nearly 63 percent of SNFs scoring 100 percent.[98] The proximity of these mean rates to the maximum score of 100 percent suggests a ceiling effect and a lack of variation that restricts distinction among SNFs.

In regard to measure removal factor six, the proposed DC Function measure is more strongly associated with desired resident functional outcomes than this current process measure, the Application of Functional Assessment/Care Plan measure. As described in section VI.C.1.b.(1)(b) of this proposed rule, the DC Function measure has the predictive ability to distinguish residents with low expected functional capabilities from those with high expected functional capabilities.[99] We have been collecting standardized functional assessment elements across PAC settings since 2016, which has allowed for the development of the proposed DC Function measure and meets the requirements of the Act to submit standardized patient assessment data and other necessary data with respect to the domain of functional status, cognitive function, and changes in function and cognitive function. In light of this development, this process measure, the Application of Functional Assessment/Care Plan measure, which measures only whether a functional assessment is completed and a functional goal is included in the care plan, is no longer necessary, and can be replaced with a measure that evaluates the SNF's outcome of care on a resident's function.

Because the Application of Functional Assessment/Care Plan measure meets measure removal factors one and six, we are proposing to remove it from the SNF QRP beginning with the FY 2025 SNF QRP. We are also proposing that public reporting of the Application of Functional Assessment/Care Plan measure would end by the October 2024 Care Compare refresh or as soon as technically feasible when public reporting of the proposed DC Function measure would begin (see section VI.G.3. of this proposed rule).

Under our proposal, SNFs would no longer be required to report a Self-Care Discharge Goal (that is, GG0130, Column 2) or a Mobility Discharge Goal (that is, GG0170, Column 2) beginning with residents admitted on or after October 1, 2023. We would remove the items for Self-Care Discharge Goal (that is, GG0130, Column 2) and Mobility Discharge Goal (that is, GG0170, Column 2) with the next release of the MDS. Under our proposal, these items would not be required to meet SNF QRP requirements beginning with the FY 2025 SNF QRP.

We invite public comment on our proposal to remove the Application of Functional Assessment/Care Plan measure from the SNF QRP beginning with the FY 2025 SNF QRP.

d. Proposed Removal of the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients and Removal of the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients Beginning With the FY 2025 SNF QRP

We are proposing to remove the Application of the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (Change in Self-Care Score) and the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (Change in Mobility Score) measures from the SNF QRP beginning with the FY 2025 SNF QRP. Section 413.360(b)(2) of our regulations describe eight factors we consider for measure removal from the SNF QRP, and we believe this measure should be removed because it satisfies measure removal factor eight: the costs associated with a measure outweigh the benefits of its use in the program.

Measure costs are multifaceted and include costs associated with implementing and maintaining the measure. On this basis, we are proposing the removal of these measures for two reasons. First, the costs to SNFs associated with tracking similar or duplicative measures in the SNF QRP outweigh any benefit that might be associated with the measures. Second, our costs associated with program oversight of the measures, including measure maintenance and public display, outweigh the benefit of information obtained from the measures. We discuss each of these in more detail below.

We adopted the Change in Self-Care Score and Change in Mobility Score measures in the FY 2018 SNF PPS final rule (82 FR 36578 through 36593), under section 1888(e)(6)(B)(i)(II) of the Act because the measures meet the functional status, cognitive function, and changes in function and cognitive function domain under section 1899B(c)(1) of the Act. Two additional measures addressing the functional status, cognitive function, and changes in function and cognitive function domain were adopted in the same program year: the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (Discharge Self-Care Score) and the Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (Discharge Mobility Score) measures. At the time

[93] Centers for Medicare & Medicaid Services. 2022 Annual Call for Quality Measures Fact Sheet, p. 10. *https://www.cms.gov/files/document/mips-call-quality-measures-overview-fact-sheet-2022.pdf.*

[94] Centers for Medicare & Medicaid Services. Nursing Homes including Rehab Services Data Archive, 2020. Annual Files National Data 10–20. PQDC, *https://data.cms.gov/provider-data/archived-data/nursing-homes.*

[95] Centers for Medicare & Medicaid Services. Nursing Homes including Rehab Services Data Archive, 2022. Annual Files National Data 06–22. PQDC, *https://data.cms.gov/provider-data/archived-data/nursing-homes.*

[96] Centers for Medicare & Medicaid Services. Nursing Homes including Rehab Services Data Archive, 2022. Annual Files National Data 10–22. PQDC, *https://data.cms.gov/provider-data/archived-data/nursing-homes.*

[97] Centers for Medicare & Medicaid Services. Nursing Homes including Rehab Services Data Archive, 2022. Annual Files Provider Data 05–22. PQDC, *https://data.cms.gov/provider-data/archived-data/nursing-homes.*

[98] Centers for Medicare & Medicaid Services. Nursing Homes including Rehab Services Data Archive, 2022. Annual Files Provider Data 10–22. PQDC, *https://data.cms.gov/provider-data/archived-data/nursing-homes.*

[99] ''Expected functional capabilities'' is defined as the predicted discharge function score.

these four outcome measures were adopted, the amount of rehabilitation services received among SNF residents varied. We believed that measuring residents' functional changes across all SNFs on an ongoing basis would permit identification of SNF characteristics associated with better or worse resident risk adjustment outcomes as well as help SNFs target their own quality improvement efforts.[100]

We are proposing to remove the Change in Self-Care Score and Change in Mobility Score measures because we believe the SNF costs associated with tracking duplicative measures outweigh any benefit that might be associated with the measures. Since the adoption of these measures in 2018, we have been monitoring the data and found that the scores for the two self-care functional outcome measures, Change in Self-Care Score and Discharge Self-Care Score, are very highly correlated in SNF settings (0.93).[101] Similarly, in the monitoring data, we have found that the scores for the two mobility score measures, Change in Mobility Score and Discharge Mobility Score, are very highly correlated in SNF settings (0.95).[102] The high correlation between these measures suggests that the Change in Self-Care Score and Discharge Self-Care Score and the Change in Mobility Score and the Discharge Mobility Score measures provide almost identical information about this dimension of quality to SNFs and are therefore duplicative.

Our proposal to remove the Change in Self-Care Score and the Change in Mobility Score measures is supported by feedback received from the TEP convened for the Refinement of LTCH, IRF, SNF/NF, and HH Function Measures. As described in section VI.C.1.b.(3) of this proposed rule, the TEP panelists were presented with analyses that demonstrated the ''Change in Score'' and ''Discharge Score'' measure sets are highly correlated and do not appear to measure unique concepts, and they subsequently articulated that it would be sensible to retire either the ''Change in Score'' or ''Discharge Score'' measure sets for both self-care and mobility. Based on responses to the post-TEP survey, the majority of panelists (nine out of 12 respondents) suggested that only one measure set each for self-care and mobility, respectively, is necessary. Of those nine respondents, six preferred retaining the ''Discharge Score'' measure set over the ''Change in Score'' measure set.[103]

Additionally, we are proposing to remove the Change in Self-Care Score and Change in Mobility Score measures because the program oversight costs outweigh the benefit of information that CMS, SNFs, and the public obtain from the measures. We must engage in various activities when administering the QRPs, such as monitoring measure results, producing provider preview reports, and ensuring the accuracy of the publicly reported data. Because these measures essentially provide the same information to SNFs as well as to consumers as the Discharge Self-Care Score and Discharge Mobility Score measures, our costs associated with measure maintenance and public display outweigh the benefit of information obtained from the measures.

Because these measures meet the criteria for measure removal factor eight, we are proposing to remove the Change in Self-Care Score and Change in Mobility Score measures from the SNF QRP beginning with the FY 2025 SNF QRP. We are also proposing that public reporting of the Change in Self-Care Score and the Change in Mobility Score measures would end by the October 2024 Care Compare refresh or as soon as technically feasible.

We invite public comment on our proposal to remove the Change in Self-Care Score and the Change in Mobility Score measures from the SNF QRP beginning with the FY 2025 SNF QRP.

2. SNF QRP Quality Measure Proposal Beginning With the FY 2026 SNF QRP

a. Proposed Adoption of the CoreQ: Short Stay Discharge Measure (NQF #2614) Beginning With the FY 2026 SNF QRP

(1) Background

We define person-centered care as integrated healthcare services delivered in a setting and manner that is responsive to the individual and their goals, values and preferences, in a system that empowers residents and providers to make effective care plans together.[104] Person-centered care is achieved when healthcare providers work collaboratively with individuals to do what is best for the health and well-being of individuals receiving healthcare services, and allows individuals to make informed decisions about their treatment that align with their preferences and values, such as including more choice in medication times, dining options, and sleeping times. Self-reported measures, including questionnaires assessing the individual's experience and satisfaction in receiving healthcare services, are widely used across various types of providers to assess the effectiveness of their person-centered care practices.

There is currently no national standardized satisfaction questionnaire that measures a resident's satisfaction with the quality of care received by SNFs. We identified resident satisfaction with the quality of care received by SNFs as a measurement gap in the SNF QRP (see section VI.D. of this proposed rule), as did the MAP in its report *MAP 2018 Considerations for Implementing Measure in Federal Programs: Post-Acute Care and Long-Term Care.*[105] Currently the SNF QRP includes measures of processes and outcomes that illustrate whether interventions are working to improve delivery of healthcare services. However, we believe that measuring resident satisfaction would provide clinical teams compelling information to use when examining the results of their clinical care, and can help SNFs identify deficiencies that other quality metrics may struggle to identify, such as

[100] **Federal Register**. Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2018. *https://www.federalregister.gov/documents/2017/05/04/2017-08521/medicare-program-prospective-payment-system-and-consolidated-billing-for-skilled-nursing-facilities#p-397.*

[101] Acumen, LLC and Abt Associates. Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures, July 14–15, 2021: Summary Report. February 2022. *https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf.*

[102] Acumen, LLC and Abt Associates. Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures, July 14–15, 2021: Summary Report. February 2022. *https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf.*

[103] Acumen, LLC and Abt Associates. Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures, July 14–15, 2021: Summary Report. February 2022. *https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf.*

[104] Centers for Medicare & Medicaid Services. Innovation Center. Person-Centered Care. *https://innovation.cms.gov/key-concepts/person-centered-care.*

[105] National Quality Forum. MAP 2018 Considerations for Implementing Measures in Federal Programs—PAC–LTC. *MAP 2018 Considerations for Implementing Measures in Federal Programs: Post-Acute Care and Long-Term Care (cms.gov).*

communication between a resident and the provider.

Measuring individuals' satisfaction with healthcare services using questionnaires has been shown to be a valid indicator for measuring person-centered care practices. The value of measuring consumer satisfaction is supported in the peer-reviewed literature using respondents from SNFs. One study demonstrated higher (that is, better) resident satisfaction is associated with the SNF receiving fewer deficiency citations from regulatory inspections of the SNF, and is also associated with higher perceived service quality.[106] Other studies of the relationship between resident satisfaction and clinical outcomes suggest that higher overall satisfaction may contribute to lower 30-day readmission rates [107] [108] [109] and better adherence to treatment recommendations.[110] [111]

We currently collect patient satisfaction data in other settings, such as home health, hospice, and hospital, using Consumer Assessment of Healthcare Providers and Systems (CAHPS®) patient experience surveys.[112] These CAHPS® surveys ask individuals (or in some cases their families) about their experiences with, and ratings of, their healthcare providers, and then we publicly report the results of some of these patient experience surveys on Care Compare.[113] The CAHPS® Nursing Home survey: Discharged Resident Instrument (NHCAHPS–D) was developed specifically for short-stay SNF residents [114] by the Agency for Healthcare Research and Quality (AHRQ) and the CAHPS® consortium [115] in collaboration with CMS. However, due to its length and the potential burden on SNFs and residents to complete it, we have not adopted it for the SNF QRP.

The CoreQ is another suite of questionnaires developed by a team of nursing home providers and researchers [116] to assess satisfaction among residents and their families. The CoreQ suite of five measures is used to capture resident and family data for SNFs and assisted living (AL) facilities. The CoreQ was developed in 2012 by SNFs and ALs that partnered with researchers to develop a valid resident satisfaction survey for SNFs and ALs since, at the time, there was no standard questionnaire or set of identical questions that could be used to compare meaningful differences in quality between SNFs. As part of the development of the CoreQ measures, extensive psychometric testing was conducted to further refine the CoreQ measures into a parsimonious set of questions that capture the domain of resident and family satisfaction. Since 2017, the CoreQ has been used in the American Health Care Association (AHCA) professional recognition program, and several states (including New Jersey, Tennessee, and Georgia) have incorporated the CoreQ into their Medicaid quality incentive programs. In addition, 42 SNF and AL customer satisfaction vendors currently administer the CoreQ measures' surveys or have added the CoreQ questions to their questionnaires.

The CoreQ measures were designed to be different from other resident satisfaction surveys. The primary difference between the CoreQ questionnaires for residents discharged from a SNF after receiving short-stay services and the NHCAHPS–D survey is its length: the CoreQ questionnaire consists of four questions while the NHCAHPS–D has 50 questions. Another difference is that the CoreQ measures provide one score that reflects a resident's overall satisfaction, while other satisfaction surveys do not. The CoreQ questionnaires use a 5-point Likert scale, and the number of respondents with an average score greater than or equal to 3.0 across the four questions is divided by the total number of valid responses to yield the SNF's satisfaction score.[117]

The CoreQ measures are also instruments that are familiar to the SNF community, and the CoreQ: Short Stay Discharge (CoreQ: SS DC) survey has already been voluntarily adopted by a large number of SNFs with ease. The number of SNFs voluntarily using the CoreQ: SS DC survey increased from 372 in the first quarter of 2016 to over 1,500 in the third quarter of 2019.[118] Additionally, the measure steward, AHCA, reported that there have been no reported difficulties with the current implementation of the measure, and in fact, providers, vendors, and residents have reported they like the fact that the questionnaire is short and residents report appreciation that their satisfaction (or lack thereof) is being measured.

(a) Measure Importance

Measuring residents' satisfaction is an effective method to assess whether the goals of person-centered care are achieved. Measuring residents' satisfaction can help SNFs identify deficiencies that the other quality metrics adopted in the SNF QRP cannot identify, such as communication between a resident and the SNF's healthcare providers. We believe collecting and assessing satisfaction data from SNF residents is important for understanding residents' experiences and preferences, while the collection process ensures each resident can easily and discreetly share their information in a manner that may help other potential consumers choose a SNF. Collection of resident satisfaction data also aligns with the person-centered care domain of CMS's Meaningful Measures 2.0

[106] Li Y, Li Q, Tang Y. Associations between Family Ratings on Satisfaction with Care and Clinical Quality-of-Care Measures for Nursing Home Residents. Med Care Res Rev. 2016 Feb;73(1):62–84. doi: 10.1177/1077558715596470. Epub 2015 Jul 21. PMID: 26199288; PMCID: PMC4712136.

[107] Boulding W, Glickman SW, Manary MP, Schulman KA, Staelin R. Relationship between Patient Satisfaction with Inpatient Care and Hospital Readmission within 30 days. Am J Manag Care. 2011 Jan;17(1):41–8. PMID: 21348567.

[108] Carter J, Ward C, Wexler D, Donelan K. The Association between Patient Experience Factors and Likelihood of 30-day Readmission: a Prospective Cohort Study. *BMJ* Qual Saf. 2018;27:683–690. doi: 10.1136/bmjqs-2017–007184. PMID: 29146680.

[109] Anderson PM, Krallman R, Montgomery D, Kline-Rogers E, Bumpus SM. The Relationship Between Patient Satisfaction With Hospitalization and Outcomes Up to 6 Months Post-Discharge in Cardiac Patients. J Patient Exp. 2020;7(6):1685–1692. doi: 10.11771237437352094838 9. PMID: 33457631 PMCID: PMC7786784.

[110] Barbosa CD, Balp MM, Kulich K, Germain N, Rofail D. A Literature Review to Explore the Link Between Treatment Satisfaction and Adherence, Compliance, and Persistence. Patient Prefer Adherence. 2012;6:39–48. doi: 10.2147/PPA.S24752. Epub 2012 Jan 13. PMID: 22272068; PMCID: PMC3262489.

[111] Krot K, Rudawska I. Is Patient Satisfaction the Key to Promote Compliance in Health Care Sector? Econ Sociol. 2019;*12(3)*:291–300. doi: 10.14254/2071–789X.2019/12–3/19.

[112] Consumer Assessment of Healthcare Providers & Systems (CAHPS). *https://cms.gov/Research-Statistics-Data-and-Systems/Research/CAHPS.com.*

[113] Care Compare. *https://www.medicare.gov/care-compare/.*

[114] Sangl J, Bernard S, Buchanan J, Keller S, Mitchell N, Castle NG, Cosenza C, Brown J, Sekscenski E, Larwood D. The development of a CAHPS instrument for nursing home residents. J Aging Soc Policy. 2007;19(2):63–82. doi: 10.1300/J031v19n02_04. PMID: 17409047.

[115] The CAHPS consortium included Harvard Medical School, The RAND Corporation, and Research Triangle Institute International.

[116] The CoreQ was developed by Nicholas Castle, Ph.D., the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), and providers with input from customer satisfaction vendors and residents.

[117] What is CoreQ? *www.coreq.org.*

[118] CoreQ_Short_Stay_Appendix_Final_updated_Jan2020_Corrected_April2020_FinalforSubmission-637229961612228954.docx. Available in the measure's specifications from the Patient Experience and Function Spring Cycle 2020 project. Available at: *https://nqfappservices storage.blob.core.windows.net/proddocs/36/Spring/2020/measures/2614/shared/2614.zip.*

Framework,[119] and would provide SNFs with resident-reported outcome information to incorporate into their quality assessment and performance improvement (QAPI) strategies to improve their quality of care.

The CoreQ: SS DC measure is a resident-reported outcome measure using the CoreQ: SS DC measure questionnaire which calculates the percentage of residents discharged in a 6-month period from a SNF, within 100 days of admission, who are satisfied with their SNF stay. The CoreQ: SS DC measure received initial NQF endorsement in 2016 and re-endorsement in 2020, and is a widely accepted instrument for measuring resident satisfaction. The measure includes a parsimonious set of four questions, and represents an important aspect of quality improvement and person-centered care. We believe it could be used to fill the identified gap in the SNF QRP's measure set, that is, measuring residents' experience of care. Therefore, we are proposing to adopt the CoreQ: SS DC measure for the SNF QRP beginning with the FY 2026 SNF QRP. More information about the CoreQ questionnaire is available at *http://www.coreq.org.*

(b) Measure Testing

The measure steward, AHCA, conducted extensive testing on the CoreQ: SS DC measure to assess reliability and validity prior to its initial NQF endorsement in 2016 and conducted additional analyses for the CoreQ: SS DC measure's NQF re-endorsement in 2020. These analyses found the CoreQ: SS DC measure to be highly reliable, valid, and reportable.[120] We describe the results of these analyses in this section.

Reliability testing included administering a pilot survey to 853 residents, re-administering the survey to 100 of these residents, and then examining results at the data element level, the respondent/questionnaire level, and the measure (that is, facility) level. The data elements of the CoreQ: SS DC measure were found to be highly repeatable, with pilot and re-administered responses agreeing between 94 percent and 97 percent of the time, depending on the question. In other words, the same results were produced a high proportion of the time when assessed in the same population in the same time period. The questionnaire-level scores were also highly repeatable, with pilot and re-administered responses agreeing 98 percent of the time. Finally, reliability at the measure (that is, facility) level was also strong. Bootstrapping analyses in which repeated draws of residents were randomly selected from the measure population and scores were recalculated showed that 17.82 percent of scores were within 1 percentage point of the original score, 38.14 percent were within 3 percentage points of the original score, and 61.05 percent were within 5 percentage points of the original score. These results demonstrate that the CoreQ: SS DC measure scores from the same facility are very stable across bootstrapped samples.

The measure steward also conducted extensive validity testing of the CoreQ: SS DC measure's questionnaire, which included examination of the items in the questionnaire, the questionnaire format, and the validity of the CoreQ: SS DC measure itself.[121]

First, the measure steward tested the items in the CoreQ: SS DC questionnaire to determine if a subset of items could reliably be used to produce an overall indicator of customer satisfaction. The measure steward started with 22 pilot questions, which assessed an individual's satisfaction with a number of concepts, such as food, environment, activities, communication, and responsiveness. Through repeated analyses, the number of questions was narrowed down to four. The four questions in the CoreQ: SS DC measure's final questionnaire were found to have a high degree of criterion validity, supporting that the instrument measures a single concept of ''customer satisfaction,'' rather than multiple areas of satisfaction.

Next, the validity of the four-question CoreQ: SS DC measure summary score was compared to the more expansive set of 22 pilot questions, and was found to have a correlation value of 0.94, indicating that the CoreQ: SS DC measure's questionnaire consisting of four questions adequately represents the overall satisfaction of the facility.

Finally, the measure steward found moderate levels of construct validity and convergent validity when the CoreQ: SS DC measure's relationship with Certification and Survey Provider Enhanced Reports (CASPER) Quality Indicators, Nursing Home Compare Quality Indicators, Five Star Ratings and staffing levels was examined. Therefore, the CoreQ: SS DC measure's questionnaire format has a high degree of both face validity and content validity.[122]

Since the CoreQ: SS DC measure's original NQF endorsement in 2018, and its subsequent use by SNFs in quality improvement (see section VI.C.2.a.(1)), the measure steward conducted additional testing, including examining the reportability of the measure. Testing found that when the CoreQ: SS DC measure's questionnaires were administered within one week of facility discharge, the response rate was 8 percent higher than if it was administered 2 weeks after facility discharge. The measure steward analyzed responses when it allowed up to 2 months for a resident to respond, and found the average time to respond to the CoreQ: SS DC questionnaire was 2 weeks, while the response rate dropped much lower in the second month after facility discharge.[123] The measure steward also conducted additional analyses to determine if there was any bias introduced into the responses to the CoreQ: SS DC's questionnaires that were returned during the second month, and found that average scores for the questionnaires returned in the second month were almost identical to those returned in the first month. Finally, the measure steward examined the time period required to collect the CoreQ: SS DC measure's data, and found that a majority of SNFs (that is, 90 percent) could achieve the minimum sample size of 20 completed CoreQ: SS DC questionnaires necessary for the satisfaction score to be reported as reliable for the SNF, when given up to 6 months. Additionally, once 125 consecutive completed CoreQ: SS DC

[119] Centers for Medicare & Medicaid Services. Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

[120] CoreQ_Short_Stay_Testing_Final_v7.1_Corrected_4_20_20_FinalforSubmission-637229958835088042.docx. Available in the measure's specifications from the Patient Experience and Function Spring Cycle 2020 project. Available at: *https://nqfappservices storage.blob.core.windows.net/proddocs/36/Spring/2020/measures/2614/shared/2614.zip.*

[121] CoreQ_Short_Stay_Testing_Final_v7.1_Corrected_4_20_20_FinalforSubmission-637229958835088042.docx. Available in the measure's specifications from the Patient Experience and Function Spring Cycle 2020 project. Available at: *https://nqfappservices storage.blob.core.windows.net/proddocs/36/Spring/2020/measures/2614/shared/2614.zip.*

[122] CoreQ_Short_Stay_Testing_Final_v7.1_Corrected_4_20_20_FinalforSubmission-637229958835088042.docx. Available in the measure's specifications from the Patient Experience and Function Spring Cycle 2020 project. Available at: *https://nqfappservices storage.blob.core.windows.net/proddocs/36/Spring/2020/measures/2614/shared/2614.zip.*

[123] CoreQ Measure Worksheet-2614-Spring 2020 Cycle. Patient Experience and Function Project. Available at *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=93879.*

questionnaires were received for a particular SNF, the measure steward found that including additional CoreQ: SS DC questionnaires had no additional effect on the SNF's satisfaction score. As a result of these additional analyses, the recommendations to allow up to 2 months for CoreQ: SS DC questionnaire returns, a 6-month reporting period, and a ceiling of 125 completed questionnaires in a 6-month period were incorporated into the CoreQ: SS DC measure's specification.

(2) Competing and Related Measures

Section 1899B(e)(2)(A) of the Act requires that, absent an exception under section 1899B(e)(2)(B) of the Act, measures specified under section 1899B of the Act be endorsed by a CBE with a contract under section 1890(a) of the Act. In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1899B(e)(2)(B) of the Act permits the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

Although the CoreQ measure is NQF-endorsed for SNFs, we did consider whether there were other CBE-endorsed measures capturing SNF resident satisfaction after discharge from a SNF in less than 100 days. We found several CBE measures used in other programs that assess resident experiences for specific resident populations, such as residents at end of life, residents with low back pain, and residents receiving psychiatric care. However, we did not find other CBE-endorsed measures that assess satisfaction of residents discharged within 100 days of their admission to the SNF.

(3) Interested Parties and Technical Expert Panel (TEP) Input

We employ a transparent process to seek input from interested parties and national experts and engage in a process that allows for pre-rulemaking input on each measure, under section 1890A of the Act. To meet this requirement, we solicited feedback from interested parties through an RFI in the FY 2022 SNF PPS proposed rule (86 FR 19998) on the importance, relevance, and applicability of patient-reported outcome (PRO) measures for SNFs. In the FY 2022 SNF PPS final rule (86 FR 42490 through 42491), we noted that several commenters supported the concept of PROs while others were uncertain what we intended with the term ''patient-reported outcomes.'' One commenter stressed the importance of PROs since they determine outcomes based on information obtained directly from residents, and therefore provide greater insight into residents' experience of the outcomes of care. Another commenter agreed and stated that residents and caregivers are the best sources of information reflecting the totality of the resident experience.

We solicited public comments from interested parties specifically on the inclusion of the CoreQ: SS DC measure in a future SNF QRP year through an RFI in the FY 2023 SNF PPS proposed rule (87 FR 22761 through 22762). In the FY 2023 SNF PPS final rule (87 FR 47555), we noted that support for the CoreQ: SS DC measure specifically was mixed among commenters. One commenter stated that since the CoreQ: SS DC measure has a limited number of questions, it may not fully reflect resident experience at a given facility. Another commenter would not support the CoreQ: SS DC measure since it excludes residents who leave a facility against medical advice and residents with guardians, and this commenter stated it would be important to hear from both of these resident populations. Two commenters cautioned us to consider the burden associated with contracting with third-party vendors to administer the CoreQ: SS DC measure.

(4) Measure Application Partnership (MAP) Review

The CoreQ: SS DC measure was initially endorsed by the NQF in 2016. It was originally reviewed by the NQF's Person- and Family-Centered Care (PFCC) Committee on June 6, 2016. The PFCC Committee members noted the importance of measuring residents' experiences and their preferences given health care's changing landscape. Overall, the PFCC Committee members liked that there was a conceptual framework associated with the measure submission that linked the CoreQ: SS DC measure with other improvement programs and organizational change initiatives that can help SNFs improve the quality of care they provide. Some PFCC Committee members expressed concern around the consistency of implementation across SNFs and whether scores could be compromised by a low response rate. All PFCC Committee members agreed to not risk-adjust the CoreQ: SS DC measure as it would be inappropriate to control for differences based on sociodemographic factors. We refer readers to the PFCC Final Report—Phase 3.[124]

The following year, the CoreQ: SS DC measure was included on the publicly available ''List of Measures under Consideration for December 1, 2017'' [125] for the SNF QRP Program, but the MAP did not receive any comments from interested parties. The CBE-convened MAP PAC/LTC workgroup met on December 13, 2017 and provided input on the CoreQ: SS DC measure. The MAP PAC/LTC workgroup offered support of the CoreQ: SS DC measure for rulemaking, noting that it adds value by adding addressing a gap area for the SNF QRP. The MAP PAC/LTC workgroup emphasized the value of resident-reported outcomes and noted that the CoreQ: SS DC measure would reflect quality of care from the resident's perspective. However, the MAP PAC/LTC workgroup also noted the potential burden of collecting the data and cautioned that the implementation of a new data collection requirement should be done with the least possible burden to the SNF.[126]

(5) Quality Measure Calculation

The proposed CoreQ: SS DC measure is a resident-reported outcome measure based on the CoreQ: SS DC questionnaire that calculates the percentage of residents discharged in a 6-month period from a SNF, within 100 days of admission, who are satisfied with their SNF stay. Unless otherwise exempt from collecting and reporting on the CoreQ: SS DC measure (as discussed in section VI.F.3.b. of this proposed rule), we are proposing that each SNF must contract with an independent CMS-approved CoreQ survey vendor to administer the CoreQ: SS DC measure questionnaire, and report the results to CMS, on behalf of the SNF (as specified in sections VI.F.3.a. and VI.F.3.c of this proposed rule).

The CoreQ: SS DC measure questionnaire utilizes four questions (hereafter referred to as the four primary questions) and uses a 5-point Likert scale as illustrated in Table 13.

[124] The Person and Family Centered Care Final Report—Phase 3. *https://www.qualityforum.org/Publications/2017/01/Person_and_Family_Centered_Care_Final_Report_-_Phase_3.aspx.*

[125] Centers for Medicare & Medicaid Services. List of Measures under Consideration for December 1, 2017. *https://www.cms.gov/files/document/2017amuc-listclearancerpt.pdf.*

[126] MAP Post-Acute Care/Long-Term Care Workgroup Project. 2017–2018 Preliminary Recommendations. Available at *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

TABLE 13—COREQ: SHORT STAY DISCHARGE PRIMARY QUESTIONS

Primary questions used in the CoreQ: short stay discharge questionnaire	Response options for the four CoreQ primary questions
1. In recommending this facility to your friends and family, how would you rate it overall? 2. Overall, how would you rate the staff? 3. How would you rate the care you received? 4. How would you rate how well your discharge needs were met?	Poor (1); Average (2); Good (3); Very Good (4); Excellent (5).

We are proposing to add two ''help provided'' questions to the end (as questions five and six) of the CoreQ: SS DC questionnaire in order to determine whether to count the CoreQ: SS DC questionnaire as a completed questionnaire for the CoreQ: SS DC measure denominator or whether the questionnaire should be excluded as described in the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual [127] available on the SNF QRP Measures and Technical Information web page. These two ''help provided'' questions are:

5. Did someone help you [the resident] complete the survey?

6. How did that person help you [the resident]?

(a) Denominator

The denominator is the sum of all of the questionnaire-eligible residents, regardless of payer, who (1) are admitted to the SNF and discharged within 100 days, (2) receive the CoreQ: SS DC questionnaire, and (3) respond to the CoreQ: SS DC questionnaire within two months of discharge from the SNF. However, certain residents are excluded from the denominator and therefore are not sent a CoreQ: SS DC questionnaire by the CMS-approved CoreQ survey vendor or contacted by the CMS-approved CoreQ survey vendor for a phone interview. The residents who are not eligible to respond to the questionnaire, and therefore are excluded from the denominator for the CoreQ: SS DC measure are: (1) residents discharged to another hospital, another SNF, a psychiatric facility, an IRF, or an LTCH; (2) residents who die during their SNF stay; (3) residents with court-appointed legal guardians with authority to make decisions on behalf of the resident; (4) residents discharged to hospice; (5) residents who have dementia impairing their ability to answer the questionnaire; [128] (6) residents who left the SNF against medical advice; and (7) residents with a foreign address. Additionally, residents are excluded from the denominator if after the CoreQ: SS DC questionnaire is returned: (1) the CMS-approved CoreQ survey vendor received the CoreQ: SS DC completed questionnaire more than two months after the resident was discharged from the SNF or the resident did not respond to attempts to conduct the interview by phone within two months of their SNF discharge date; (2) the CoreQ: SS DC questionnaire ''help provided'' question six indicates the questionnaire answers were answered for the resident by an individual(s) other than the resident; or (3) the received CoreQ: SS DC questionnaire is missing more than one response to the four primary questions (that is, missing two or more responses).

(b) Numerator

The numerator is the sum of the resident respondents in the denominator that submitted an average satisfaction score of greater than or equal to three for the four primary questions on the CoreQ: SS DC questionnaire. If a CoreQ: SS DC questionnaire is received and is missing only one response (out of the four primary questions in the questionnaire), imputation is used which represents the average value from the other three available responses. If a CoreQ: SS DC questionnaire is received and is missing more than one response to the four primary questions (that is, missing two or more responses), the CoreQ: SS DC questionnaire is excluded from the analysis (that is, no imputation will be used for these residents). The CoreQ: SS DC measure is not risk-adjusted by sociodemographic status (SDS), as the measure steward found no statistically significant differences (at the 5 percent level) in scores between the SDS categories.[129] Additional information about how the CoreQ: SS DC measure is calculated is available in the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual [130] on the SNF QRP Measures and Technical Information web page.

We invite public comment on our proposal to adopt the CoreQ: SS DC Measure beginning with the FY 2026 SNF QRP.

b. Proposed Adoption of the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date Measure Beginning With the FY 2026 SNF QRP

(1) Background

COVID–19 has been and continues to be a major challenge for PAC facilities, including SNFs. The Secretary first declared COVID–19 a PHE on January 31, 2020. As of March 23, 2023, the U.S. has reported 103,957,053 cumulative cases of COVID–19 and 1,123,613 total deaths due to COVID–19.[131] Although all age groups are at risk of contracting COVID–19, older persons are at a significantly higher risk of mortality and severe disease following infection; those over age 80 dying at five times the average rate.[132] Older adults, in general, are prone to both acute and chronic infections owing to reduced immunity, and are a high-risk population.[133] Adults age 65 and older comprise over

[127] Draft CoreQ: SS DC Survey Protocols and Guidelines Manual. Chapter VIII. Data Processing and Coding. Available on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

[128] Patients who have dementia impairment in their ability to answer the questionnaire are defined as having a Brief Interview of Mental Status (BIMS) score on the MDS 3.0 as 7 or lower. *https://cmit.cms.gov/CMIT_public/ViewMeasure?MeasureId=3436.*

[129] The measure developer examined the following SDS categories: age, race, gender, and highest level of education. CoreQ: Short Stay Discharge Measure.

[130] Draft CoreQ: SS DC Survey Protocols and Guidelines Manual. Chapter VIII. Data Processing and Coding. Available on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

[131] Centers for Disease Control and Prevention. COVID Data Tracker. *https://covid.cdc.gov/covid-data-tracker/#cases_totalcases.*

[132] United Nations. Policy Brief: The Impact of COVID–19 on Older Persons. May 2020. *https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-The-Impact-of-COVID-19-on-Older-Persons.pdf.*

[133] Lekamwasam R, Lekamwasam S. Effects of COVID–19 Pandemic on Health and Wellbeing of Older People: a Comprehensive Review. *Ann Geriatr Med Res.* 2020;24(3):166–172. doi: 10.4235/agmr.20.0027. PMID: 32752587; PMCID: PMC7533189.

75 percent of total COVID–19 deaths despite representing 13.4 percent of reported cases.[134] COVID–19 has impacted older adults' access to care, leading to poorer clinical outcomes, as well as taking a serious toll on their mental health and well-being due to social distancing.[135]

Since the development of the vaccines to combat COVID–19, studies have shown they continue to provide strong protection against severe disease, hospitalization, and death in adults, including during the predominance of Omicron BA.4 and BA.5 variants.[136] Initial studies showed the efficacy of FDA-approved or authorized COVID–19 vaccines in preventing COVID–19. Prior to the emergence of the Delta variant of the virus, vaccine effectiveness against COVID–19-associated hospitalizations among adults age 65 and older was 91 percent for those who were fully vaccinated with a full mRNA vaccination (Pfizer-BioNTech or Moderna), and 84 percent for those receiving a viral vector vaccine (Janssen). Adults age 65 and older who were fully vaccinated with an mRNA COVID–19 vaccine had a 94 percent reduction in risk of COVID–19 hospitalizations, while those who were partially vaccinated had a 64 percent reduction in risk.[137] Further, after the emergence of the Delta variant, vaccine effectiveness against COVID–19-associated hospitalizations for adults who were fully vaccinated was 76 percent among adults age 75 and older.[138]

More recently, since the emergence of the Omicron variants and the availability of booster doses, multiple studies have shown that while vaccine effectiveness has waned, protection is higher among those receiving booster doses than among those receiving only the primary series.[139] [140] [141] CDC data show that, among people age 50 and older, those who have received both a primary vaccination series and booster doses have a lower risk of hospitalization and dying from COVID–19 than their non-vaccinated counterparts.[142] Additionally, a second vaccine booster dose has been shown to reduce risk of severe outcomes related to COVID–19, such as hospitalization or death, among nursing home residents. Nursing home residents who received their second booster dose were more likely to have additional protection against severe illness compared to those who received only one booster dose after their initial COVID–19 vaccination.[143] Early evidence also demonstrates that the bivalent boosters, specifically aimed to provide better protection against disease caused by Omicron subvariants, have been quite effective, and underscores the role of up-to-date vaccination protocols in effectively countering the spread of COVID–19.[144] [145]

(a) Measure Importance

Despite the availability and demonstrated effectiveness of COVID–19 vaccinations, significant gaps continue to exist in vaccination rates.[146] As of March 22, 2023, vaccination rates among people age 65 and older are generally high for the primary vaccination series (94.3 percent) but lower for the first booster (73.6 percent among those who received a primary series) and even lower for the second booster (59.9 percent among those who received a first booster).[147] Additionally, though the uptake in boosters among people age 65 and older has been much higher than among people of other ages, booster uptake still remains relatively low compared to primary vaccination among older adults.[148] Variations are also present when examining vaccination rates by race, gender, and geographic location.[149] For example, 66.2 percent of the Asian, non-Hispanic population have completed the primary series and 21.2 percent have received a bivalent booster dose, whereas 44.9 percent of the Black, non-Hispanic population have completed the primary series and only 8.9 percent have received the bivalent booster dose. Among Hispanic populations, 57.1 percent of the population have completed the primary series and 8.5 percent have received the bivalent booster dose, while in White, non-Hispanic populations, 51.9 percent have completed the primary series and 16.2 percent have received a bivalent booster dose.[150] Disparities have been

[134] Centers for Disease Control and Prevention. Demographic Trends of COVID–19 Cases and Deaths in the US Reported to CDC. COVID Data Tracker. *https://covid.cdc.gov/covid-data-tracker/#demographics.*

[135] United Nations. Policy Brief: The Impact of COVID–19 on Older Persons. May 2020. *https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-The-Impact-of-COVID-19-on-Older-Persons.pdf.*

[136] Chalkias S, Harper C, Vrbicky K, et al. A Bivalent Omicron-Containing Booster Vaccine Against COVID–19. *N Engl J Med.* 2022 Oct 6;387(14):1279–1291. doi: 10.1056/NEJMoa2208343. PMID: 36112399; PMCID: PMC9511634.

[137] Centers for Disease Control and Prevention. Fully Vaccinated Adults 65 and Older Are 94% Less Likely to Be Hospitalized with COVID–19. April 28, 2021. *https://www.cdc.gov/media/releases/2021/p0428-vaccinated-adults-less-hospitalized.html.*

[138] Interim Estimates of COVID–19 Vaccine Effectiveness Against COVID–19–Associated Emergency Department or Urgent Care Clinic Encounters and Hospitalizations Among Adults During SARS–CoV–2 B.1.617.2 (Delta) Variant Predominance—Nine States, June–August 2021. (Grannis SJ, et al. *MMWR Morb Mortal Wkly Rep.* 2021;70(37):1291–1293. doi: 10.15585/mmwr.mm7037e2). *https://www.cdc.gov/mmwr/volumes/70/wr/mm7037e2.htm.*

[139] Surie D, Bonnell L, Adams K, et al. Effectiveness of monovalent mRNA vaccines against COVID–19–associated hospitalization among immunocompetent adults during BA.1/BA.2 and BA.4/BA.5 predominant periods of SARS–CoV–2 Omicron variant in the United States—IVY Network, 18 States, December 26, 2021–August 31, 2022. *MMWR Morb Mortal Wkly Rep.* 2022;71(42):1327–1334. doi: 10.15585/mmwr.mm7142a3.

[140] Andrews N, Stowe J, Kirsebom F, et al. Covid–19 Vaccine Effectiveness against the Omicron (B.1.1.529) Variant. *N Engl J Med.* 2022;386(16):1532–1546. doi: 10.1056/NEJMoa2119451. PMID: 35249272; PMCID: PMC8908811.

[141] Buchan SA, Chung H, Brown KA, et al. Estimated Effectiveness of COVID–19 Vaccines Against Omicron or Delta Symptomatic Infection and Severe Outcomes. *JAMA Netw Open.* 2022;5(9):e2232760. doi:10.1001/jamanetworkopen.2022.32760. PMID: 36136332; PMCID: PMC9500552.

[142] Centers for Disease Control and Prevention. Rates of laboratory-confirmed COVID–19 hospitalizations by vaccination status. COVID Data Tracker. 2023, February 9. Last accessed March 22, 2023. *https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalizations-vaccination.*

[143] Centers for Disease Control and Prevention. COVID–19 Vaccine Effectiveness Monthly Update. COVID Data Tracker. November 10, 2022. *https://covid.cdc.gov/covid-data-tracker/#vaccine-effectiveness.*

[144] Chalkias S, Harper C, Vrbicky K, et al. A Bivalent Omicron-Containing Booster Vaccine Against COVID–19. *N Engl J Med.* 2022 Oct 6;387(14):1279–1291. doi: 10.1056/NEJMoa2208343. PMID: 36112399; PMCID: PMC9511634.

[145] Tan, S.T., Kwan, A.T., Rodríguez-Barraquer, I. et al. Infectiousness of SARS–CoV–2 breakthrough infections and reinfections during the Omicron wave. Nat Med 29, 358–365 (2023). *https://doi.org/10.1038/s41591-022-02138-x.*

[146] Centers for Disease Control and Prevention. COVID–19 Vaccinations in the United States. COVID Data Tracker. *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-booster-percent-pop5.*

[147] Centers for Disease Control and Prevention. COVID–19 Vaccination Age and Sex Trends in the United States, National and Jurisdictional. *https://data.cdc.gov/Vaccinations/COVID-19-Vaccination-Age-and-Sex-Trends-in-the-Uni/5i5k-6cmh.*

[148] Freed M, Neuman T, Kates J, Cubanski J. Deaths Among Older Adults Due to COVID–19 Jumped During the Summer of 2022 Before Falling Somewhat in September. Kaiser Family Foundation. October 6, 2022. *https://www.kff.org/coronavirus-covid-19/issue-brief/deaths-among-older-adults-due-to-covid-19-jumped-during-the-summer-of-2022-before-falling-somewhat-in-september/.*

[149] Saelee R, Zell E, Murthy BP, et al. Disparities in COVID–19 Vaccination Coverage Between Urban and Rural Counties—United States, December 14, 2020–January 31, 2022. *MMWR Morb Mortal Wkly Rep.* 2022;71:335–340. doi: 10.15585/mmwr.mm7109a2.

[150] Centers for Disease Control and Prevention. Trends in Demographic Characteristics of People Receiving COVID–19 Vaccinations in the United States. COVID Data Tracker. 2023, January 20. Last accessed January 17, 2023. *https://covid.cdc.gov/*

Continued

found in vaccination rates between rural and urban areas, with lower vaccination rates found in rural areas.[151] [152] Data show that 55.2 percent of the eligible population in rural areas have completed the primary vaccination series, as compared to 66.5 percent of the eligible population in urban areas.[153] Receipt of bivalent booster doses among those eligible has been lower: 18 percent of the urban population have received a booster dose, and 11.5 percent of the rural population have received a booster dose.[154]

We are proposing to adopt the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date (Patient/Resident COVID–19 Vaccine) measure for the SNF QRP beginning with the FY 2026 SNF QRP. This proposed measure has the potential to increase COVID–19 vaccination coverage of residents in SNFs, as well as prevent the spread of COVID–19 within the SNF resident population. This measure would also support the goal of the CMS Meaningful Measure Initiative 2.0 to ''Empower consumers to make good health care choices through patient-directed quality measures and public transparency objectives.'' The proposed Patient/Resident COVID–19 Vaccine measure would be reported on Care Compare and would provide residents and caregivers, including those who are at high risk for developing serious complications from COVID–19, with valuable information they can consider when choosing a SNF. The proposed Patient/Resident COVID–19 Vaccine measure would also facilitate resident care and care coordination during the hospital discharge planning process. A discharging hospital, in collaboration with the resident and family, could use this proposed measure's information on Care Compare to coordinate care and ensure resident preferences are considered in the discharge plan. Additionally, the proposed Patient/Resident COVID–19 Vaccine measure would be an indirect measure of SNF action. Since the resident's COVID–19 vaccination status would be reported at discharge from the SNF, if a resident is not up to date with their COVID–19 vaccine per applicable CDC guidance at the time they are admitted, the SNF has the opportunity to educate the resident and provide information on why they should become up to date with their COVID–19 vaccine. SNFs may also choose to administer the vaccine to the resident prior to their discharge from the SNF or coordinate a follow-up visit for the resident to obtain the vaccine at their physician's office or local pharmacy.

(b) Item Testing

Our measure development contractor conducted testing of the proposed standardized patient/resident COVID–19 vaccination coverage assessment item for the Patient/Resident COVID–19 Vaccine measure using resident scenarios, draft guidance manual coding instructions, and cognitive interviews to assess SNFs' comprehension of the item and the associated guidance. A team of clinical experts assembled by our measure development contractor developed these resident scenarios to represent the most common scenarios that SNFs would encounter. The results of the item testing demonstrated that SNFs that used the draft guidance manual coding instructions had strong agreement (that is, 84 percent) with the correct responses, supporting its reliability. The testing also provided information to improve both the item itself and the accompanying guidance.

(2) Competing and Related Measures

Section 1899B(e)(2)(A) of the Act requires that, absent an exception under section 1899B(e)(2)(B) of the Act, each measure specified under section 1899B of the Act be endorsed by a CBE with a contract under section 1890(a) of the Act. In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1899B(e)(2)(B) of the Act permits the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to the measures that have been endorsed or adopted by a CBE identified by the Secretary. The proposed Patient/Resident COVID–19 Vaccine measure is not CBE endorsed and, after review of other CBE-endorsed measures, we were unable to identify any CBE endorsed measures for SNFs focused on capturing COVID–19 vaccination coverage of SNF residents. We found only one related measure addressing COVID–19 vaccination, the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) measure, adopted for the FY 2023 SNF QRP (86 FR 42480 through 42489), which captures the percentage of HCP who receive a complete COVID–19 primary vaccination series, but not booster doses.

Although SNFs' COVID–19 vaccination rates are posted on Care Compare, these data are aggregated at the facility level, and SNFs are not required to report beneficiary-level data to the CDC's NHSN. The COVID–19 vaccination rates currently posted on Care Compare are obtained from CDC's NHSN, and reflect ''residents who completed primary vaccination series'' and ''residents who are up-to-date on their vaccines'' across the entire nursing home (NH) resident population. Residents receiving SNF care under the Medicare fee-for-service program differ from residents receiving long-term care in nursing homes in several ways. SNF residents typically enter the facility after an inpatient hospital stay for temporary specialized post-acute care, while NH residents typically have chronic or progressive medical conditions, requiring maintenance and supportive levels of care, and may reside in the NH for years. Additionally, the SNF QRP includes data submitted by non-CAH swing bed units whose data are only represented through the SNF QRP, and are not included in the COVID–19 vaccination data reported to the NHSN by nursing homes. The proposed Patient/Resident COVID–19 Vaccine measure would be calculated using data collected on the MDS (as described in section VI.F.4. of this proposed rule) at the beneficiary level, which would enhance SNFs' ability to monitor their own infection prevention efforts with information on which they can act.

Additionally, the COVID–19 reporting requirements set forth in 42 CFR 483.80(g), finalized in the interim final rule with comment period (IFC) published on May 13, 2021 entitled ''Medicare and Medicaid Programs; COVID–19 Vaccine Requirements for Long-Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) Residents, Clients, and Staff'' (86 FR 26315–26316) (hereafter referred to as the May 2021 IFC) are directed at the LTC facilities' requirements, and are separate from the SNF QRP. The purpose of the May 2021 IFC was to collect information which would allow the CDC to identify and alert us to facilities that may need additional

covid-data-tracker/#vaccination-demographics-trends.

[151] Saelee R, Zell E, Murthy BP, et al. Disparities in COVID–19 Vaccination Coverage Between Urban and Rural Counties—United States, December 14, 2020–January 31, 2022. *MMWR Morb Mortal Wkly Rep.* 2022;71:335–340. doi: 10.15585/mmwr.mm7109a2.

[152] Sun Y, Monnat SM. Rural-Urban and Within-Rural Differences in COVID–19 Vaccination Rates. *J Rural Health.* 2022;38(4):916–922. doi: 10.1111/jrh.12625. PMID: 34555222; PMCID: PMC8661570.

[153] Centers for Disease Control and Prevention. Vaccination Equity. COVID Data Tracker; 2023, January 20. Last accessed January 17, 2023. *https://covid.cdc.gov/covid-data-tracker/#vaccination-equity.*

[154] Centers for Disease Control and Prevention. Vaccination Equity. COVID Data Tracker; 2023, January 20. Last accessed January 17, 2023. *https://covid.cdc.gov/covid-data-tracker/#vaccination-equity.*

support in regard to vaccine administration and education.

Instead, the purpose of the proposed Patient/Resident COVID–19 Vaccine measure is to allow for the collection of these data under the SNF QRP and subsequent public reporting of SNFs' facility-level resident vaccination rates on Care Compare so that Medicare beneficiaries who require short stays can make side-by-side SNF comparisons. Adoption of this proposed measure would also promote measure harmonization across quality reporting programs and provide Medicare beneficiaries the information to make side-by-side comparisons across other facility types to facilitate informed decision making in an accessible and user-friendly manner. Finally, the proposed Patient/Resident COVID–19 Vaccine measure would generate actionable data on vaccination rates that can be used to target quality improvement among SNFs.

Therefore, after consideration of other available measures that assess COVID–19 vaccination rates among SNF residents, we believe the exception under section 1899B(e)(2)(B) of the Act applies. We intend to submit the proposed measure for to the CBE for consideration of endorsement when feasible.

(3) Interested Parties and Technical Expert Panel (TEP) Input

First, the measure development contractor convened a focus group of patient and family/caregiver advocates (PFAs) to solicit input. The PFAs believed a measure capturing raw vaccination rate, irrespective of SNF action, would be most helpful in resident and caregiver decision-making. Next, TEP meetings were held on November 19, 2021, and December 15, 2021 to solicit feedback on the development of patient/resident COVID–19 vaccination measures and assessment items for the PAC settings. The TEP panelists voiced their support for PAC patient/resident COVID–19 vaccination measures and agreed that developing a measure to report the rate of vaccination in a SNF/NH setting without denominator exclusions was an important goal. We considered the TEP's recommendations, and we applied the recommendations, where technically feasible and appropriate. A summary of the TEP proceedings titled *Technical Expert Panel (TEP) for the Development of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) COVID–19 Vaccination-Related Items and Measures Summary Report* [155] is available on the CMS MMS Hub.

To seek input on the importance, relevance, and applicability of a patient/resident COVID–19 vaccination coverage measure, we solicited public comments in an RFI for publication in the FY 2023 SNF PPS proposed rule (87 FR 42424). Commenters were mixed on whether they supported the concept of a measure addressing COVID–19 vaccination coverage among SNF residents. Two commenters noted the measure should account for other variables, such as whether the vaccine was offered, as well as excluding residents with medical contraindications to the vaccine (87 FR 47553).

(4) Measure Applications Partnership (MAP) Review

In accordance with section 1890A of the Act, the pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures Under Consideration (MUC) List, that the Secretary is considering adopting for use in Medicare programs. This allows interested parties to provide recommendations to the Secretary on the measures included on the list. The Patient/Resident COVID–19 Vaccine measure was included on the publicly available 2022 MUC List for the SNF QRP.[156]

After the MUC List was published, MAP received seven comments by interested parties during the measure's MAP pre-rulemaking process. Commenters were mostly supportive of the measure and recognized the importance of resident COVID–19 vaccination, and that measurement and reporting is one important method to help healthcare organizations assess their performance in achieving high rates of up-to-date vaccination. One commenter also noted that resident engagement is critical at this stage of the pandemic because best available information indicates COVID–19 variants will continue to require additional boosters to avert case surges. Another commenter noted the benefit of less-specific criteria for inclusion in the numerator and denominator of the proposed Patient/Resident COVID–19 Vaccine measure, which would provide flexibility for the measure to remain relevant to current circumstances. Several commenters noted their conditional support, however, and raised several issues about the measure. Specifically, one questioned whether our intent was to replace the required NHSN reporting if this measure were finalized and noted it did not collect data on Medicare Advantage residents. Another commenter suggested that nursing homes might refuse to admit unvaccinated residents, and was concerned about the costs SNFs would incur purchasing the vaccines. Another commenter raised concerns about the measure since it did not directly measure provider actions to increase vaccine uptake in the numerator and that it would only collect vaccination information on Medicare fee-for-service residents, rather than all residents, regardless of payer. Finally, one commenter was concerned because there were no exclusions for residents who refused to become up to date with their COVID–19 vaccination.

Subsequently, several MAP workgroups met to provide input on the measure. First, the MAP Health Equity Advisory Group convened on December 6, 2022. One MAP Health Equity Advisory Group member noted that the percentage of true contraindications for the COVID–19 vaccine is low, and the lack of exclusions on the measure is reasonable in order to minimize variation in what constitutes a contraindication.[157] The MAP Rural Health Advisory Group met on December 8, 2022, and requested clarification of the term ''up to date'' and noted concerns with the perceived level of burden for collection of data.[158]

Next, the MAP PAC/LTC workgroup met on December 12, 2022. The voting workgroup members noted the importance of reporting residents' vaccination status, but discussed their concerns about: (1) the duplication of data collection with the NHSN if an assessment-based measure were adopted into the SNF QRP; (2) how publicly reported rates would differ from the rates reported by the NHSN; (3) that the

[155] *Technical Expert Panel (TEP) for the Development of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) COVID–19 Vaccination-Related Items and Measures Summary Report* is available on the CMS MMS Hub at *https://mmshub.cms.gov/sites/default/files/COVID19-Patient-Level-Vaccination-TEP-Summary-Report-NovDec2021.pdf.*

[156] Centers for Medicare & Medicaid Services. (2022). Overview of the List of Measures Under Consideration for December 1, 2022. *https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf.*

[157] CMS Measures Management System (MMS). Measure Implementation: Pre-rulemaking MUC Lists and MAP reports. *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[158] CMS Measures Management System (MMS). Measure Implementation: Pre-rulemaking MUC Lists and MAP reports. *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

Patient/Resident COVID–19 Vaccine measure does not account for resident refusals or those who are unable to respond; and (4) the difficulty of implementing the definition of ''up to date.'' We clarified during the PAC/LTC workgroup meeting that this measure was intended to only include Medicare Part A-covered SNF stays. We further noted that the proposed Patient/Resident COVID–19 Vaccine measure does not have exclusions for resident refusals because the proposed measure was intended to report raw rates of vaccination. We explained that raw rates of vaccination collected by the proposed Patient/Resident COVID–19 Vaccine measure are important for consumer choice and PAC providers, including SNFs, are in a unique position to leverage their care processes to increase vaccination coverage in their settings to protect residents and prevent negative outcomes. We also clarified that the measure defines ''up to date'' in a manner that provides flexibility to reflect future changes in the CDC's guidance with respect to COVID–19 vaccination. Finally, we clarified that, like the existing HCP COVID–19 Vaccine measure, this measure would continue to be reported quarterly because the CDC has not yet determined whether COVID–19 is seasonal. Ultimately, the PAC/LTC workgroup did not achieve a 60 percent consensus vote to accept the NQF's preliminary analysis assessment of conditional support for the Patient/Resident COVID–19 Vaccine measure for SNF QRP rulemaking pending testing demonstrating the measure is reliable and valid, and CBE endorsement.[159] Since the PAC/LTC workgroup did not reach consensus to accept, or subsequently to overturn the NQF staff's preliminary analysis assessment, the preliminary analysis assessment became the final recommendation of the PAC/LTC workgroup.

NQF received 10 comments by interested parties in response to the PAC/LTC workgroup recommendations. Interested parties generally understood the importance of COVID–19 vaccinations' role in preventing the spread of COVID–19 infections, although a majority of commenters did not recommend the inclusion of the proposed Patient/Resident COVID–19 Vaccine measure in the SNF QRP and raised several concerns. Specifically, several commenters were concerned about vaccine hesitancy, SNFs' inability to influence measure results based on factors outside of their control, duplication with NHSN reporting requirements, data lag in public reporting of QRP data relative to NHSN's current reporting of the measure, and that the proposed Patient/Resident COVID–19 Vaccine measure is not representative of the full SNF population, noting that the proposed Patient/Resident COVID–19 Vaccine measure has not been fully tested, and encouraged us to monitor the measure for unintended consequences and ensure that the measure has meaningful results. One commenter was in support of the proposed Patient/Resident COVID–19 Vaccine measure and provided recommendations for us to consider, including an exclusion for medical contraindications and submitting the measure for CBE endorsement. Another commenter questioned why the PAC/LTC workgroup recommendation for SNF was not consistent with their recommendation for the proposed Patient/Resident COVID–19 Vaccine measure in other PAC QRPs.

Finally, the MAP Coordinating Committee convened on January 24, 2023, and noted concerns which were previously discussed in the PAC/LTC workgroup, such as the duplication of NHSN reporting requirements and potential for selection bias based on the resident's vaccination status. We were able to clarify that this measure was intended to include only Medicare Part A-covered SNF stays for facilities required to report to the SNF QRP, since the Medicare Advantage resident population is not part of the SNF QRP reporting requirements. We also noted that this measure does not have exclusions for resident refusals since this is a process measure intended to report raw rates of vaccination, and is not intended to be a measure of SNFs' actions. We acknowledged that a measure accounting for variables, such as SNFs' actions to vaccinate residents, could be important, but noted that we are focused on a measure which would provide and publicly report vaccination rates for consumers given the importance of this information to residents and their caregivers.

The MAP Coordinating Committee recommended three mitigation strategies for the Patient/Resident COVID–19 Vaccine measure: (1) reconsider exclusions for medical contraindications, (ii) complete reliability and validity measure testing, and (iii) seek CBE endorsement. The Coordinating Committee ultimately reached 90 percent consensus on its recommendation of ''Do not Support with potential for mitigation.'' [160] Despite the MAP Coordinating Committee's vote, we believe it is still important to propose the Patient/Resident COVID–19 Vaccine measure for the SNF QRP. As we stated in section VI.C.2.b.(3) of this proposed rule, we did not include exclusions for medical contraindications because the PFAs we met with told us that a measure capturing raw vaccination rate, irrespective of any medical contraindications, would be most helpful in patient and family/caregiver decision-making. We do plan to conduct reliability and validity measure testing once we have collected enough data, and we intend to submit the proposed measure to the CBE for consideration of endorsement when feasible. We refer readers to the final MAP recommendations, titled *2022–2023 MAP Final Recommendations.*[161]

(5) Quality Measure Calculation

The proposed Patient/Resident COVID–19 Vaccine measure is a process measure that reports the percent of stays in which residents in a SNF are up to date on their COVID–19 vaccinations per the CDC's latest guidance.[162] This measure has no exclusions, and is not risk adjusted.

The numerator for this measure would be the total number of Medicare Part A-covered SNF stays in which residents are up to date with their COVID–19 vaccine per CDC's latest guidance during the reporting year. The denominator for this measure would be the total number of Medicare Part A-covered SNF stays discharged during the reporting period. For the SNF QRP, this would apply to all freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing-bed rural hospitals.

The data source for the proposed Patient/Resident COVID–19 Vaccine measure is the MDS assessment instrument for SNF residents. For more information about the proposed data submission requirements for this proposed measure, we refer readers to

[159] National Quality Forum MAP Post-Acute Care/Long Term Care Workgroup Materials. Meeting Summary—MUC Review Meeting. Accessed January 20, 2023. *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=97960.*

[160] National Quality Forum Measure Applications Partnership. 2022–2023 MAP Final Recommendations. *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=98102.*

[161] 2022–2023 MAP Final Recommendations. *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[162] The definition of ''up to date'' may change based on CDC's latest guidelines and can be found on the CDC web page, ''Stay Up to Date with COVID–19 Vaccines Including Boosters,'' at *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html* (updated January 9, 2023).

section VI.F.4. of this proposed rule. For additional technical information about this proposed measure, we refer readers to the draft measure specifications document titled *Patient -Resident-COVID-Vaccine-Draft-Specs.pdf*[163] available on the SNF QRP Measures and Technical Information web page.

We invite public comments on our proposal to adopt the Patient/Resident: COVID–19 Vaccine measure beginning with the FY 2026 SNF QRP.

D. Principles for Selecting and Prioritizing SNF QRP Quality Measures and Concepts Under Consideration for Future Years—Request for Information (RFI)

1. Background

We have established a National Quality Strategy (NQS)[164] for quality programs which supports a resilient, high-value healthcare system promoting quality outcomes, safety, equity, and accessibility for all individuals. The CMS NQS is foundational for contributing to improvements in health care, enhancing patient outcomes, and informing consumer choice. To advance these goals, leaders from across CMS have come together to move toward a building-block approach to streamline quality measures across our quality programs for the adult and pediatric populations. This ''Universal Foundation'' [165] of quality measures will focus provider attention and reduce provider burden, as well as identify disparities in care, prioritize development of interoperable, digital quality measures, allow for cross-comparisons across programs, and help identify measurement gaps. The development and implementation of the Preliminary Adult and Pediatric Universal Foundation Measures will promote the best, safest, and most equitable care for individuals as we all come together on these critical quality areas.

In alignment with the CMS NQS, the SNF QRP endeavors to move toward a more parsimonious set of measures while continually improving the quality of health care for beneficiaries. The purpose of this RFI is to gather input on existing gaps in SNF QRP measures and to solicit public comment on fully developed SNF measures that are not part of the SNF QRP, fully developed quality measures in other programs that may be appropriate for the SNF QRP, and measurement concepts that could be developed into SNF QRP measures, to fill these measurement gaps in the SNF QRP. While we will not be responding to specific comments submitted in response to this RFI in the FY 2024 SNF PPS final rule, we intend to use this input to inform future policies.

This RFI consists of three sections. The first section discusses a general framework or set of principles that we could use to identify future SNF QRP measures. The second section draws from an environmental scan conducted to identify measurement gaps in the current SNF QRP, and measures or measure concepts that could be used to fill these gaps. The final section solicits public comment on: (1) the set of principles for selecting measures for the SNF QRP, (2) identified measurement gaps, and (3) measures that are available for immediate use, or that may be adapted or developed for use in the SNF QRP.

2. Guiding Principles for Selecting and Prioritizing Measures

We have identified a set of principles to guide future SNF QRP measure set development and maintenance. These principles are intended to ensure that measures resonate with beneficiaries and caregivers, do not impose undue burden on providers, align with our PAC program goals, and can be readily operationalized. Specifically, measures incorporated into the SNF QRP should meet the following four objectives:

1. *Actionability:* Optimally, SNF QRP measures should focus on structural elements, healthcare processes, and outcomes of care that have been demonstrated through clinical evidence or other best practices to be amenable to improvement and feasible for SNFs to implement.

2. *Comprehensiveness and Conciseness:* SNF QRP measures should assess performance of all SNF core services using the smallest number of measures that comprehensively assess the value of care provided in SNF settings. Parsimony in the QRP measure set minimizes SNFs' burden resulting from data collection and submission.

3. *Focus on Provider Responses to Payment:* The SNF PPS shapes incentives for care delivery. SNF performance measures should neither exacerbate nor induce unwanted responses to the payment systems. As feasible, measures should mitigate adverse incentives of the payment system.

4. *Compliance with CMS Statutory Requirements and Key Program Goals:* Measures must comply with the governing statutory authorities and our policy to align measures with our policy initiatives, such as the Meaningful Measures Framework.

3. Gaps in SNF QRP Measure Set and Potential New Measures

We conducted an environmental scan that utilized the previously listed principles and identified measurement gaps in the domains of cognitive function, behavioral and mental health, resident experience and resident satisfaction, and chronic conditions and pain management. We discuss each of these in more detail below.

a. Cognitive Function

Illnesses associated with limitations in cognitive function, which may include stroke, dementia, and Alzheimer's disease, affect an individual's ability to think, reason, remember, problem-solve, and make decisions. Section 1888(e)(6)(B)(i) of the Act requires SNFs to submit data on quality measures under section 1899B(c)(1) of the Act, and cognitive function and changes in cognitive function are key dimensions of clinical care that are not currently represented in the SNF QRP.

Two sources of information on cognitive function currently collected in SNFs include the Brief Interview for Mental Status (BIMS) and Confusion Assessment Method (CAM©).[166] Both the BIMS and CAM© have been incorporated into the MDS as standardized patient assessment data elements. Scored by SNFs via direct observation, the BIMS is used to determine orientation and the ability to register and recall new information. The CAM© assesses the presence of delirium and inattention, and level of consciousness. While data from the BIMS and CAM© are collected and reported via the MDS, these items have not been developed into specific quality measures for the SNF QRP.

Alternative sources of information on cognitive function include the Patient-Reported Outcomes Measurement

[163] *Patient-Resident-COVID-Vaccine-Draft-Specs.pdf. https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

[164] Schreiber M, Richards AC, Moody-Williams J, Fleisher LA. The CMS National Quality Strategy: A Person-centered Approach to Improving Quality. Centers for Medicare & Medicaid ServicesBblog. June 6, 2022. *https://www.cms.gov/blog/cms-national-quality-strategy-person-centered-approach-improving-quality.*

[165] 1 Jacobs DB, Schreiber M, Seshamani M, Tsai D, Fowler E, Fleisher LA. Aligning Quality Measures across CMS—The Universal Foundation. *N Engl J Med.* 2023 Mar 2; 338:776–779. doi: 10.1056/NEJMp2215539. PMID: 36724323.

[166] Centers for Medicare & Medicaid Services. Minimum Data Set (MDS) 3.0 Technical Information. Effective October 1, 2020. *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqimds30technicalinformation.*

Information Set (PROMIS) Cognitive Function forms and the PROMIS Neuro-Quality of Life (Neuro-QoL) measures.[167] [168] Developed and tested with a broad range of resident populations, PROMIS Cognitive Function assesses cognitive functioning using items related to resident perceptions regarding performance of cognitive tasks, such as memory and concentration, and perceptions of changes in these activities. The Neuro-QoL, which was specifically designed for use in residents with neurological conditions, assesses resident perceptions regarding oral expression, memory, attention, decision-making, planning, and organization.

The BIMS, CAM©, PROMIS Cognitive Function short forms, and PROMIS Neuro-QoL include items representing different aspects of cognitive function, from which quality measures may be constructed. Although these instruments have been subjected to feasibility, reliability, and validity testing, additional development and testing would be required prior to transforming the concepts reflected in the BIMS and CAM© (for example, temporal orientation, recall) into fully specified measures for implementation in the SNF QRP.

Through this RFI, we are requesting comment on the availability of cognitive functioning measures outside of the SNF QRP that may be available for immediate use in the SNF QRP, or that may be adapted or developed for use in the SNF QRP, using the BIMS, CAM©, PROMIS Cognitive Function short forms, and PROMIS Neuro-QoL, or other instruments. In addition to comment on specific measures and instruments, we seek input on the feasibility of measuring improvement in cognitive functioning during a SNF stay, which averages approximately 30 days; the cognitive skills (for example, executive functions) that are more likely to improve during a SNF stay; conditions for which measures of maintenance—rather than improvement in cognitive functioning—are more practical; and the types of intervention that have been demonstrated to assist in improving or maintaining cognitive functioning.

b. Behavioral and Mental Health

Estimates suggest that one in five Medicare beneficiaries has a ''common mental health disorder'' and nearly 8 percent have a serious mental illness.[169] Substance use disorders (SUDs) are also common. Research estimates that approximately 1.7 million Medicare beneficiaries (8 percent) reported a SUD in the past year, with 77 percent attributed to alcohol use and 16 percent to prescription drug use.[170] In some instances, such as following a knee replacement or stroke, residents may develop depression, anxiety, and/or SUDs. In other instances, residents may have been dealing with mental or behavioral health issues or SUDs long before their post-acute admission. Left unmanaged, however, these conditions could make it difficult for affected residents to actively participate in medical rehabilitation or to adhere to the prescribed treatment regimen, thereby contributing to poor health outcomes.

Information on the availability and appropriateness of behavioral health measures in post-acute settings is limited, and the 2021 National Impact Assessment of the CMS Quality Measures Report [171] identified PAC program measurement gaps in the areas of behavioral and mental health. Among the mental health quality measures in current use, the Home Health QRP assesses the extent to which residents have been screened for depression and a follow-up plan is documented.[172] Although it may be possible to adapt this measure for use in other PAC settings, this process measure does not directly assess performance in the management of depression and related mental health concerns.

Other instruments that may be adapted to assess management of mental health, behavioral health, or SUDs in PAC settings include the CAHPS Experience of Care and Health Outcomes Survey (ECHO), which consists of a series of questions that may be used to understand residents' perspectives concerning mental health services received; [173] the PROMIS [174] suite of instruments that may be used to monitor and evaluate mental health and quality of life; and the National Institutes of Health (NIH) Toolbox for the Assessment of Neurological and Behavioral Health Function,[175] which was commissioned by the NIH Blueprint for Neuroscience Research and includes both stand-alone measures and batteries of measures to assess emotional function and psychological well-being.

Like mental health issues, SUDs have been under-studied in the SNF and other PAC settings, even though they are among the fastest-growing disorders in the community-dwelling older adult population.[176] [177] Left untreated, SUDs can lead to overdose deaths, emergency department visits, and hospitalizations. The Substance Abuse and Mental Health Services Administration (SAMHSA) was established by Congress in 1992 to make substance use and mental disorder information, services, and research more accessible. As part of its work, SAMHSA developed the Screening, Brief Intervention, and Referral to Treatment (SBIRT) approach to support providers in using early intervention with at-risk substance users before more severe consequences occur, and has a number of resources available.[178]

We seek feedback on these and other measures or instruments that may be directly applied, adapted, or developed for use in the SNF QRP. Further, we seek comments on the degree to which measures have been or will require validation and testing prior to application in the SNF QRP. We seek input on the availability of data, the manner in which data could be

[167] HealthMeasures. List of Adult Measures: Available Neuro-QoL™ Measures for Adult Self-Report. *https://www.healthmeasures.net/explore-measurement-systems/neuro-qol/intro-to-neuro-qol/list-of-adult-measures.*

[168] HealthMeasures. List of Adult Measures: Available PROMIS® Measures for Adults. *https://www.healthmeasures.net/explore-measurement-systems/promis/intro-to-promis/list-of-adult-measures.*

[169] Figueroa JF, Phelan J, Orav EJ, Patel V, Jha AK. Association of Mental Health Disorders with Health Care Spending in the Medicare Population. *JAMA* Netw *Open.* 2020;3(3):e201210. doi: 10.1001/jamanetworkopen.2020.1210. PMID: 32191329; PMCID: PMC7082719.

[170] Parish WJ, Mark TL, Weber EM, Steinberg DG. Substance Use Disorders Among Medicare Beneficiaries: Prevalence, Mental and Physical Comorbidities, and Treatment Barriers. *Am J Prev Med.* 2022 Aug;63(2):225–232. doi: 10.1016/j.amepre.2022.01.021. PMID: 35331570.

[171] Centers for Medicare & Medicaid Services. 2021 National Impact Assessment of the Centers for Medicare & Medicaid Services (CMS) Quality Measures Report. June 2021. *https://www.cms.gov/files/document/2021-national-impact-assessment-report.pdf.*

[172] Depression Screening Conducted and Follow-Up Plan Documented. *https://cmit.cms.gov/cmit/#/MeasureView?variantId=3102&sectionNumber=1.*

[173] Agency for Healthcare Research and Quality. CAHPS Mental Health Care Surveys. May 2022. *https://www.ahrq.gov/cahps/surveys-guidance/echo/index.html.*

[174] HealthMeasures. Intro to PROMIS®. January 10, 2023. *https://www.healthmeasures.net/explore-measurement-systems/promis/intro-to-promis.*

[175] HealthMeasures. NIH Toolbox. February 9, 2023. *https://www.healthmeasures.net/explore-measurement-systems/nih-toolbox.*

[176] Desai A, Grossberg G. Substance Use Disorders in Postacute and Long-Term Care Settings. Psychiatr Clin North Am. 2022 Sep;45(3):467–482. doi: 10.1016/j.psc.2022.05.005. PMID: 36055733.

[177] Sorrell JM. Substance Use Disorders in Long-Term Care Settings: A Crisis of Care for Older Adults. J Psychosoc Nurs Ment Health Serv. 2017 Jan 1;55(1):24–27. doi: 10.3928/02793695–20170119–08. PMID: 28135388.

[178] Substance Abuse and Mental Health Services Administration. Resources for Screening, Brief Intervention, and Referral to Treatment (SBIRT). Available at *https://www.samhsa.gov/sbirt/resources.*

collected and reported to us, and the burden imposed on SNFs.

c. Resident Experience and Resident Satisfaction

Resident experience measures focus on how residents experienced or perceived selected aspects of their care, whereas resident satisfaction measures focus on whether a resident's expectations were met. Information on resident experience of care is typically collected via a number of instruments that rely on resident self-reported data. The most prominent among these is the CAHPS suite of surveys. The Nursing Home Discharged Resident CAHPS,[179] [180] which is intended for use with residents who had a length of stay less than 100 days, measures resident experience in terms of the care environment, communication with staff, respect received, quality of care, autonomy, and activities. The CoreQ questionnaires are another set of resident satisfaction tools. The CoreQ is a suite of five measures used to capture resident and family data for SNFs and assisted living (AL) facilities. The CoreQ: SS DC measure assesses the level of satisfaction among SNF short-stay (less than 100 days) residents, and we are proposing to adopt it for the SNF QRP beginning with the FY 2026 SNF QRP (see section VI.C.2.a. of this proposed rule).

We seek comment on the feasibility and challenges of adapting existing resident experience measures for use in the SNF QRP, as well as on the value of adapting and/or developing other resident experience and satisfaction measures beyond the CoreQ: SS DC measure proposed for the SNF QRP in this proposed rule. We also seek input on the challenges of adapting existing resident experience measures and instruments, the challenges of collecting and reporting resident experience and resident satisfaction data, and the extent to which resident experience measures offer SNFs sufficient information to assist in quality improvement.

d. Chronic Conditions and Pain Management

Despite the availability of measures focused on SNF clinical care services, existing SNF QRP measures do not directly address aspects of care rendered to populations with chronic conditions or SNFs' management of residents' pain. For example, the measures that address respiratory care relate to staff influenza and COVID–19 vaccination status. Although these measures target provider performance in preventing a respiratory illness with a potentially severe impact on morbidity and mortality, current measures fail to capture SNF performance in treatment or management of residents' chronic respiratory conditions, such as chronic obstructive pulmonary disease (COPD) or asthma.

Existing measures also fail to capture SNF actions concisely for pain management even though pain has been demonstrated to contribute to falls with major injury and restrictions in mobility and daily activity. However, a host of other factors also contribute to these measure domains, making it difficult to directly link provider actions to performance. Instead, a measure of SNFs' actions in reducing pain interference in daily activities, including the ability to sleep, would be a more concise measure of pain management. Beginning October 1, 2023, SNFs will begin collecting new standardized resident assessment data elements, including items that assess pain interference with (1) daily activities, (2) sleep, and (3) participation in therapy, providing an opportunity to develop more-concise measures of provider performance (84 FR 38798 through 38801).

Through this RFI, we are seeking input on measures of chronic condition and pain management that may be used to assess SNF performance. Additionally, we seek general comment on the feasibility and challenges of measuring and reporting SNF performance on existing QRP measures, such as the Discharge Self-Care Score for Medical Rehabilitation Patients and Discharge Mobility Score for Medical Rehabilitation Patients measures, for subgroups of residents defined by type of chronic condition. As examples, measures could assess discharge outcomes for SNF residents with a hip fracture diagnosis or for residents admitted with a diagnosis of congestive heart failure.

4. Solicitation of Comments

We invite general comments on the principles for identifying SNF QRP measures, as well as additional thoughts about measurement gaps, and suitable measures for filling these gaps. Specifically, we solicit comment on the following questions:

- Principles for Selecting and Prioritizing QRP Measures.

++ To what extent do you agree with the principles for selecting and prioritizing measures?

++ Are there principles that you believe CMS should eliminate from the measure selection criteria?

++ Are there principles that you believe CMS should add to the measure selection criteria?

- SNF QRP Measurement Gaps.

++ We request input on the identified measurement gaps, including in the areas of cognitive function, behavioral and mental health, resident experience and resident satisfaction, chronic conditions and pain management.

++ Are there gaps in the SNF QRP measures that have not been identified in this RFI?

- Measures and Measure Concepts Recommended for Use in the SNF QRP.

++ Are there measures that you believe are either currently available for use, or that could be adapted or developed for use in the SNF QRP program to assess performance in the areas of (1) cognitive functioning, (2) behavioral and mental health, (3) resident experience and resident satisfaction, (4) chronic conditions, (5) pain management, or (6) other areas not mentioned in this RFI?

We also seek input on data available to develop measures, approaches for data collection, perceived challenges or barriers, and approaches for addressing challenges.

E. Health Equity Update

1. Background

In the FY 2023 SNF PPS proposed rule (87 FR 22754 through 22760), we included an RFI entitled ''Overarching Principles for Measuring Equity and Healthcare Quality Disparities Across CMS Quality Programs.'' We define health equity as ''the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.'' [181] We are working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs and models, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our

[179] Agency for Healthcare Research and Quality. CAHPS Nursing Home Surveys. Content last reviewed April 2020. *https://www.ahrq.gov/cahps/surveys-guidance/nh/index.html.*

[180] In addition to the Discharged Resident Survey, Nursing Home CAHPS includes two other instruments, a Long-Stay Survey for Residents with a length of stay of 100 days or more, and a Family Member survey.

[181] Centers for Medicare & Medicaid Services. Health Equity. *https://www.cms.gov/pillar/health-equity.* Accessed February 1, 2023.

beneficiaries need to thrive. Our goals outlined in the *CMS Framework for Health Equity 2022–2023* [182] are in line with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' [183] The goals included in the CMS Framework for Health Equity serve to further advance health equity, expand coverage, and improve health outcomes for the more than 170 million individuals supported by our programs, and set a foundation and priorities for our work, including: strengthening our infrastructure for assessment; creating synergies across the healthcare system to drive structural change; and identifying and working to eliminate barriers to CMS-supported benefits, services, and coverage.

In addition to the CMS Framework for Health Equity, we seek to advance health equity and whole-person care as one of eight goals comprising the CMS National Quality Strategy (NQS).[184] The NQS identifies a wide range of potential quality levers that can support our advancement of equity, including: (1) establishing a standardized approach for resident-reported data and stratification; (2) employing quality and value-based programs to address closing equity gaps; and (3) developing equity-focused data collections, analysis, regulations, oversight strategies, and quality improvement initiatives.

A goal of this NQS is to address persistent disparities that underlie our healthcare system. Racial disparities in health, in particular, are estimated to cost the U.S. $93 billion in excess medical costs and $42 billion in lost productivity per year, in addition to economic losses due to premature deaths.[185] At the same time, racial and ethnic diversity has increased in recent years with an increase in the percentage of people who identify as two or more races accounting for most of the change, rising from 2.9 percent to 10.2 percent between 2010 and 2020.[186] Therefore, we need to consider ways to reduce disparities, achieve equity, and support our diverse beneficiary population through the way we measure quality and display the data.

We solicited public comments via the aforementioned RFI on changes that we should consider in order to advance health equity. We refer readers to the FY 2023 SNF PPS final rule (87 FR 47553 through 47555) for a summary of the public comments and suggestions we received in response to the health equity RFI. We will take these comments into account as we continue to work to develop policies, quality measures, and measurement strategies on this important topic.

2. Anticipated Future State

We are committed to developing approaches to meaningfully incorporate the advancement of health equity into the SNF QRP. One option we are considering is including social determinants of health (SDOH) as part of new quality measures.

Social determinants of health are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. They may have a stronger influence on the population's health and well-being than services delivered by practitioners and healthcare delivery organizations.[187] Measure stratification is important for understanding differences in outcomes across different groups. For example, when ''pediatric measures over the past two decades are stratified by race, ethnicity, and income, they show that outcomes for children in the lowest income households and for Black and Hispanic children have improved faster than outcomes for children in the highest income households or for White children, thus narrowing an important health disparity.[188] This analysis and comparison of the SDOH items in the assessment instruments support our desire to understand the benefits of measure stratification. Hospital providers receive such information in their confidential feedback reports and we think this learning opportunity would benefit post-acute care providers. The goals of the confidential reporting are to provide SNFs with their results; educate SNFs and offer the opportunity to ask questions; and solicit feedback from SNFs for future enhancements to the methods.

We are considering whether health equity measures we have adopted for other settings, such as hospitals, could be adopted in post-acute care settings. We are exploring ways to incorporate SDOH elements into the measure specifications. For example, we could consider a future health equity measure like screening for social needs and interventions. With 30 percent to 55 percent of health outcomes attributed to SDOH,[189] a measure capturing and addressing SDOH could encourage SNFs to identify residents' specific needs and connect them with the community resources necessary to overcome social barriers to their wellness. We could specify a health equity measure using the same SDOH data items that we currently collect as standardized patient assessment data elements under the SNF. These SDOH data items assess health literacy, social isolation, transportation problems, and preferred language (including need or want of an interpreter). We also see value in aligning SDOH data items across all care settings as we develop future health equity quality measures under our SNF QRP statutory authority. This would further the NQS to align quality measures across our programs as part of the Universal Foundation.[190]

As we move this important work forward, we will continue to take input from interested parties.

F. Form, Manner, and Timing of Data Submission Under the SNF QRP

1. Background

We refer readers to the current regulatory text at § 413.360(b) for information regarding the policies for reporting SNF QRP data.

[182] Centers for Medicare & Medicaid Services. CMS Framework for Health Equity 2022–2032. *https://www.cms.gov/files/document/cms-framework-health-equity-2022.pdf.*

[183] Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' can be found at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

[184] Centers for Medicare & Medicaid Services. What Is the CMS Quality Strategy? *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/CMS-Quality-Strategy.*

[185] Turner A. The Business Case for Racial Equity: A Strategy for Growth. April 24, 2018. W.K. Kellogg Foundation and Altarum. *https://altarum.org/RacialEquity2018.*

[186] Agency for Healthcare Research and Quality. 2022 National Healthcare Quality and Disparities Report. Content last reviewed November 2022. *https://www.ahrq.gov/research/findings/nhqrdr/nhqdr22/index.html.*

[187] Agency for Healthcare Research and Quality. 2022 National Healthcare Quality and Disparities Report. November 2022. *https://www.ahrq.gov/research/findings/nhqrdr/nhqdr22/index.html.*

[188] Agency for Healthcare Research and Quality. 2022 National Healthcare Quality and Disparities Report. Content last reviewed November 2022. *https://www.ahrq.gov/research/findings/nhqrdr/nhqdr22/index.html.*

[189] World Health Organization. Social Determinants of Health. *https://www.who.int/westernpacific/healthtopics/social-determinants-of-health.*

[190] Jacobs DB, Schreiber M, Seshamani M, Tsai D, Fowler E, Fleisher LA. Aligning Quality Measures across CMS—The Universal Foundation. N Engl J Med. 2023 Mar 2;338:776–779. doi: 10.1056/NEJMp2215539. PMID: 36724323.

2. Proposed Reporting Schedule for the Minimum Data Set (MDS) Assessment Data for the Discharge Function Score Measure Beginning With the FY 2025 SNF QRP

As discussed in section VI.C.1.b. of this proposed rule, we are proposing to adopt the DC Function measure beginning with the FY 2025 SNF QRP. We are proposing that SNFs would be required to report these MDS assessment data beginning with residents admitted and discharged on October 1, 2023 for purposes of the FY 2025 SNF QRP. Starting in CY 2024, SNFs would be required to submit data for the entire calendar year beginning with the FY 2026 SNF QRP. Because the DC Function measure is calculated based on data that are currently submitted to the Medicare program, there would be no new burden associated with data collection for this measure.

We invite public comment on this proposal.

3. Proposed Method of Data Submission and Reporting Schedule for the CoreQ: Short Stay Discharge Measure Beginning With the FY 2026 SNF QRP

a. Proposed Method of Data Submission To Meet SNF QRP Requirements Beginning With the FY 2026 Program Year

As discussed in section VI.C.2.a. of this proposed rule, we are proposing to adopt the CoreQ: SS DC measure beginning with the FY 2026 SNF QRP. We propose that Medicare-certified SNFs and all non-CAH swing bed rural hospitals would be required to contract with a third-party vendor that is CMS-trained and approved to administer the CoreQ: SS DC survey on their behalf (referred to as a ''CMS-approved CoreQ survey vendor''). SNFs would be required to contract with a CMS-approved CoreQ survey vendor to ensure that the data are collected by an independent organization that is trained to collect this type of data, and given the independence of the CMS-approved CoreQ survey vendor from the SNF, ensure that the data collected are unbiased. The CMS-approved CoreQ survey vendor would be the business associate of the SNF and follow the minimum business requirements described in the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual.[191] It is important that respondents to the CoreQ: SS DC measure questionnaire are comfortable sharing their experiences with persons not directly involved in providing the care. This method of data collection has been used successfully in other settings, including for Medicare-certified home health agencies and hospices. The goal is to ensure that we have comparable data across all SNFs.

CMS-approved CoreQ survey vendors administering the CoreQ: SS DC survey would be required to offer a toll-free assistance line and an electronic mail address which respondents could use to seek help. The toll-free telephone line must have staff that can respond to questions in any language in which the CMS-approved CoreQ survey vendor is offering the CoreQ: SS DC survey. CMS-approved CoreQ survey vendors must accommodate alternate telephone communications, including a teletypewriter (TTY). Interested vendors may apply to become a CMS-approved CoreQ survey vendor beginning in Fall 2023. There will be a web page devoted specifically to the SNF CoreQ: SS DC survey and it will include information including the application process. SNFs interested in viewing similar model web pages are encouraged to visit the Hospital CAHPS website at *https://hcahpsonline.org* or the Home Health CAHPS website at *https://homehealthcahps.org*.

We propose to require SNFs to use the protocols and guidelines for the proposed CoreQ: SS DC measure as defined by the Draft CoreQ: SS Survey Protocols and Guidelines Manual in effect at the time the questionnaires are sent to eligible residents. The Draft CoreQ: SS DC Survey Protocols and Guidelines Manual is available on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information*. We propose that CMS-approved CoreQ survey vendors and SNFs be required to participate in CoreQ: SS DC measure oversight activities to ensure compliance with the protocols, guidelines, and questionnaire requirements. The purpose of the oversight activities is to ensure that SNFs and CMS-approved CoreQ survey vendors follow the procedures in the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual.

We also propose that all CMS-approved CoreQ survey vendors develop a Quality Assurance Plan (QAP) for CoreQ: SS DC survey administration in accordance with the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual.

A list of CMS-approved CoreQ survey vendors would be provided on the website devoted specifically to the SNF CoreQ: SS DC Survey as soon as technically feasible.

At § 413.360, we also propose to redesignate paragraph (b)(2) as paragraph (b)(3) and add new paragraph (b)(2) for the CoreQ: SS DC measure's data submission requirements. Finally, we propose to codify the requirements for being a CMS-approved CoreQ: SS DC survey vendor at paragraphs (b)(2)(ii) through (b)(2)(iii) in regulation. The proposed revisions are outlined in paragraph (b)(2) in the regulation text of this proposed rule.

We invite public comment on this proposal to require Medicare-certified SNFs to contract with a third-party vendor to administer the CoreQ: SS DC measure questionnaire on their behalf beginning with the FY 2026 SNF QRP.

b. Proposed Exemptions for the CoreQ: SS DC Measure Reporting Requirements Beginning With the FY 2026 Program Year

(1) Low Volume Exemptions

We are aware that there is a wide variation in the size of Medicare-certified SNFs. Therefore, we propose that SNFs with less than 60 residents, regardless of payer, discharged within 100 days of SNF admission in the prior calendar year would be exempt from the CoreQ: SS DC measure data collection and reporting requirements. A SNF's total number of short-stay discharged residents for the period of January 1 through December 31 for a given year would be used to determine if the SNF would have to participate in the CoreQ: SS DC measure in the next calendar year. To qualify for the exemptions, SNFs would be required to submit their request using the Participation Exemption Request form no later than December 31 of the CY prior to the reporting CY. These forms would be made available on a web page devoted to the SNF CoreQ: SS DC Survey.

(2) New Provider Exemptions

We also propose that newly Medicare-certified SNFs (that is, those certified on or after January 1, 2024) be excluded from the CoreQ: SS DC measure reporting requirement for CY 2024, because there would be no information from the previous CY to determine

[191] Draft CoreQ: SS DC Survey Protocols and Guidelines Manual. Chapter III. CoreQ Survey Participation Requirements. Available on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

whether the SNF would be required to report or exempt from reporting the CoreQ: SS DC measure.

In future years, we are proposing that SNFs certified for Medicare participation on or after January 1 of the reporting year would be excluded from reporting on the CoreQ: SS DC measure for the applicable SNF QRP program year. For example, if a SNF is certified for Medicare participation on November 1, 2024, it would be excluded from the CY 2024 CoreQ: SS DC measure reporting requirement, and therefore, would not be subject to any payment penalty related to the SNF not reporting on the CoreQ: SS DC measure in CY 2024 for the FY 2026 SNF QRP. However, if a SNF is certified for Medicare participation on November 1, 2024, it would be required to meet the CoreQ: SS DC measure reporting requirements in CY 2025 for the FY 2027 SNF QRP unless it expects to meet the low volume exemption as described in section VI.F.3.b.(2) of this proposed rule.

We invite public comment on this proposal to exempt SNFs with less than 60 residents, regardless of payer, discharged within 100 days of SNF admission in the prior calendar year, and to exempt newly Medicare-certified SNFs in their first-year certification, from the CoreQ SS DC measure reporting requirements for the applicable SNF QRP program year.

c. Proposed Reporting Schedule for the Data Submission of the CoreQ: Short Stay Discharge Measure Beginning With the FY 2026 SNF QRP

We propose that the CoreQ: SS DC measure questionnaire be a component of the SNF QRP for the FY 2026 SNF QRP and subsequent years. To comply with the SNF QRP reporting requirements for the FY 2026 SNF QRP, we propose that SNFs would be required to collect data for the CoreQ: SS DC measure by utilizing CMS-approved CoreQ survey vendors in compliance with the proposed provisions at § 413.360(b)(2)(i) through (b)(2)(iii).

For the CoreQ: SS DC measure, we propose that SNFs would send a resident information file to the CMS-approved CoreQ survey vendor on a weekly basis so the CMS-approved CoreQ survey vendor can start administering the CoreQ: SS DC questionnaire within seven days after the reporting week closes. The resident information file, whose data is listed in Table 14, represents the minimum required information the CMS-approved CoreQ survey vendor would need to determine the residents' eligibility for the CoreQ: SS DC measure's questionnaire to administer the survey to eligible residents.

TABLE 14—DATA ELEMENTS IN THE COREQ: SS DC MEASURE RESIDENT INFORMATION FILE

SNF name
SNF CMS Certification Number (CCN)
National Provider Identifier (NPI)
Reporting week
Reporting year
Number of eligible residents
Resident First Name
Resident Middle Initial
Resident Last Name
Resident Date of Birth
Resident Mailing Address 1
Resident Mailing Address 2
Resident address, City
Resident address, State
Resident address, Zip Code
Telephone number, including area code
Resident email address
Gender
Payer
HMO indicator
Dual eligibility indicator
End stage renal disease
Resident date of admission
Resident date of discharge
Brief Interview of Mental Status (BIMS) score
Discharge status
Left against medical advice
Court appointed guardian
Are you of Hispanic, Latino/a, or Spanish origin?
What is your race?
What is your preferred language?

For additional information about the data elements that would be included in the resident information file, see the Draft CoreQ Protocols and Guidelines Manual located at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

For the CoreQ: SS DC measure, we propose that SNFs would be required to meet or exceed two separate data completeness thresholds: (1) one threshold, set at 75 percent, for submission of weekly resident information files to the CMS-approved CoreQ survey vendor for the full reporting year; and (2) a second threshold, set at 90 percent, for completeness of the resident information files. In other words, SNFs would need to submit resident information files on a weekly basis that include at least 90 percent of the required data fields to their CMS-approved CoreQ survey vendors for at least 75 percent of the weeks in a reporting year. SNFs may choose to submit resident information files more frequently, but must meet the minimum threshold to avoid receiving a 2-percentage-point reduction to their Annual Payment Update (APU). Although we are proposing to adopt a 75 percent data submission and 90 percent data completeness threshold for the resident information files initially, we intend to propose to raise the threshold levels for subsequent program years through future rulemaking. We are proposing to codify this data completeness threshold requirement at our regulation at § 413.360(f)(1)(iv).

We propose an initial data submission period from January 1, 2024, through June 30, 2024. As described in Table 15 in this section of this proposed rule, in order to meet the pay-for-reporting requirement of the SNF QRP for the first half of the FY 2026 program year, SNFs would only be required to contract with a CMS-approved CoreQ survey vendor and submit one resident information file to their CMS-approved CoreQ survey vendor for at least one week during January 1, 2024 through June 30, 2024. During this period, the CMS-approved CoreQ survey vendor would follow the procedures as described in the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual.[192] Beginning July 1, 2024, SNFs would be required to submit weekly resident information files for at least 75 percent of the weeks remaining in CY 2024.

[192] Draft CoreQ: SS DC Survey Protocols and Guidelines Manual. Available on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

TABLE 15—PROPOSED PARTICIPATION REQUIREMENTS FOR THE COREQ: SHORT STAY DISCHARGE MEASURE BEGINNING WITH THE FY 2026 SNF QRP

Data submission quarters	Proposed data submission frequency	Quarterly data submission deadlines	FY 2026 SNF APU compliance thresholds
Q1 2024: January 1, 2024 through March 31, 2024.	At least one week during either data submission quarter.	August 15, 2024	At least one weekly resident information file containing at least 90% of the required resident information for one resident discharged within 100 days of admission.
Q2 2024: April 1, 2024 through June 30, 2024.		November 15, 2024.	
Q3 2024: July 1, 2024 through September 30, 2024.	No less than weekly	February 18, 2025	A minimum of 18 weekly resident information files that contain at least 90% of required resident information.[193]
Q4 2024: October 1, 2024 through December 31, 2024.	No less than weekly	May 15, 2025.	

Starting in CY 2025, SNFs would be required to submit resident information files no less than weekly for the entire calendar year beginning with the FY 2027 SNF QRP, as described in Table 16 in this section of this proposed rule.

TABLE 16—PROPOSED PARTICIPATION REQUIREMENTS FOR THE COREQ: SHORT STAY DISCHARGE MEASURE BEGINNING WITH THE FY 2027 SNF QRP

Data submission quarters	Proposed data submission frequency	Quarterly data submission deadlines	FY 2027 SNF APU compliance thresholds
Q1 2025: January 1, 2025 through March 31, 2025.	No less than weekly	August 15, 2025	A minimum of 35 weekly resident information files that contain at least 90% of required resident information.[194]
Q2 2025: April 1, 2025 through June 30, 2025.	No less than weekly	November 17, 2025..	
Q3 2025: July 1, 2025 through September 30, 2025.	No less than weekly	February 16, 2026..	
Q4 2025: October 1, 2025 through December 31, 2025.	No less than weekly	May 15, 2026..	

We are proposing that the CMS-approved CoreQ survey vendor administer the CoreQ: SS DC measure's questionnaire to discharged residents within 2 weeks of their discharge date through the U.S. Postal Service or by telephone. If administered by mail, the questionnaires must be returned to the CMS-approved CoreQ survey vendor within 2 months of the resident's discharge date from the SNF.

Although the CMS-approved CoreQ survey vendor would administer the CoreQ: SS DC measure's survey on a SNF's behalf, each SNF would be responsible for ensuring required data is collected and submitted to CMS in accordance with the SNF QRP's requirements. We strongly suggest that SNFs that submit their CoreQ: SS DC measure resident information files to their CMS-approved CoreQ survey vendor follow up with their CMS-approved CoreQ survey vendor to make sure the CMS-approved CoreQ survey vendor submits its CoreQ: SS DC survey information files to the CoreQ Survey Data Center well in advance of each quarterly data submission deadline. Each submitted CoreQ: SS DC survey information file would undergo validation checks before it is accepted, and if it does not pass, the CoreQ: SS DC survey information file would be rejected. Submission of CoreQ: SS DC survey information files early in the data submission period would allow the CMS-approved CoreQ survey vendor to correct any problems detected and resubmit the CoreQ: SS DC survey information file(s) to the CoreQ Survey Data Center before the deadline. We would not allow any CoreQ: SS DC survey information files to be submitted to the CoreQ Survey Data Center after the SNF QRP data submission deadline ends. However, in the event of extraordinary circumstances beyond the control of the provider, the SNF would be able to request an exemption set forth in § 413.360(c). More information on how to request an exemption can be found on the SNF QRP Reconsideration and Exception & Extension web page.[195]

We also recommend that SNFs submitting CoreQ: SS DC resident information files to their CMS-approved CoreQ survey vendor promptly review the Data Submission Summary Reports that are described in the Draft CoreQ: SS DC Survey Protocols and Guidelines Manual.[196] These reports will enable the

[193] There are 26 weeks in the period July 1, 2024 and December 31, 2024. The threshold of a minimum of 75 percent of weekly resident information files is applied first, meaning that a SNF must submit a minimum of 20 resident information files ($26 \times 0.75 = 19.5$, rounded up to 20). The threshold of 90 percent for complete and accurate resident information files is applied second, meaning that a minimum of 18 submitted weekly resident information files must be complete and accurate ($20 \times 0.9 = 18$).

[194] There are 52 weeks in the period January 1, 2025 to December 31, 2025. The threshold of a minimum of 75 percent of weekly resident information files is applied first, meaning that a SNF must submit a minimum of 39 resident information files ($52 \times 0.75 = 39$). The threshold of 90 percent for complete and accurate resident information files is applied second, meaning that a minimum of 35 submitted weekly resident information files must be complete and accurate ($39 \times 0.9 = 35.1$, rounded down).

[195] The SNF QRP Reconsideration and Exception & Extension web page is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-QR-Reconsideration-and-Exception-and-Extension.*

[196] Draft CoreQ: SS DC Survey Protocols and Guidelines Manual. Chapter X. SNF CoreQ Survey

Continued

SNF to ensure that its CMS-approved CoreQ survey vendor has submitted its data on time, and that the data have been accepted by the CoreQ Data Center. For more information about the SNF QRP data submission deadlines for each CY quarter, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46427 through 46429).

We invite public comment on the proposed schedule for data submission and the participation requirements for the CoreQ: Short Stay Discharge Measure beginning with the FY 2026 SNF QRP.

4. Proposed Reporting Schedule for the Data Submission of Minimum Data Set (MDS) Assessment Data for the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date Measure Beginning With the FY 2026 SNF QRP

As discussed in section VI.C.2.b. of this proposed rule, we are proposing to adopt the Patient/Resident COVID–19 Vaccine measure beginning with the FY 2026 SNF QRP. We are proposing that SNFs would be required to report this new MDS assessment data item beginning with Medicare Part A residents discharged on October 1, 2024 for purposes of the FY 2026 SNF QRP. Starting in CY 2025, SNFs would be required to submit data for the entire calendar year beginning with the FY 2027 SNF QRP.

We are also proposing to add a new item to the MDS in order for SNFs to report the proposed Patient/Resident COVID–19 Vaccine measure. Specifically, a new item would be added to the MDS discharge item sets to collect information on whether a resident is up to date with their COVID–19 vaccine at the time of discharge from the SNF. A draft of the new item is available in the *COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date* Draft Measure Specifications.[197]

We invite public comment on this proposal.

5. Proposal To Increase the SNF QRP Data Completion Thresholds for MDS Data Items Beginning With the FY 2026 SNF QRP

In the FY 2016 SNF PPS final rule (80 FR 46458), we finalized that SNFs would need to complete 100 percent of the data on 80 percent of MDSs submitted in order to be in compliance with the SNF QRP reporting requirements for the applicable program year, as codified in regulation at § 413.360(f). We established this data completion threshold because SNFs were accustomed to submitting MDS assessments for other purposes and they should easily be able to meet this requirement for the SNF QRP. We also noted at that time our intent to raise the proposed 80 percent threshold in subsequent program years.[198]

We are now proposing that, beginning with the FY 2026 SNF QRP, SNFs would be required to report 100 percent of the required quality measure data and standardized patient assessment data collected using the MDS on at least 90 percent of the assessments they submit through the CMS-designated submission system.

Complete data are needed to help ensure the validity and reliability of SNF QRP data items, including risk-adjustment models. The proposed threshold of 90 percent is based on the need for substantially complete records, which allows appropriate analysis of SNF QRP measure data for the purposes of updating quality measure specifications as they undergo yearly and triennial measure maintenance reviews with the CBE. Additionally, we want to ensure complete SNF QRP measure data from SNFs, which will ultimately be reported to the public, allowing our beneficiaries to gain a more complete understanding of SNF performance related to these metrics, helping them to make informed healthcare choices. Finally, this proposal would contribute to further alignment of data completion thresholds across the PAC settings.

We believe SNFs should be able to meet this proposed requirement for the SNF QRP. Our data suggest that the majority of SNFs are already in compliance with, or exceeding, this proposed threshold. The complete list of items required under the SNF QRP is updated annually and posted on the SNF QRP Measures and Technical Information page.[199]

We are proposing that SNFs would be required to comply with the proposed new data completion threshold beginning with the FY 2026 SNF QRP. Starting in CY 2024, SNFs would be required to report 100 percent of the required quality measures data and standardized patient assessment data collected using the MDS on at least 90 percent of all assessments submitted January 1 through December 31 for that calendar year's payment determination. Any SNF that does not meet the proposed requirement will be subject to a reduction of 2 percentage points to the applicable FY APU beginning with the FY 2026 SNF QRP. We are proposing to update § 413.360(f) of our regulations to reflect this new policy, as well as to clarify and make non-substantive edits to improve clarity of the regulation.

We invite public comment on the proposed schedule for the increase of SNF QRP data completion thresholds for the MDS data items beginning with the FY 2026 program year.

G. Proposed Policies Regarding Public Display of Measure Data for the SNF QRP

1. Background

Section 1899B(g) of the Act requires the Secretary to establish procedures for making the SNF QRP data available to the public, including the performance of individual SNFs, after ensuring that SNFs have the opportunity to review their data prior to public display. For a more detailed discussion about our policies regarding public display of SNF QRP measure data and procedures for the SNF's opportunity to review and correct data and information, we refer readers to the FY 2017 SNF PPS final rule (81 FR 52045 through 52048).

2. Proposed Public Reporting of the Transfer of Health Information to the Provider—Post-Acute Care Measure and Transfer of Health Information to the Patient—Post-Acute Care Measure Beginning With the FY 2025 SNF QRP

We are proposing to begin publicly displaying data for the measures: (1) Transfer of Health (TOH) Information to the Provider—Post-Acute Care (PAC) Measure (TOH-Provider); and (2) TOH Information to the Patient—PAC Measure (TOH-Patient) beginning with the October 2025 Care Compare refresh or as soon as technically feasible.

We adopted these measures in the FY 2020 SNF PPS final rule (84 FR 38761 through 38764). In response to the COVID–19 PHE, we released an Interim

Website Reports. Available on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/skilled-nursing-facility-quality-reporting-program/snf-quality-reporting-program-measures-and-technical-information.*

[197] *COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date* Draft Measure Specifications is available at *https://www.cms.gov/files/document/patient-resident-covid-vaccine-draft-specs.pdf.*

[198] 80 FR 22077; 80 FR 46458.

[199] The SNF QRP Measures and Technical Information page is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.*

Final Rule (85 FR 27595 through 27597) which delayed the compliance date for collection and reporting of the TOH-Provider and TOH-Patient measures to October 1 of the year that is at least two full fiscal years after the end of the COVID–19 PHE. Subsequently, in the FY 2023 SNF PPS final rule (87 FR 47502), the compliance date for the collection and reporting of the TOH-Provider and TOH-Patient measures was revised to October 1, 2023. Data collection for these two assessment-based measures will begin with residents discharged on or after October 1, 2023.

We are proposing to publicly display data for these two assessment-based measures based on four rolling quarters of data, initially using discharges from January 1, 2024, through December 31, 2024 (Quarter 1 2024 through Quarter 4 2024), and to begin publicly reporting these measures with the October 2025 refresh of Care Compare, or as soon as technically feasible. To ensure the statistical reliability of the data, we are proposing that we would not publicly report a SNF's performance on a measure if the SNF had fewer than 20 eligible cases in any four consecutive rolling quarters for that measure. SNFs that have fewer than 20 eligible cases would be distinguished with a footnote that states: ''The number of cases/resident stays is too small to report.''

We invite public comment on our proposal for the public display of the (1) Transfer of Health (TOH) Information to the Provider—Post-Acute Care (PAC) Measure (TOH-Provider), and (2) Transfer of Health (TOH) Information to the Patient—Post-Acute Care (PAC) Measure (TOH-Patient) assessment-based measures.

3. Proposed Public Reporting of the Discharge Function Score Measure Beginning With the FY 2025 SNF QRP

We are proposing to begin publicly displaying data for the DC Function measure beginning with the October 2024 refresh of Care Compare, or as soon as technically feasible, using data collected from January 1, 2023 through December 31, 2023 (Quarter 1 2023 through Quarter 4 2023). If finalized as proposed, a SNF's DC Function score would be displayed based on four quarters of data. Provider preview reports would be distributed in July 2024, or as soon as technically feasible. Thereafter, a SNF's DC Function score would be publicly displayed based on four quarters of data and updated quarterly. To ensure the statistical reliability of the data, we are proposing that we would not publicly report a SNF's performance on the measure if the SNF had fewer than 20 eligible cases in any quarter. SNFs that have fewer than 20 eligible cases would be distinguished with a footnote that states: ''The number of cases/resident stays is too small to report.''

We invite public comment on the proposal for the public display of the Discharge Function Score assessment-based measure beginning with the October 2024 refresh of Care Compare, or as soon as technically feasible.

4. Proposed Public Reporting of the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date Measure Beginning With the FY 2026 SNF QRP

We are proposing to begin publicly displaying data for the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure beginning with the October 2025 refresh of Care Compare or as soon as technically feasible using data collected for Q4 2024 (October 1, 2024 through December 31, 2024). A SNF's Patient/Resident COVID–19 Vaccine percent of residents who are up to date would be displayed based on one quarter of data. Provider preview reports would be distributed in July 2025 for data collected in Q4 2024, or as soon as technically feasible. Thereafter, the percent of SNF residents who are up to date with their COVID–19 vaccinations would be publicly displayed based on one quarter of data updated quarterly. To ensure the statistical reliability of the data, we are proposing that we would not publicly report a SNF's performance on the measure if the SNF had fewer than 20 eligible cases in any quarter. SNFs that have fewer than 20 eligible cases would be distinguished with a footnote that states: ''The number of cases/resident stays is too small to report.''

We invite public comment on the proposal for the public display of the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure beginning with the October 2025 refresh of Care Compare, or as soon as technically feasible.

VII. Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program: Proposed Policy Changes

A. Statutory Background

Through the Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program, we award incentive payments to SNFs to encourage improvements in the quality of care provided to Medicare beneficiaries. The SNF VBP Program is authorized by section 1888(h) to the Act, and it applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing bed rural hospitals. We believe the SNF VBP Program has helped to transform how Medicare payment is made for SNF care, moving increasingly towards rewarding better value and outcomes instead of merely rewarding volume. Our codified policies for the SNF VBP Program can be found in our regulations at 42 CFR 413.337(f) and 413.338.

B. SNF VBP Program Measures

1. Background

For background on the measures we have adopted for the SNF VBP Program, we refer readers to the following prior final rules:

- In the FY 2016 SNF PPS final rule (80 FR 46411 through 46419), we finalized the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) as required under section 1888(g)(1) of the Act.
- In the FY 2017 SNF PPS final rule (81 FR 51987 through 51995), we finalized the Skilled Nursing Facility 30-Day Potentially Preventable Readmission (SNFPPR) Measure as required under section 1888(g)(2) of the Act.
- In the FY 2020 SNF PPS final rule (84 FR 38821 through 38822), we updated the name of the SNFPPR measure to the ''Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure'' (§ 413.338(a)(14)).
- In the FY 2021 SNF PPS final rule (85 FR 47624), we amended the definition of ''SNF Readmission Measure'' in our regulations to reflect the updated name for the SNFPPR measure.
- In the FY 2022 SNF PPS final rule (86 FR 42503 through 42507), we finalized a measure suppression policy for the duration of the PHE for COVID–19, and finalized suppression of the SNFRM for scoring and payment purposes for the FY 2022 SNF VBP Program. We also updated the lookback period for risk-adjustment in the FY 2023 performance period (FY 2021).
- In the FY 2023 SNF PPS final rule (87 FR 47559 through 47580), we finalized suppression of the SNFRM for scoring and payment purposes for the FY 2023 SNF VBP Program. We also modified the SNFRM beginning with the FY 2023 program year by adding a risk-adjustment variable for both patients with COVID–19 during the prior proximal hospitalization (PPH) and patients with a history of COVID–19. We also finalized three new quality measures for the SNF VBP Program as permitted under section 1888(h)(2)(A)(ii) of the Act. We finalized two new measures beginning with the

FY 2026 program year: (1) Skilled Nursing Facility Healthcare Associated Infections Requiring Hospitalization (SNF HAI) measure; and (2) Total Nursing Hours per Resident Day Staffing (Total Nurse Staffing) measure. We finalized an additional measure beginning with the FY 2027 program year: Discharge to Community—Post-Acute Care Measure for Skilled Nursing Facilities (DTC PAC SNF) measure.

2. Proposal To Refine the SNFPPR Measure Specifications and Update the Measure Name

a. Background

Section 1888(g)(2) of the Act requires the Secretary to specify a resource use measure that reflects an all-condition, risk-adjusted potentially preventable hospital readmission rate for skilled nursing facilities. To meet this statutory requirement, we finalized the Skilled Nursing Facility Potentially Preventable Readmission (SNFPPR) measure in the FY 2017 SNF PPS final rule (81 FR 51987 through 51995). In the FY 2020 SNF PPS final rule (84 FR 38821 through 38822), we updated the SNFPPR measure name to the Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure, while maintaining SNFPPR as the measure short name.

Although our testing results indicated that the SNFPPR measure was sufficiently developed, valid, and reliable for use in the SNF VBP at the time we adopted it, we have since engaged in additional measure development work to further align the measure's specifications with the specifications of other potentially preventable readmission (PPR) measures, including the SNF PPR post-discharge (PD) measure specified for the SNF QRP, and the within-stay PPR measure used in the IRF QRP. Based on those efforts, we are now proposing to refine the SNFPPR measure specifications as follows: (1) we are proposing to change the outcome observation window from a fixed 30-day window following acute care hospital discharge to within the SNF stay; and (2) we are proposing to change the length of time allowed between a qualifying prior proximal inpatient discharge (that is, the inpatient discharge that occurs prior to admission to the index SNF stay) and SNF admission from one day to 30 days. To align with those measure refinements, we are also proposing to update the measure name to the ''Skilled Nursing Facility Within-Stay Potentially Preventable Readmission (SNF WS PPR) Measure.''

b. Overview of the Proposed Updated Measure

The SNF WS PPR measure estimates the risk-standardized rate of unplanned, potentially preventable readmissions (PPR) that occur during SNF stays among Medicare FFS beneficiaries. Specifically, this outcome measure reflects readmission rates for residents who are readmitted to a short-stay acute-care hospital or long-term care hospital (LTCH) with a principal diagnosis considered to be unplanned and potentially preventable while within SNF care. The measure is risk-adjusted and calculated using 2 consecutive years of Medicare FFS claims data.

We have tested the proposed updated SNF WS PPR measure for reliability and validity. The random split-half correlation tests indicated good reliability with the intraclass correlation coefficient being notably better than that of the SNFRM. In addition, we tested the validity of the SNF WS PPR measure by comparing SNF WS PPR measure scores with those of nine other measures. The testing results indicated that the SNF WS PPR measure is not duplicative of those nine measures and provides unique information about quality of care not captured by the other nine measures. Validity tests also showed that the measure can accurately predict PPRs while controlling for differences in resident case-mix. We refer readers to the SNF WS PPR measure technical specifications available at *https://www.cms.gov/files/document/snfvbp-snfwsppr-draft-technical-measure-specification.pdf.*

(1) Measure Applications Partnership (MAP) Review

We included the SNF WS PPR measure as a SNF VBP measure under consideration in the publicly available ''2022 Measures Under Consideration List.'' [200] The MAP offered conditional support of the SNF WS PPR measure for rulemaking, contingent upon endorsement by the consensus-based entity, noting that the measure would add value to the Program because PPRs are disruptive and burdensome to patients. We refer readers to the final 2022–2023 MAP recommendations for further details available at *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[200] 2022 Measures Under Consideration Spreadsheet available at *https://mmshub.cms.gov/sites/default/files/2022-MUC-List.xlsx.*

c. Data Sources

The SNF WS PPR measure is calculated using 2 consecutive years of Medicare FFS claims data to estimate the risk-standardized rate of unplanned PPRs that occur during SNF stays. Specifically, the stay construction, exclusions, and risk-adjustment model utilize data from the Medicare eligibility files and inpatient hospital claims. Calculating the SNF WS PPR measure using 2 years of data improved the measure's statistical reliability relative to 1 year of data, which is used in the current version of the SNFPPR measure. Because the SNF WS PPR measure is calculated entirely using administrative data, our proposed adoption of the measure would not impose any additional data collection or submission burden for SNFs.

d. Measure Specifications

(1) Denominator

The population included in the measure denominator is Medicare FFS beneficiaries who are admitted to a SNF during a 2-year measurement period who are not then excluded based on the measure exclusion criteria, which we describe in the next section. For SNF residents with multiple SNF stays during the 2-year readmission window, each of those SNF stays is eligible for inclusion in the measure. In addition, the index SNF admission must have occurred within 30 days of discharge from a prior proximal hospital (PPH) stay, which is defined in the measure specifications as an inpatient stay in an IPPS hospital, a CAH, or an inpatient psychiatric facility. Residents who expire during the readmission window are included in the measure.

The measure denominator is the risk-adjusted ''expected'' number of residents with a PPR that occurred during the SNF stay. This estimate includes risk adjustment for certain resident characteristics without the facility effect, which we further discuss in section VII.B.2.e. of this proposed rule. The ''expected'' number of residents with a PPR is derived from the predicted number of residents with a PPR if the same residents were treated at the average SNF, which is defined for purposes of this measure as a SNF whose facility effect is zero.

(2) Denominator Exclusions

A SNF stay is excluded from the measure denominator if it meets at least one of the following conditions:

- The SNF resident is less than 18 years old.
- The SNF resident did not have at least 12 months of continuous FFS

Medicare enrollment prior to SNF admission, which is defined as the month of SNF admission and the 11 months prior to that admission.

- The SNF resident did not have continuous FFS Medicare enrollment for the entire risk period (defined as enrollment during the month of SNF admission through the month of SNF discharge).
- SNF stays where there was a gap of greater than 30 days between discharge from the PPH and the SNF admission.
- The SNF resident was discharged from the SNF against medical advice.
- SNF stays in which the principal diagnosis for the PPH was for the medical treatment of cancer. Residents with cancer whose principal diagnosis from the PPH was for other medical diagnoses or for surgical treatment of their cancer remain included in the measure).
- SNF stays in which the principle diagnosis for the PPH was for pregnancy (this is an atypical reason for resident to be admitted to SNFs).
- The SNF resident who the SNF subsequently transfers to a Federal hospital. A transfer to a Federal hospital is identified when discharge code 43 is entered for the patient discharge status field on the Medicare claim.
- The SNF resident received care from a provider outside of the United States, Puerto Rico, or a U.S. territory, as identified by the provider's CCN on the Medicare claim.
- SNF stays with data that are problematic (for example, anomalous records for hospital stays that overlap wholly or in part or are otherwise erroneous or contradictory).
- SNF stays that occurred in a CAH swing bed.

For additional details on the denominator exclusions, we refer readers to the SNF WS PPR measure technical specifications available at *https://www.cms.gov/files/document/snfvbp-snfwsppr-draft-techical-specification.pdf.*

(3) Numerator

The numerator is defined as the number of SNF residents included in the measure denominator who also have an unplanned PPR during an index SNF stay. For the purposes of this measure, an unplanned PPR is defined as a readmission from a SNF to an acute care hospital or a long-term care hospital, with a diagnosis considered to be unplanned and potentially preventable. The numerator only includes unplanned PPRs that occur during the within-SNF stay period (that is, from the date of the SNF admission through and including the date of discharge), which can be a hospital readmission that occurs within the SNF stay or a direct transfer to a hospital on the date of the SNF discharge. Because this measure focuses on potentially preventable and *unplanned* readmissions, we do not count planned readmissions in the numerator. Further, because we consider readmissions to inpatient psychiatric facilities to be planned, they are also not counted in the numerator.

The measure numerator is the risk-adjusted ''predicted'' estimate of the number of residents with an unplanned PPR that occurred during a SNF stay. This estimate starts with the unadjusted, observed count of the measure outcome (the number of residents with an unplanned PPR during a SNF stay), which is then risk-adjusted for resident characteristics and a statistical estimate of the SNF's facility effect, to become the risk-adjusted numerator.

e. Risk Adjustment

The SNF WS PPR measure is risk-adjusted to control for risk factor differences across SNF residents and SNF facilities. Specifically, the statistical model utilizes a hierarchical logistic regression to estimate the effect of resident characteristics on the probability of readmission across all SNFs and the effect of each SNF on readmissions that differs from that of the average SNF (''facility effect''). The denominator is risk-adjusted for resident characteristics only, while the numerator is risk-adjusted for both resident characteristics and the facility effect. The specific risk adjustment variables included in the statistical model for this measure are the following:

- Age and sex category.
- Original reason for Medicare entitlement (disability or other).
- Indicator of End-Stage Renal Disease (ESRD).
- Surgery category if present (for example, cardiothoracic, orthopedic), as defined in the Hospital Wide Readmission (HWR) measure model software. The surgical procedures are grouped using the Clinical Classification Software (CCS) classes for ICD–10 procedures developed by the Agency for Healthcare Research and Quality (AHRQ).
- Principal diagnosis on PPH inpatient claim. The ICD–10 codes are grouped clinically using the CCS mappings developed by AHRQ.
- Comorbidities from secondary diagnoses on the PPH inpatient claim and diagnoses from earlier hospital inpatient claims up to 1 year before the date of the index SNF admission (these are clustered using the Hierarchical Condition Categories (HCC) groups used by CMS).
- Length of stay in the PPH stay (categorical to account for nonlinearity).
- Prior acute intensive care unit (ICU) or critical care unit (CCU) utilization.
- Number of prior acute care hospital discharges in the prior year.

For additional details on the risk adjustment model, we refer readers to the SNF WS PPR measure technical specifications available at *https://www.cms.gov/files/document/snfvbp-snfwsppr-draft-techical-specification.pdf.*

f. Measure Calculation

The SNF WS PPR measure estimates the risk-standardized rate of unplanned PPRs that occur during SNF stays among Medicare FFS beneficiaries. A lower score on this measure indicates better performance. The provider-level risk-standardized readmission rate (RSRR) of unplanned PPRs is calculated by multiplying the standardized risk ratio (SRR) by the mean readmission rate in the population (that is, all Medicare FFS residents included in the measure). The SRR is calculated as the predicted number of readmissions at the SNF divided by the expected number of readmissions for the same residents if treated at the average SNF. For additional details on the calculation method, we refer readers to the SNF WS PPR measure technical specifications available at *https://www.cms.gov/files/document/snfvbp-snfwsppr-draft-techical-specification.pdf.*

g. Proposed Scoring of SNF Performance on the SNF WS PPR Measure

(1) Background

In the FY 2017 SNF PPS final rule (81 FR 52000 through 52001), we finalized a policy to invert SNFRM measure rates such that a higher measure rate reflects better performance on the SNFRM. In that final rule, we also stated our belief that this inversion is important for incentivizing improvement in a clear and understandable manner, and because a ''lower is better'' rate could cause confusion among SNFs and the public. In the FY 2023 SNF PPS final rule (87 FR 47568), we applied this policy to the SNF HAI measure such that a higher measure rate reflects better performance on the SNF HAI measure. We also stated our intent to apply this inversion scoring policy to all measures in the Program for which the calculation produces a ''lower is better'' measure rate. We continue to believe that inverting measure rates such that a higher measure rate reflects better performance on a measure is important

for incentivizing improvement in a clear and understandable manner.

The measure rate inversion scoring policy does not change the measure specifications or the calculation method. We use this measure rate inversion only as part of the scoring methodology under the SNF VBP Program. The measure rate inversion is part of the methodology we use to generate measure scores, and resulting SNF Performance Scores, that are clear and understandable for SNFs and the public.

(2) Proposal To Invert the SNF WS PPR Measure Rate for SNF VBP Scoring Purposes

In the previous section, we stated that a lower risk-standardized rate for the SNF WS PPR measure indicates better performance. Therefore, we are proposing to apply our measure rate inversion scoring policy to the SNF WS PPR measure because a ''lower is better'' rate could cause confusion among SNFs and the public. Specifically, we are proposing to calculate the scores for this measure for the SNF VBP Program by inverting the SNF WS PPR measure rates using the following calculation:

SNF WS PPR Inverted Rate = *1 − Facility's SNF WS PPR Risk Standardized Rate*

This calculation would invert SNF WS PPR measure rates such that a higher measure rate would reflect better performance.

h. Confidential Feedback Reports and Public Reporting for the Proposed SNF WS PPR Measure

Our confidential feedback reports and public reporting policies are codified at § 413.338(f) of our regulation. In the FY 2023 SNF PPS final rule (87 FR 47591 through 47592), we revised our regulations such that the confidential feedback reports and public reporting policies apply to each measure specified for a fiscal year, which includes the proposed SNF WS PPR measure beginning with the FY 2028 program year.

We invite public comment on our proposal to refine the measure specifications for the SNFPPR measure, and our proposal to update the measure's name to the ''Skilled Nursing Facility Within-Stay Potentially Preventable Readmissions (SNF WS PPR) measure.'' We also invite public comment on our proposal to invert the SNF WS PPR measure rate for SNF VBP Program scoring purposes.

3. Proposal To Replace the SNFRM With the SNF WS PPR Measure Beginning With the FY 2028 SNF VBP Program Year

Section 1888(h)(2)(B) of the Act requires the Secretary to apply the measure specified under section 1888(g)(2) of the Act, instead of the measure specified under section 1888(g)(1) of the Act as soon as practicable. To meet that statutory requirement, we are proposing to replace the SNFRM with the proposed SNF WS PPR measure beginning with the FY 2028 program year. This is the first program year that we can feasibly implement the SNF WS PPR measure after taking into consideration its proposed performance period and a number of other statutory requirements.

We are proposing a 2-year performance period for the proposed SNF WS PPR, and we believe the earliest the first performance period can occur is FY 2025 and FY 2026 (October 1, 2024 through September 30, 2026). This would provide us with sufficient time to calculate and announce the performance standards for the proposed SNF WS PPR measure at least 60 days before the beginning of that performance period, as required under section 1888(h)(3)(C) of the Act. Additionally, we are required under section 1888(h)(7) of the Act to announce the net payment adjustments for SNFs no later than 60 days prior to the start of the applicable fiscal year. We calculate these payment adjustments using performance period data. To provide us with sufficient time to calculate and announce the net payment adjustments after the end of the proposed performance period (FY 2025 and FY 2026), we believe the earliest program year in which we can feasibly adopt the proposed SNF WS PPR measure is FY 2028.

We invite public comment on our proposal to replace the SNFRM with the SNF WS PPR measure beginning with the FY 2028 SNF VBP program year.

4. Quality Measure Proposals for the SNF VBP Expansion Beginning With the FY 2026 Program Year

a. Background

Section 1888(h)(2)(A)(ii) of the Act (as amended by section 111(a)(2)(C) of the CAA 2021) allows the Secretary to expand the SNF VBP Program to include up to 10 quality measures with respect to payments for services furnished on or after October 1, 2023. These measures may include measures of functional status, patient safety, care coordination, or patient experience. Section 1888(h)(2)(A)(ii) of the Act also requires that the Secretary consider and apply, as appropriate, quality measures specified under section 1899B(c)(1) of the Act.

In the FY 2023 SNF PPS final rule (87 FR 47564 through 47580), we adopted the first three measures for the Program expansion: (1) SNF HAI measure; (2) Total Nurse Staffing measure; and (3) DTC PAC SNF measure. We adopted the SNF HAI and Total Nurse Staffing measures beginning with the FY 2026 program year (FY 2024 is the first performance period). We also adopted the DTC PAC SNF measure beginning with the FY 2027 program year (FY 2024 and FY 2025 is the first performance period).

In this proposed rule, we are proposing to adopt four additional measures for the Program. We are proposing to adopt one new measure beginning with the FY 2026 program year (FY 2024 would be the first performance period): Total Nursing Staff Turnover (''Nursing Staff Turnover'') measure. We are also proposing to adopt three new measures beginning with the FY 2027 program year (FY 2025 would be the first performance period): (1) Percent of Residents Experiencing One or More Falls with Major Injury (Long-Stay) (''Falls with Major Injury (Long-Stay)'') measure; (2) Discharge Function Score for SNFs (''DC Function measure''); and (3) Number of Hospitalizations per 1,000 Long Stay Resident Days (''Long Stay Hospitalization'') measure.

Therefore, for the FY 2024 performance period, SNF data would be collected for five measures: SNFRM, SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, and DTC PAC SNF measures. Performance on the first four measures would affect SNF payment in the FY 2026 program year. Since the DTC PAC SNF measure is a 2-year measure, performance on that measure would affect SNF payment in the FY 2027 program year.

Beginning with the FY 2025 performance period, SNF data would be collected for nine measures: SNFRM, SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, DC Function, Falls with Major Injury (Long-Stay), Long Stay Hospitalization, DTC PAC SNF, and SNF WS PPR measures. Performance on the first seven measures would affect SNF payment in the FY 2027 program year. Since the DTC PAC SNF and SNF WS PPR measures are 2-year measures, performance on those measures would affect SNF payment in the FY 2028 program year. Further, we refer readers to section VII.B.3. of this proposed rule for additional details on our proposal to replace the SNFRM with the SNF WS

PPR measure beginning with the FY 2028 program year, as required by statute, which would mean that the FY 2027 and FY 2028 program years would each only have eight measures that would affect SNF payment for those program years. Finally, there is no additional burden on SNFs to submit data on these previously adopted and proposed measures for the SNF VBP Program.

Table 17 provides the list of the currently adopted and newly proposed measures for the SNF VBP Program.

TABLE 17—CURRENTLY ADOPTED AND PROPOSED NEW SNF VBP MEASURES

Measure name	Measure short name	Measure status	First program year	First performance period *
SNF 30-Day All-Cause Readmission Measure	SNFRM	Adopted, implemented	FY 2017 **	FY 2015.
SNF Healthcare-Associated Infections Requiring Hospitalization Measure.	SNF HAI Measure	Adopted, not implemented	FY 2026	FY 2024.
Total Nurse Staffing Hours per Resident Day Measure.	Total Nurse Staffing Measure	Adopted, not implemented	FY 2026	FY 2024.
Total Nursing Staff Turnover Measure	Nursing Staff Turnover Measure	Proposed	FY 2026 +	FY 2024.
Discharge to Community—Post-Acute Care Measure for SNFs.	DTC PAC SNF Measure	Adopted, not implemented	FY 2027	FY 2024 and FY 2025.
Percent of Residents Experiencing One or More Falls with Major Injury (Long-Stay) Measure.	Falls with Major Injury (Long-Stay) Measure.	Proposed	FY 2027 +	FY 2025.
Discharge Function Score for SNFs Measure	DC Function Measure	Proposed	FY 2027 +	FY 2025.
Number of Hospitalizations per 1,000 Long Stay Resident Days Measure.	Long Stay Hospitalization Measure	Proposed	FY 2027 +	FY 2025.
SNF Within-Stay Potentially Preventable Readmissions Measure.	SNF WS PPR Measure	Proposed	FY 2028 +	FY 2025 and FY 2026.

* For each measure, we have adopted or are proposing to adopt a policy to automatically advance the beginning of the performance period by 1-year from the previous program year. We refer readers to section VII.C.3 of this proposed rule for additional information.

** Proposed to be replaced with the SNF WS PPR measure beginning with the FY 2028 program year.

+ Proposed first program year in which the measure would be included in the Program.

b. Proposal To Adopt the Total Nursing Staff Turnover Measure Beginning With the FY 2026 SNF VBP Program Year

We are proposing to adopt the Total Nursing Staff Turnover Measure (''Nursing Staff Turnover measure'') beginning with the FY 2026 SNF VBP program year.

(1) Background

Nursing home staffing, including nursing staff turnover, has long been considered an important indicator of nursing home quality.[201] [202] [203] Longer-tenured nursing staff are more familiar with the residents and are better able to detect changes in a resident's condition. They are also more acclimated to their facility's procedures and thus, operate more efficiently. In contrast, higher nursing staff turnover can mean that nursing staff are less familiar with resident needs and facility procedures, which can contribute to lower quality of care.

There is considerable evidence demonstrating the impact of nursing staff turnover on resident outcomes, with higher turnover associated with poorer quality of care.[204] [205] [206] [207] [208] [209] [210] A recent 2019 study comparing nursing home's annualized turnover rates with the overall five-star ratings for the facilities found that the average total nursing staff annual turnover rates were 53.4 percent among one-star nursing homes and 40.7 percent for five-star facilities.[211] The same study found a statistically significant relationship between higher turnover rates and lower performance on clinical quality measures, including hospitalization rates, readmission rates, and emergency department visits. [212] Studies have also shown that nursing staff turnover is a meaningful factor in nursing home quality of care and that staff turnover influences quality outcomes.[213] [214] For example, higher staff turnover is associated with an increased likelihood of receiving an infection control citation.[215]

Recently, the National Academies of Sciences, Engineering, and Medicine formed the Committee on the Quality of Care in Nursing homes to examine the delivery of care and the complex array of factors that influence the quality of care in nursing homes. The committee published a report in 2022 titled ''The National Imperative to Improve Nursing Home Quality.'' The report details the complex array of factors that influence care quality in nursing homes, including staffing variables such as staffing levels and turnover, and identifies several broad goals and recommendations to improve the quality of care in nursing homes.[216] In the 2022 report, the National Academies of Sciences, Engineering, and Medicine highlighted the association between the high turnover of many nursing home staff, including RNs, and lower quality of care delivery in nursing homes.[217] The report also recognized the need for quality measures that report on turnover rates, citing that increased transparency will improve patient care. Because of its central role in the quality of care of Medicare beneficiaries, HHS and the Biden-Harris Administration are also committed to improving the quality of care in nursing homes with respect to staffing, as stated in the fact sheets entitled ''Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes'' and ''Biden-Harris Administration Announces New Steps to Improve Quality of Nursing Homes.'' [218] [219] While much of this research has been conducted in long-term care facilities or nursing homes, we believe this research is relevant to the SNF setting, because approximately 94 percent of long-term care facilities are dually certified as both SNFs and nursing facilities (86 FR 42508).

In light of the strong association between high nursing staff turnover rates and negative resident outcomes, including the nursing staff turnover measure in the SNF VBP Program would provide a comprehensive assessment of the quality of care provided to residents. This measure would also drive improvements in nursing staff turnover that are likely to translate into positive resident outcomes.

Although the proposed Nursing Staff Turnover measure is not specified under section 1899B(c)(1) of the Act, we believe this measure supports the Program's goals to improve the quality of care provided to Medicare beneficiaries throughout their entire SNF stay. We have long identified staffing as one of the vital components of a SNF's ability to provide quality care and use staffing data to gauge a facility's impact on quality of care in SNFs with more accuracy and efficacy. The proposed measure aligns with the topics listed under section 1888(h)(2)(A)(ii) of the Act and with HHS and Biden-Harris Administration priorities. We also believe that the Nursing Staff Turnover

[201] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[202] Institute of Medicine. Nursing Staff in Hospitals and Nursing Homes: Is It Adequate? Washington, DC: National Academy Press; 1996.

[203] ''To Advance Information on Quality of Care, CMS Makes Nursing Home Staffing Data Available | CMS.'' Accessed December 22, 2022. *https://www.cms.gov/newsroom/press-releases/advance-information-quality-care-cms-makes-nursing-home-staffing-data-available.*

[204] Zheng Q, Williams CS, Shulman ET, White AJ Association between staff turnover and nursing home quality—evidence from payroll-based journal data. Journal of the American Geriatrics Society. May 2022. *doi:10.1111/jgs.17843.*

[205] Bostick JE, Rantz MJ, Flesner MK, Riggs CJ Systematic review of studies of staffing and quality in nursing homes. J Am Med Dir Assoc. 2006;7:366–376. *https://pubmed.ncbi.nlm.nih.gov/16843237/.*

[206] Backhaus R, Verbeek H, van Rossum E, Capezuti E, Hamer JPH Nursing staffing impact on quality of care in nursing homes: a systemic review of longitudinal studies. J Am Med Dir Assoc. 2014;15(6):383–393. *https://pubmed.ncbi.nlm.nih.gov/24529872/.*

[207] Spilsbury K., Hewitt C., Stirk L., Bowman C. The relationship between nurse staffing and quality of care in nursing homes: a systematic review. Int J Nurs Stud. 2011; 48(6):732–750. *https://pubmed.ncbi.nlm.nih.gov/21397229/.*

[208] Castle N. Nursing home caregiver staffing levels and quality of care: a literature review. J Appl Gerontol. 2008;27:375–405. *https://doi.org/10.1177%2F0733464808321596.*

[209] Spilsbury et al.

[210] Castle NG, Engberg J. Staff turnover and quality of care in nursing homes. Med Care. 2005 Jun;43(6):616–26. doi: 10.1097/01.mlr.0000163661.67170.b9. PMID: 15908857.

[211] Zheng, Q, Williams, CS, Shulman, ET, White, AJ Association between staff turnover and nursing home quality—evidence from payroll-based journal data. J Am Geriatr Soc. 2022; 70(9): 2508–2516. doi:10.1111/jgs.17843.

[212] Ibid.

[213] Centers for Medicare and Medicaid Services. 2001 Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II. Baltimore, MD: Centers for Medicare and Medicaid Services. *http://phinational.org/wp-content/uploads/legacy/clearinghouse/PhaseIIVolumeIofIII.pdf.*

[214] Loomer, L, Grabowski, DC, Yu, H, & Gandhi, A. (2021). Association between nursing home staff turnover and infection control citations. *Health Services Research. https://doi.org/10.1111/1475-6773.13877.*

[215] Loomer, L., Grabowski, D.C., Yu, H., & Gandhi, A. (2021). Association between nursing home staff turnover and infection control citations. *Health Services Research. https://doi.org/10.1111/1475-6773.13877.*

[216] National Academies of Sciences, Engineering, and Medicine. 2022. The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff. Washington, DC: The National Academies Press. *https://doi.org/10.17226/26526.*

[217] National Academies of Sciences, Engineering, and Medicine, 2022.

[218] The White House. (2022, February 28). FACT SHEET: Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes. *https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.*

[219] The White House. (2021, October 21). FACT SHEET: Biden-Harris Administration Announces New Steps to Improve Quality of Nursing Homes. *https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/21/fact-sheet-biden-harris-administration-announces-new-steps-to-improve-quality-of-nursing-homes/.*

measure would complement the Total Nursing Hours per Resident Day (Total Nurse Staffing) measure, adopted in the FY 2023 SNF PPS final rule (87 FR 47570 through 47576). Together, these measures emphasize and align with our current priorities and focus areas for the Program.

(2) Overview of Measure

The Nursing Staff Turnover measure is a structural measure that uses auditable electronic data reported to CMS' PBJ system to calculate annual turnover rates for nursing staff, including registered nurses (RNs), licensed practical nurses (LPNs), and nurse aides. Given the well-documented impact of nurse staffing on patient outcomes and quality of care, this proposed measure would align the Program with the Care Coordination domain of CMS' Meaningful Measures 2.0 Framework. The Nursing Staff Turnover measure is currently being measured and publicly reported for nursing facilities on the *Care Compare* website (*https://www.medicare.gov/care-compare/*) and is used in the Five-Star Quality Rating System. For more information on measure specifications and how this measure is used in the Five -Star Quality Rating System, we refer readers to the January 2023 Technical Users' Guide available at *https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcomplianc/downloads/usersguide.pdf.*

This proposed measure is constructed using daily staffing information submitted through the PBJ system by nursing facilities. Specifically, turnover is identified based on gaps in days worked, which helps ensure that Nursing Staff Turnover is defined the same way across all nursing facilities with SNF beds and that it does not depend on termination dates that may be reported inconsistently by these facilities. Individuals are identified based on the employee system ID and SNF identifiers in the PBJ data. We refer readers to the Nursing Staff Turnover measure specifications available at *https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcomplianc/downloads/usersguide.pdf.*

Payroll data are considered the gold standard for nurse staffing measures and are a significant improvement over the manual data previously used, wherein staffing information was calculated based on a form (CMS–671) filled out manually by the facility.[220] The PBJ staffing data are electronically submitted and auditable back to payroll and other verifiable sources. Analyses of PBJ-based staffing measures show a relationship between higher nurse staffing levels and higher ratings for other dimensions of quality such as health inspection survey results and quality measures.[221]

(a) Interested Parties and TEP Input

In 2019 through 2022, CMS tested this measure based on input from the CMS Five-Star Quality Rating Systems' TEP, as well as input from interested parties. We began publicly reporting this measure on the Care Compare website via the Nursing Home Five-Star Rating System in January 2022.

We solicited public feedback on this measure in a ''Request for Comment on Additional SNF VBP Program Measure Considerations for Future Years'' in the FY 2023 SNF PPS proposed rule (87 FR 22786 through 22787). We considered the input we received as we developed our proposal for this measure. We refer readers to the FY 2023 SNF PPS final rule (87 FR 47592 through 475963) for a detailed summary of the feedback we received on this measure.

(b) Measure Applications Partnership (MAP) Review

We included the Nursing Staff Turnover measure as a SNF VBP measure under consideration in the publicly available ''2022 Measures Under Consideration List.'' [222] The MAP offered conditional support of the Nursing Staff Turnover measure for rulemaking, contingent upon endorsement by the consensus-based entity, noting that the measure would add value to the Program because staffing turnover is a longstanding indicator of nursing home quality, and it addresses the Care Coordination domain of the Meaningful Measures 2.0 Framework. We refer readers to the final 2022–2023 MAP recommendations available at *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

(3) Data Sources

The proposed Nursing Staff Turnover measure is calculated using auditable, electronic staffing data submitted by each SNF for each quarter through the PBJ system. Specifically, this measure utilizes five data elements from the PBJ data, including employee ID, facility ID, hours worked, work date, and job title code.

(4) Inclusion and Exclusion Criteria

We are proposing that SNFs would be excluded from the measure under the following conditions:

- Any SNF with 100 percent total nursing staff turnover for any day in the six-quarter period during which there were at least five eligible nurse staff. A 100 percent daily turnover is typically the result of changes in the employee IDs used by SNFs and does not reflect actual staff turnover.
- SNFs that do not submit staffing data or submitted data that are considered invalid (using the current exclusion rules for the staffing domain) for one or more of the quarters used to calculate the Nursing Staff turnover measure.
- SNFs that do not have resident census information (derived from MDS assessments).
- SNFs with fewer than five eligible nurses (RNs, LPNs and nurse aides) in the denominator.

(a) Denominator

The denominator for the proposed Nursing Staff Turnover measure includes all eligible employees, defined as RNs, LPNs, and nurse aides, who are regular employees and agency staff who work at a Medicare certified SNF and use the same job category codes as other nurse staffing measures that are reported on the Care Compare website. For the purposes of this measure, the RN category is defined as RNs (job code 7), RN director of nursing (job code 5), and RNs with administrative duties (job code 6). The LPN category is defined as LPNs (job code 9) and LPNs with administrative duties (job code 8). The nurse aide category is defined as certified nurse aides (job code 10), aides in training (job code 11), and medication aides/technicians (job code 12). This measure only includes eligible employees who work at least 120 hours in a 90-day period. The timeframe for the 90-day period begins on the first workday observed during the quarter prior to the start of the performance period (termed the baseline quarter) and ends on the last workday, of the last month, of the second quarter of the performance period. Eligible employees who work infrequently (that is, those who work fewer than 120 hours during a 90-day period, including those who only occasionally cover shifts at a

[220] *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf.*

[221] Zheng, Q, Williams, CS, Shulman, ET, White, AJ Association between staff turnover and nursing home quality—evidence from payroll-based journal data. J Am Geriatr Soc. 2022; 70(9): 2508–2516.

[222] 2022 Measures Under Consideration Spreadsheet available at *https://mmshub.cms.gov/sites/default/files/2022-MUC-List.xlsx.*

nursing home) would be excluded from the denominator calculation.

(b) Numerator

The numerator includes eligible employees who were included in the denominator and who are not identified in the PBJ data as having worked at the SNF for at least 60 consecutive days during the performance period. The 60-day gap must start during the period covered by the turnover measure. The turnover date is defined as the last workday prior to the start of the 60-day gap.

(5) Measure Calculation

The proposed Nursing Staff Turnover measure is calculated using six consecutive quarters of PBJ data. Data from a baseline quarter,[223] Q0, along with the first two quarters of the performance period, are used for identifying employees who are eligible to be included in the measure (denominator). The four quarters of data (Q1 through Q4) of the performance period are used for identifying the number of employment spells, defined as a continuous period of work, that ended in turnover (numerator). Data from the sixth quarter (Q5), which occurs after the four-quarter numerator (performance) period, are used to identify gaps in days worked that started in the last 60 days of the fifth quarter (Q4) used for the measure. To calculate the measure score, we first determine the measure denominator by identifying the total number of employment spells, defined as a continuous period of work. For example, for the FY 2026 program year, the denominator would be calculated as the number of eligible employees who worked 120 or more hours in a 90-day period with the first workday of the 90-day period occurring in FY 2023 Q4, the quarter prior to the start of the performance period (Q0), through FY 2024 Q2, the first 2 quarters of the performance period (July 1, 2023 through March 31, 2024). The numerator is calculated as the total number of eligible employees who had a 60-day gap from October 1, 2023 through September 30, 2024 during which they did not work. Data from FY 2025 Q1, defined as Q5 above, is also used to identify gaps that start within 60 days of the end of the performance period (August 2, 2024 through September 30, 2024).

We are proposing to calculate the Nursing Staff Turnover measure rate for the SNF VBP Program using the following formula:

$$\textit{Total Nursing Staff Turnover Rate} = \frac{\textit{Total number of employment spells that ended in turnover}}{\textit{Total number of eligible employment spells}}$$

We also note that based on analysis and previous research on turnover measures, and a review by a technical expert panel, the Nursing Staff Turnover measure is not risk-adjusted.

We invite public comment on our proposal to adopt the Total Nursing Staff Turnover measure beginning with the FY 2026 SNF VBP program year.

c. Proposal To Adopt the Percent of Residents Experiencing One or More Falls With Major Injury (Long-Stay) Measure Beginning With the FY 2027 SNF VBP Program Year

We are proposing to adopt the Percent of Residents Experiencing One or More Falls with Major Injury (Long-Stay) Measure (''Falls with Major Injury (Long-Stay) measure'') beginning with the FY 2027 SNF VBP program year. The Falls with Major Injury (Long-Stay) measure is an outcome measure that estimates the percentage of long-stay residents who have experienced one or more falls with major injury. We refer readers to the specifications for this proposed measure, which are located in the Minimum Data Set (MDS) 3.0 Quality Measures User's Manual Version 15 available at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqiqualitymeasures.* The Falls with Major Injury (Long-Stay) measure was endorsed by the CBE in 2011. The measure is currently reported by nursing facilities under the CMS Nursing Home Quality Initiative (NHQI) and the Five-Star Quality Rating System and those results are publicly reported on the Care Compare website, available at *https://www.medicare.gov/care-compare/.*

(1) Background

Falls are the leading cause of injury-related death among persons aged 65 years and older. According to the Centers for Disease Control and Prevention (CDC), approximately one in four adults aged 65 years and older fall each year, and fall-related emergency department visits are estimated at approximately 3 million per year.[224] In 2016, nearly 30,000 U.S. residents aged 65 years and older died as the result of a fall, resulting in an age-adjusted mortality rate of 61.6 deaths per 100,000 people. This represents a greater than 30 percent increase in fall-related deaths from 2007, where the age-adjusted mortality rate was 47.0 deaths per 100,000 people.[225] Additionally, the death rate from falls was higher among adults aged 85 years and older as indicated by a mortality rate of 257.9 deaths per 100,000 people.[226]

Of the 1.6 million residents in U.S. nursing facilities, approximately half fall annually, with one in three having two or more falls in a year. One in every ten residents who falls has a serious related injury, and about 65,000 residents suffer a hip fracture each year.[227] An analysis of MDS data from FY 2019 Q2 found that, among the 14,586 nursing facilities included in the sample, the percent of long-stay residents who experienced one or more falls with major injury ranged from zero percent to nearly 21 percent. This wide variation in facility -level fall rates indicates a performance gap and suggests that there are opportunities to improve performance on this measure.

It is important to monitor injurious falls among the long-stay population because of the potentially negative impacts on resident health outcomes and quality of life. Research has found that injurious falls are one of the leading causes of disability and death for all nursing home residents. Specifically, falls have serious health consequences, such as reduced quality of life,

[223] The baseline quarter is specific to this measure calculation and not related to the SNF VBP Program's measure baseline period, which is part of the performance standards used to score the measure. The baseline quarter is the quarter prior to the first quarter of either the baseline period or the performance period for a program year.

[224] Burns E, Kakara R. Deaths from Falls Among Persons Aged ≥65 Years—United States, 2007–2016. *MMWR Morb Mortal Wkly Rep* 2018;67:509–514. DOI: *http://dx.doi.org/10.15585/mmwr.mm6718a1externalicon.*

[225] Ibid.

[226] Ibid.

[227] The Falls Management Program: A Quality Improvement Initiative for Nursing Facilities: Chapter 1. introduction and program overview. Agency for Healthcare Research and Quality. *https://www.ahrq.gov/patient-safety/settings/long-term-care/resource/injuries/fallspx/man1.html.* Published December 2017. Accessed December 13, 2022.

decreased functional abilities, anxiety and depression, serious injuries, and increased risk of morbidity and mortality.[228] [229]

Injurious falls are also a significant cost burden to the entire healthcare system. The U.S. spends approximately $50 billion on medical costs related to non-fatal fall-related injuries and $754 million on medical costs related to fatal falls annually.[230] Of the amount paid on non-fatal fall injuries, Medicare pays approximately $29 billion, while private or out-of-pocket payers pay $12 billion. Research suggests that acute care costs incurred for falls among nursing home residents range from $979 for a typical case with a simple fracture to $14,716 for a typical case with multiple injuries.[231] Other research examining hospitalizations of nursing home residents with serious fall-related injuries (intracranial bleed, hip fracture, or other fracture) found an average cost of $23,723.[232]

Research has found that 78 percent of falls are anticipated physiologic falls, which are defined as falls among individuals who scored high on a risk assessment scale, meaning their risk could have been identified in advance of the fall.[233] To date, studies have identified a number of risk factors for falls within the long-stay population, including impaired cognitive function, history of falls, difficulties with walking and balancing, vitamin D deficiency, and use of psychotropic medications.[234] [235] [236] In addition, residents who experience dementia or depression, are underweight, or are over the age of 85 are at a higher risk of falling.[237] [238] [239] While much of this research has been conducted in long-term care facilities or nursing homes, we believe this research is relevant to the SNF setting, because approximately 94 percent of long-term care facilities are dually certified as both SNFs or nursing facilities (86 FR 42508). Therefore, these risk factors described above suggest that SNFs may be able to identify, reduce, and prevent the incidence of falls among their residents.[240] [241] [242] [243]

Given the effects of falls with major injury, preventing and reducing their occurrence in SNFs is critical to delivering safe and high-quality care. We believe the proposed Falls with Major Injury (Long-Stay) measure aligns with this goal by monitoring the occurrence of falls with major injury and assessing SNFs on their performance on fall prevention efforts. In doing so, we believe the proposed measure would promote patient safety and increase the transparency of care quality in the SNF setting, and it would address the Patient Safety domain of CMS' Meaningful Measures 2.0 Framework.[244]

We believe there are effective interventions that SNFs can implement to reduce and prevent falls, including those that cause major injury. Specifically, several studies observed that multifactorial interventions such as exercise, medication review, risk assessment, vision assessment, and environmental assessment significantly reduce fall rates.[245] [246] [247] Another study found that a single intervention of exercise reduced the number of resident falls in the nursing home setting by 36 percent and the number of recurrent fallers by 41 percent.[248] Additionally, various systematic reviews link facility structural characteristics to falls with major injury. For example, the incorporation of adequate equipment throughout the facility, such as hip protectors or equipment used for staff education tasks, may reduce fall rates or fall-related injuries.[249] [250] In addition, poor communication between staff, inadequate staffing levels, and limited facility equipment have been identified as barriers to implementing fall prevention programs in facilities.[251]

[228] The Falls Management Program: A Quality Improvement Initiative for Nursing Facilities: Chapter 1. Introduction and Program Overview. Agency for Healthcare Research and Quality. *https://www.ahrq.gov/patient-safety/settings/long-term-care/resource/injuries/fallspx/man1.html.* Published December 2017. Accessed December 13, 2022.

[229] Bastami M, Azadi A. Effects of a Multicomponent Program on Fall Incidence, Fear of Falling, and Quality of Life among Older Adult Nursing Home Residents. *Ann Geriatr Med Res.* 2020;24(4):252–258. doi:10.4235/agmr.20.0044.

[230] Cost of older adult falls. Centers for Disease Control and Prevention. *https://www.cdc.gov/falls/data/fall-cost.html.* Published July 9, 2020. Accessed December 13, 2022.

[231] Sorensen SV, de Lissovoy G, Kunaprayoon D, Resnick B, Rupnow MF, Studenski S. A taxonomy and economic consequence of nursing home falls. *Drugs Aging.* 2006;23(3):251–62.

[232] Quigley PA, Campbell RR, Bulat T, Olney RL, Buerhaus P, Needleman J. Incidence and cost of serious fall-related injuries in nursing homes. *Clin Nurs Res.* Feb 2012;21(1):10–23.

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[235] Galik, E, Resnick, B, Hammersla, M, & Brightwater, J (2014). Optimizing function and physical activity among nursing home residents with dementia: testing the impact of function-focused care. *Gerontologist* 54(6), 930–943. *https://doi.org/10.1093/geront/gnt108.*

[236] Broe KE, Chen TC, Weinberg J, Bischoff-Ferrari HA, Holick MF, Kiel DP. A higher dose of vitamin d reduces the risk of falls in nursing home residents: a randomized, multiple-dose study. *J Am Geriatr Soc.* 2007;55(2):234–239. doi:10.1111/j.1532–5415.2007.01048.x.

[237] Zhang N, Lu SF, Zhou Y, Zhang B, Copeland L, Gurwitz JH. Body Mass Index, Falls, and Hip Fractures Among Nursing Home Residents. *J Gerontol A Biol Sci Med Sci.* 2018;73(10):1403–1409. doi:10.1093/gerona/gly039.

[238] Fernando E, Fraser M, Hendriksen J, Kim CH, Muir-Hunter SW. Risk Factors Associated with Falls in Older Adults with Dementia: A Systematic Review. *Physiother Can.* 2017;69(2):161–170. doi:10.3138/ptc.2016–14.

[239] Grundstrom AC, Guse CE, Layde PM. Risk factors for falls and fall-related injuries in adults 85 years of age and older. *Arch Gerontol Geriatr.* 2012;54(3):421–428. doi:10.1016/j.archger.2011.06.008.

[240] Morris JN, Moore T, Jones R, et al. Validation of long-term and post-acute care quality indicators. CMS Contract No: 500–95–0062.

[241] Chen XL, Liu YH, Chan DK, Shen Q, Van Nguyen H. Chin Med J (Engl). Characteristics associated with falls among the elderly within aged care wards in a tertiary hospital: A Retrospective. 2010 Jul; 123(13):1668–72.

[242] Fonad E, Wahlin TB, Winblad B, Emami A, Sandmark H. Falls and fall risk among nursing home residents. J Clin Nurs. 2008 Jan; 17(1):126–34.

[243] Lee JE, Stokic DS. Risk factors for falls during inpatient rehabilitation. Am J Phys Med Rehabil. 2008 May; 87(5):341–50; quiz 351, 422.

[244] Centers for Medicare & Medicaid Services. Meaningful Measures Framework. Available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.*

[245] Gulka, HJ, Patel, V, Arora, T, McArthur, C, & Iaboni, A (2020). Efficacy and generalizability of falls prevention interventions in nursing homes: A systematic review and meta-analysis. *Journal of the American Medical Directors Association,* 21(8), P1024–1035.E4. *https://doi.org/10.1016/j.jamda.2019.11.012.*

[246] Tricco, AC, Thomas, SM, Veroniki, AA, Hamid, JS, Cogo, E, Strifler, L, Khan, PA, Robson, R, Sibley, KM, MacDonald, H, Riva, JJ, Thavorn, K, Wilson, C, Holroyd-Leduc, J, Kerr, GD, Feldman, F, Majumdar, SR, Jaglal, SB, Hui, W, & Straus, SE (2017). Comparisons of interventions for preventing falls in older adults: A systematic review and meta-analysis. *Journal of the American Medical Association,* 318(17), 1687–1699. *https://doi.org/10.1001/jama.2017.15006.*

[247] Vlaeyen, E, Coussement, J, Leysens, G, Van der Elst, E, Delbaere, K, Cambier, D, Denhaerynck, K, Goemaere, S, Wertelaers, A, Dobbels, F, Dejaeger, E, & Milisen, K (2015). Characteristics and effectiveness of fall prevention programs in nursing homes: A systematic review and meta-analysis of randomized control trials. *Journal of the American Geriatrics Society,* 6(3), 211–21. *https://doi.org/10.1111/jgs.13254.*

[248] Gulka, HJ, Patel, V, Arora, T, McArthur, C, & Iaboni, A (2020). Efficacy and generalizability of falls prevention interventions in nursing homes: A systematic review and meta-analysis. *Journal of the American Medical Directors Association,* 21(8), P1024–1035.E4. *https://doi.org/10.1016/j.jamda.2019.11.012.*

[249] Crandall, M, Duncan, T, Mallat, A, Greene, W, Violano, P, & Christmas, B (2016). Prevention of fall-related injuries in the elderly: An eastern association for the surgery of trauma practice management guideline. *Journal of Trauma and Acute Care Surgery,* 81(1), 196–206. *https://doi.org/10.1097/TA.0000000000001025.*

[250] Vlaeyen, E, Stas, J, Leysens, G, Van der Elst, E, Janssens, E, Dejaeger, E, Dobbels, F, & Milisen, K (2017). Implementation of fall prevention in residential care facilities: A systematic review of barriers and facilitators. *International Journal of Nursing Studies,* 70, 110–121. *https://doi.org/10.1016/j.ijnurstu.2017.02.002.*

[251] Ibid.

Other studies have shown that proper staff education can significantly reduce fall rates.[252] [253] The effectiveness of these interventions suggest improvement of fall rates among SNF residents is possible through modification of provider-led processes and interventions, which supports the overall goal of the SNF VBP Program.

(2) Overview of Measure

The proposed Falls with Major Injury (Long-Stay) measure is an outcome measure that reports the percentage of long-stay residents in a nursing home who have experienced one or more falls with major injury using 1 year of data from the Minimum Data Set (MDS) 3.0. This measure defines major injuries as bone fractures, joint dislocations, closed head injuries with altered consciousness, or subdural hematomas. Long-stay residents are defined as residents who have received 101 or more cumulative days of nursing home care by the end of the measure reporting period (performance period). This proposed measure is a patient safety measure reported at the facility-level.

Although the Falls with Major Injury (Long-Stay) measure is a long-stay measure, we believe that including a long-stay measure in the SNF VBP Program is appropriate because it would better capture the quality of care provided to the entirety of the population that resides in facilities that are dually certified as SNFs and nursing facilities, including long-stay residents who continue to receive Medicare coverage for certain services provided by nursing facilities. We discussed the potential to include long stay measures in the SNF VBP Program in the FY 2022 SNF PPS final rule Summary of Comments Received on Potential Future Measures for the SNF VBP Program (86 FR 42507 through 42510). Specifically, we stated that the majority of long-stay residents are Medicare beneficiaries, regardless of whether they are in a Medicare Part A SNF stay, because they are enrolled in Medicare Part B and receive Medicare coverage of certain services provided by long-term care facilities even if they are a long-stay resident. We did not receive any negative comments on inclusion of this specific Falls with Major Injury (Long-Stay) measure or long-stay measures generally in the Program in response to this request for comment.

We have adopted a similar measure for the SNF QRP, titled Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (80 FR 46440 through 46444), but that measure excludes long-stay residents. We believe it is important to hold SNFs accountable for the quality of care provided to long-stay residents given that the majority of long-term care facilities are dually certified as SNFs and nursing facilities. Additionally, we believe the proposed Falls with Major Injury (Long-Stay) measure satisfies the requirement to consider and apply, as appropriate, quality measures specified under section 1899B(c)(1) of the Act, in which this measure aligns with the domain, incidence of major falls, described at section 1899B(c)(1)(D) of the Act. Therefore, we believe it is appropriate for the SNF VBP program to include a falls with major injury for long-stay resident measure.

Testing for this measure has demonstrated that the Falls with Major Injury (Long-Stay) measure has sufficient reliability and validity. For example, signal-to-noise and split-half reliability analyses found that the measure exhibited moderate reliability. Validity testing showed that there are meaningful differences in nursing facility-level scores for this measure, indicating good validity. For additional details on measure testing, we refer readers to the MAP PAC/LTC: 2022–2023 MUC Cycle Measure Specifications Manual available at *https://mmshub.cms.gov/sites/default/files/map-pac-muc-measure-specifications-2022-2023.pdf.*

(a) Interested Parties and TEP Input

In considering the selection of this measure for the SNF VBP Program, CMS convened a TEP in March 2022 which focused on the identification of measurement gaps and measure development priorities for the Program. Panelists were largely supportive of including a falls with major injury measure compared to a general falls measure or a falls with injury measure for several reasons including: (1) the broad definition of falls; and (2) the consensus-based entity endorsement of the Falls with Major Injury (Long-Stay) measure in the Nursing Home Quality Initiative Program. A summary of the TEP meeting is available at *https://mmshub.cms.gov/sites/default/files/SNF-VBP-TEP-Summary-Report-Mar2022.pdf.*

(b) Measure Applications Partnership (MAP) Review

We included the Falls with Major Injury (Long-Stay) measure for the SNF VBP in the publicly available ''2022 Measures Under Consideration List''.[254] The MAP supported the Falls with Major Injury (Long-Stay) measure for rulemaking, noting that the measure would add value to the Program because of the lack of an existing falls measure and that it would help improve patient safety. We refer readers to the final 2022–2023 MAP recommendations available at *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

(3) Data Sources

The proposed Falls with Major Injury (Long-Stay) measure is calculated using 1 year of patient data collected through the MDS. The collection instrument is the Resident Assessment Instrument (RAI), which contains the MDS 3.0. The RAI is a tool used by nursing home staff to collect information on residents' strengths and needs. We describe the measure specifications in more detail below and also refer readers to the MDS 3.0 Quality Measures User's Manual Version 15.0 for further details on how these data components are utilized in calculating the Falls with Major Injury (Long-Stay) measure available at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqiqualitymeasures.* Technical information for the MDS 3.0 is also available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/NHQIMDS30TechnicalInformation.* The proposed Falls with Major Injury (Long-Stay) measure is calculated using data from the MDS, which all Medicare-certified SNFs and Medicaid-certified nursing facilities are currently required to report. Therefore, this measure would not impose any additional data collection or submission burden for SNFs.

(4) Measure Specifications

(a) Denominator

All long-stay residents with one or more look-back scan assessments no more than 275 days prior to the target assessment, except those that meet the

[252] Gulka, HJ, Patel, V, Arora, T, McArthur, C, & Iaboni, A (2020). Efficacy and generalizability of falls prevention interventions in nursing homes: A systematic review and meta-analysis. *Journal of the American Medical Directors Association,* 21(8), P1024–1035.E4. *https://doi.org/10.1016/j.jamda.2019.11.012.*

[253] Tricco, AC, Thomas, SM, Veroniki, AA, Hamid, JS, Cogo, E, Strifler, L, Khan, PA, Robson, R, Sibley, KM, MacDonald, H, Riva, JJ, Thavorn, K, Wilson, C, Holroyd-Leduc, J, Kerr, GD, Feldman, F, Majumdar, SR, Jaglal, SB, Hui, W, & Straus, SE (2017). Comparisons of interventions for preventing falls in older adults: A systematic review and meta-analysis. *Journal of the American Medical Association,* 318(17), 1687–1699. *https://doi.org/10.1001/jama.2017.15006.*

[254] 2022 Measures Under Consideration Spreadsheet available at *https://mmshub.cms.gov/sites/default/files/2022-MUC-List.xlsx.*

exclusion criteria, are included in the measure denominator. Long-stay residents are defined as those who have 101 or more cumulative days of nursing home care by the end of the measure reporting period (performance period). Residents who return to the nursing home following a hospital discharge would not have their cumulative days in the facility reset to zero, meaning that days of care from a previous admission would be added to any subsequent admissions.

The MDS includes a series of assessments and tracking documents, such as Omnibus Budget Reconciliation Act (OBRA) Comprehensive Assessments, OBRA Quarterly Assessments, OBRA Discharge Assessments or PPS assessments. For the purposes of this measure, a target assessment, which presents the resident's status at the end of the episode of care or their latest status if their episode of care is ongoing, is selected for each long-stay resident. Target assessments may be an Omnibus Budget Reconciliation Act (OBRA) admission, quarterly, annual, or significant change/correction assessment; or PPS 5-day assessments; or discharge assessment with or without anticipated return. For more information on how we define target assessments, we refer readers to the MDS 3.0 Quality Measures User's Manual Version 15.0 available at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqiqualitymeasures.*

(b) Denominator Exclusions

Residents are excluded from the denominator if the number of falls with major injury was not coded for all of the look-back scan assessments. A SNF would not be scored on this measure if it does not have long-stay residents, or residents with 101 or more cumulative days of care. The measure also excludes all SNF swing beds because they are not used for long-stay residents.

(c) Numerator

The measure numerator includes long-stay residents with one or more look-back scan assessments that indicate one or more falls that resulted in major injury. Major injuries include bone fractures, joint dislocations, closed-head injuries with altered consciousness, or subdural hematomas. The selection period for the look-back scan consists of the target assessment and all qualifying earlier assessments in the scan.

An assessment should be included in the scan if it meets all of the following conditions: (1) it is contained within the resident's episode, (2) it has a qualifying Reason for Assessment (RFA), (3) its target date is on or before the target date for the target assessment, and (4) its target date is no more than 275 days prior to the target date of the target assessment. For the purposes of this measure, we define the target date as the event date of an MDS record (that is, entry date for an entry record or discharge date for a discharge record or death-in-facility record) or the assessment reference date (for all records that are not entry, discharge, or death-in-facility). For additional target date details, we refer readers to Chapter 1 of the MDS 3.0 Quality Measures User's Manual Version 15.0 available at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqiqualitymeasures.*

A 275-day time period is used to include up to three quarterly OBRA assessments. The earliest of these assessments would have a look-back period of up to 93 days, which would cover a total of about 1 year. To calculate the measure, we scan these target assessments and any qualifying earlier assessments described in the previous paragraph for indicators of falls with major injury.

(5) Risk Adjustment

The Falls with Major Injury (Long-Stay) measure is not risk-adjusted. We considered risk adjustment during measure development, and we tested various risk-adjustment models, but none had sufficient predictive ability.

(6) Measure Calculation

The Falls with Major Injury (Long-Stay) measure is calculated and reported at the facility level. Specifically, to calculate the measure score, we are proposing to first determine the measure denominator by identifying the total number of long-stay residents with a qualifying target assessment (OBRA, PPS, or discharge), one or more look-back scan assessments, and who do not meet the exclusion criteria. Using that set of residents, we calculate the numerator by identifying the total number of those residents with one or more look-back scan assessments that indicate one or more falls that resulted in major injury. We then divide the numerator by the denominator and multiply the resulting ratio by 100 to obtain the percentage of long-stay residents who experience one or more falls with major injury. A lower measure rate indicates better performance on the measure. For additional details on the calculation method, we refer readers to the specifications for the Falls with Major Injury (Long-Stay) measure included in the MDS 3.0 Quality Measures User's Manual available at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqiqualitymeasures.*

We invite public comment on our proposal to adopt the Percent of Residents Experiencing One or More Falls with Major Injury (Long-Stay) measure beginning with the FY 2027 SNF VBP program year.

d. Proposal To Adopt the Discharge Function Score Measure Beginning With the FY 2027 SNF VBP Program Year

We are proposing to adopt the Discharge Function Score (''DC Function'') measure beginning with the FY 2027 SNF VBP Program.[255] We are also proposing to adopt this measure in the SNF QRP (see section VI. of this proposed rule).

(1) Background

Maintenance or improvement of physical function among older adults is increasingly an important focus of healthcare. Adults aged 65 years and older constitute the most rapidly growing population in the United States, and functional capacity in physical (non-psychological) domains has been shown to decline with age.[256] Moreover, impaired functional capacity is associated with poorer quality of life and an increased risk of all-cause mortality, postoperative complications, and cognitive impairment, the latter of which can complicate the return of a resident to the community from post-acute care.[257] [258] [259] Nonetheless,

[255] This measure was submitted to the Measure Under Consideration (MUC) List as the Cross-Setting Discharge Function Score. Subsequent to the MAP workgroup meetings, the measure developer modified the name.

[256] High KP, Zieman S, Gurwitz J, Hill C, Lai J, Robinson T, Schonberg M, Whitson H. Use of Functional Assessment to Define Therapeutic Goals and Treatment. J Am Geriatr Soc. 2019 Sep;67(9):1782–1790. doi: 10.1111/jgs.15975. Epub 2019 May 13. PMID: 31081938; PMCID: PMC6955596.

[257] Clouston SA, Brewster P, Kuh D, Richards M, Cooper R, Hardy R, Rubin MS, Hofer SM The dynamic relationship between physical function and cognition in longitudinal aging cohorts. Epidemiol Rev. 2013;35(1):33–50. doi: 10.1093/epirev/mxs004. Epub 2013 Jan 24. PMID: 23349427; PMCID: PMC3578448.

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Continued

evidence suggests that physical functional abilities, including mobility and self-care, are modifiable predictors of resident outcomes across PAC settings, including functional recovery or decline after post-acute care,[260] [261] [262] [263] [264] rehospitalization rates,[265] [266] [267] discharge to community,[268] [269] and falls.[270] Because evidence shows that older adults experience aging heterogeneously and require individualized and comprehensive healthcare, functional status can serve as a vital component in informing the provision of healthcare and thus indicate a SNF's quality of care.[271] [272]

As stated in section VI. of this proposed rule, we are proposing this measure for the SNF QRP, and we are also proposing it for adoption in the SNF VBP Program under section 1888(h)(2)(A)(ii) of the Act. We believe it is important to measure quality across the full range of outcomes for Medicare beneficiaries during a SNF stay. Further, adoption of this measure would ensure that the SNF VBP Program's measure set aligns with the Person-Centered Care domain of CMS' Meaningful Measures 2.0 Framework.

We included the proposed DC Function measure on the 2022–2023 MUC list for the Inpatient Rehabilitation Facility QRP, Home Health QRP, Long Term Care Hospital QRP, SNF QRP, and SNF VBP. While the DC Function measure is not yet implemented in the SNF QRP or other PAC programs, SNFs already report many of the elements that would be used to calculate this measure.[273] As such, we believe SNFs have had sufficient time to ensure successful reporting of the data elements needed for this measure.

(2) Overview of Measure

The proposed DC Function measure is an outcome measure that estimates the percentage of SNF residents who meet or exceed an expected discharge score during the reporting period. The proposed DC Function measure's numerator is the number of SNF stays with an observed discharge function score that is equal to or higher than the calculated expected discharge function score. The observed discharge function score is the sum of individual function items at discharge. The expected discharge function score is computed by risk adjusting the observed discharge function score for each SNF stay. Risk adjustment controls for resident characteristics, such as admission function score, age, and clinical conditions. The denominator is the total number of SNF stays with a MDS record in the measure target period (four rolling quarters) which do not meet the measure exclusion criteria. For additional details regarding the numerator, denominator, risk adjustment, and exclusion criteria, refer to the *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report.*[274]

The proposed DC Function measure implements a statistical imputation approach for handling ''missing'' standardized functional assessment data elements. The coding guidance for standardized functional assessment data elements allows for using ''Activity Not Attempted'' (ANA) codes, resulting in ''missing'' information about a patient's functional ability on at least some items, at admission and/or discharge, for a substantive portion of SNF patients. Currently, functional outcome measures in the SNF QRP use a simple imputation method whereby all ANA codes or otherwise missing scores, on both admission and discharge records, are recoded to ''1'' or ''most dependent.'' Statistical imputation, on the other hand, replaces these missing values for a variable based on the values of other, non-missing variables in the data and which are otherwise similar to the assessment with a missing value. Specifically, this proposed DC Function measure's statistical, statistical imputation allows missing values (for

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[274] *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report,* which is available on the SNF Quality Reporting Program Measures and Technical Information web page at *https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

example, the ANA codes) to be replaced with any value from 1 to 6, based on a patient's clinical characteristics and codes assigned on other standardized functional assessment data elements. The measure implements separate imputation models for each standardized functional assessment data elements used in measure construction at admission and discharge. Relative to the current simple imputation method, this statistical imputation approach increases the precision and accuracy and reduces the bias in estimates for missing item scores. We refer readers to *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report* [275] for measure specifications and additional details. We also refer readers to the SNF QRP section VI.C.1.b.(1) of this proposed rule for additional information on Measure Importance and Measure Testing.

(a) Interested Parties and TEP Input

We convened two TEP meetings (July 2021 and January 2022), as well as a Patient and Family Engagement Listening Session, to collect feedback from interested parties on the measure's potential use in quality programs in the future. The TEP members expressed support for the measure's validity and agreed with the conceptual and operational definition of the measure.

The feedback we received during the Patient and Family Engagement Listening Session demonstrated that this measure resonates with patients and caregivers. For example, participants' views of self-care and mobility were aligned with the functional domains captured by the measure, and participants found that those domains included critical aspects of care in post-acute care settings. Participants also emphasized the importance of measuring functional outcomes when assessing quality for SNF residents. We refer readers to the SNF QRP section VI.C.1.b.(3) of this proposed rule for additional discussion on the TEP.

(b) MAP Review

The Discharge Function measure was included as a SNF VBP measure under consideration in the publicly available ''2022 Measures Under Consideration List.'' [276] The MAP offered conditional support of the DC Function measure for rulemaking, contingent upon endorsement by the consensus-based entity, noting that the measure would add value to the Program because there are currently no measures related to functional status in the Program, and this measure serves as an indicator for whether the care provided is effective and high quality. We refer readers to section VI.C.1.b.(4) of this proposed rule for further details on the MAP's recommendations and the final 2022–2023 MAP recommendations available at *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

We invite public comment on our proposal to adopt the Discharge Function Score measure beginning with the FY 2027 SNF VBP program year.

e. Proposal To Adopt the Number of Hospitalizations per 1,000 Long-Stay Resident Days Measure Beginning With the FY 2027 SNF VBP Program Year

We are proposing to adopt the Number of Hospitalization per 1,000 Long Stay Resident Days Measure (''Long Stay Hospitalization measure'') beginning with the FY 2027 SNF VBP Program.

(1) Background

Unplanned hospitalizations of long -stay residents can be disruptive and burdensome to residents. ''They can cause discomfort for residents, anxiety for loved ones, morbidity due to iatrogenic events, and excess healthcare costs.'' [277] Studies have found that many unplanned hospitalizations could have been safely avoided by early intervention by the facility. For example, one structured review by expert clinicians of hospitalizations of skilled nursing facility residents found that two -thirds were potentially avoidable, citing a lack of primary care clinicians on-site and delays in assessments and lab orders as primary reasons behind unplanned hospitalizations.[278] Another study found that standardizing advanced care planning and physician availability has a considerable impact on reducing hospitalizations.[279] The Missouri Quality Initiative reduced hospitalizations by 30 percent by having a clinical resource embedded to influence resident care outcomes. Another study found that reducing hospitalizations did not increase the mortality risk for long -stay nursing home residents.[280]

A review of data that were publicly reported on Care Compare shows that there is considerable variation in performance across nursing homes when it comes to unplanned hospitalizations, suggesting that improvement is possible through modification of facility-led processes and interventions. Specifically, performance on this measure ranges from 0.841 hospital admissions per 1,000 long stay resident days at the 10th percentile to 2.656 hospital admissions per 1,000 long-stay resident days at the 90th percentile.[281] In other words, the top decile of performers (10th percentile) has half the number of hospitalizations of the bottom decile (90th percentile). We also reported in 2020 that the rate of unplanned hospitalizations was 1.4 per 1,000 nursing home resident days, suggesting these disruptive events are fairly common.[282] Adopting this measure would align measures between Care Compare and the SNF VBP program without increasing the reporting burden.

Although the proposed Long Stay Hospitalization measure is not specified under section 1899B(c)(1) of the Act, it aligns with the topics listed under section 1888(h)(2)(A)(ii) of the Act. We believe this outcome measure supports the Program's goals to improve the quality of care provided to Medicare beneficiaries throughout their entire SNF stay. Furthermore, the measure would align with the Care Coordination domain of the Meaningful Measures 2.0 Framework.

We examined the relationship between long-stay hospitalization rates and other measures of quality from CMS' Five-Star Quality Rating System

[275] *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report,* which is available on the SNF Quality Reporting Program Measures and Technical Information web page at *https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[276] 2022 Measures Under Consideration Spreadsheet available at *https://mmshub.cms.gov/sites/default/files/2022-MUC-List.xlsx.*

[277] Ouslander, JG, Lamb, G, Perloe, M, Givens, JH, Kluge, L, Rutland, T, Atherly, A, & Saliba, D (2010). Potentially avoidable hospitalizations of nursing home residents: frequency, causes, and costs. Journal of the American Geriatrics Society, 58(4), 627–635. *https://doi.org/10.1111/j.1532-5415.2010.02768.x.*

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[280] Feng, Z, Ingber, MJ, Segelman, M, Zheng, NT, Wang, JM, Vadnais, A, . . . & Khatutsky, G (2018). Nursing facilities can reduce avoidable hospitalizations without increasing mortality risk for residents. Health Affairs, 37(10), 1640–1646.

[281] Data is pulled from the public facing scorecard in 2020, available at *https://www.medicaid.gov/state-overviews/scorecard/hospitalizations-per-1000-long-stay-nursing-home-days/index.html.*

[282] Data is pulled from the public facing scorecard in 2020, available at *https://www.medicaid.gov/state-overviews/scorecard/hospitalizations-per-1000-long-stay-nursing-home-days/index.html.*

using data from the December 2019 Nursing Home Compare update. Analyses showed that facilities with lower hospitalization rates tend to perform better on other dimensions of quality such as health inspection survey results, staffing level, other quality measures, and overall ratings.

Although the Long Stay Hospitalization measure is a long-stay measure, we believe that including a long-stay measure in the SNF VBP Program is appropriate because it would better capture the quality of care provided to the entirety of the population that resides in facilities that are dually certified as SNFs and nursing facilities, including long-stay residents who continue to receive Medicare coverage for certain services provided by nursing facilities. We discussed the potential to include long stay measures in the SNF VBP Program in the FY 2022 SNF PPS final rule Summary of Comments Received on Potential Future Measures for the SNF VBP Program (86 FR 42507 through 42510). Specifically, we stated that the majority of long-stay residents are Medicare beneficiaries, regardless of whether they are in a Medicare Part A SNF stay, because they are enrolled in Medicare Part B and receive Medicare coverage of certain services provided by long-term care facilities even if they are a long-stay resident. We did not receive any negative comments on inclusion of this specific Long Stay Hospitalization measure or long-stay measures generally in the Program in response to the request for comment.

(2) Overview of Measure

The Long Stay Hospitalization measure calculates the number of unplanned inpatient admissions to an acute care hospital or critical access hospital or outpatient observation stays that occurred among long-stay residents per 1,000 long stay resident days using 1 year of Medicare fee-for-service (FFS) claims data. A long-stay day is defined as any day after a resident's one-hundredth cumulative day in the nursing home or the beginning of the 12-month target period (whichever is later) and until the day of discharge, the day of death, or the end of the 12-month target period (whichever is earlier). We are proposing to risk adjust this measure, as we explain in more detail below.

(a) Measure Applications Partnership (MAP) Review

We included the Long Stay Hospitalization measure in the publicly available ''2022 Measures Under Consideration List.'' [283] The MAP offered conditional support of the Long Stay Hospitalization measure for rulemaking, contingent upon endorsement by the consensus-based entity, noting that the measure would add value to the Program because unplanned hospitalizations are disruptive and burdensome to long-stay residents. We refer readers to the final 2022–2023 MAP recommendations available at *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

(3) Data Sources

The Long Stay Hospitalization measure is calculated using Medicare fee-for-service (FFS) claims data. We use the inpatient hospital claims data to determine the hospital admission, outpatient hospital claims data to determine the outpatient observation stay, and items from the Minimum Data Set for building resident stays and for risk-adjustment.

(4) Inclusion and Exclusion Criteria

All Medicare beneficiaries enrolled in both Part A and Part B are included. The measure excludes any resident enrolled in Medicare managed care during any portion of the resident's stay. The measure also excludes all days and any hospital admissions during which the resident was enrolled in hospice.

The measure does not count days prior to a resident's 101st cumulative day, which is when the resident meets long-stay criteria. Furthermore, we do not include any long-stay days prior to the beginning of the applicable performance period. For example, if a resident becomes a long-stay resident on September 25, 2024, and is discharged on October 5, 2024, we would only count 5 days in the denominator during the performance period for the FY 2027 program year.

Any days a resident was not in the facility for any reason would not be counted in the denominator, defined as the total observed number of long stay days at the facility. This means we do not count in the denominator any days the resident is admitted to another type of inpatient facility, or days temporarily residing in the community, so long as the NF with beds that are also certified as SNF beds submits an MDS discharge assessment for the temporary discharge. For example, if a patient became long-stay resident on December 20, but stayed with family on December 24 and December 25 but returned to the facility on December 26, we would not count those two days (24 and 25) in the denominator because the NF with beds that are also certified as SNF beds completed an MDS discharge assessment. We would also not count the days when a resident was admitted to a hospital, and therefore, is not residing at the facility in the denominator.

We would not count an observed hospitalization of a resident, the numerator count, if the hospitalization occurred while the resident was not in the facility and had a completed MDS discharge assessment for the temporary discharge. In the example in the prior paragraph, if the resident was admitted to the hospital on December 25, during which they were residing with family with a completed MDS temporary discharge assessment, the admission would not be counted as a hospitalization for the NF with beds that are also certified as SNF beds (in the numerator). If, however, the resident returned to the NF with beds that are also certified as SNF beds on December 26 and was admitted to the hospital on December 27, then it would count as a hospitalization (in the numerator).

If a resident spends 31 or more days in a row residing outside the NF with beds that are also certified as SNF beds, which could be in another facility or in the community, we would consider the resident discharged and they would no longer meet long-stay status. If a resident is discharged and then admitted to the same facility within 30 days, we would consider the resident still in a long-stay status, and we would count the days in this admission in the measure denominator.

The measure numerator includes all admissions to an acute care hospital or critical access hospital, for an inpatient or outpatient observation stay, that occur while the resident meets the long-stay status criteria. Observation stays are included in the numerator regardless of diagnosis. Planned inpatient admissions are not counted in the numerator since they are unrelated to the quality of care at the facility. Hospitalizations are classified as planned or unplanned using the same version of CMS' Planned Readmissions Algorithm that is used to calculate the percentage of short-stay residents who were re-hospitalized after a nursing home admission in the Nursing Home Compare Five-Star Rating system. The algorithm identifies planned admission using the principal discharge diagnosis category and all procedure codes listed on inpatient claims, coded using the AHRQ Clinical Classification System (CCS) software.

[283] 2022 Measures Under Consideration Spreadsheet available at *https://mmshub.cms.gov/sites/default/files/2022-MUC-List.xlsx.*

(5) Risk Adjustment

The risk adjustment model used for this measure is a negative binomial regression. Specifically, we are proposing to risk adjust the observed number of hospitalizations after the resident met the long-stay status to determine the expected number of hospitalizations for each long-stay resident given the resident's clinical and demographic profile. The goal of risk adjustment is to account for differences across facilities in medical acuity, functional impairment, and frailty of the long-stay residents but not factors related to the quality of care provided by the facility. The data for the risk adjustment model are derived from Medicare inpatient claims data prior to the day the resident became a long-stay resident and from the most recent quarterly or comprehensive MDS assessment within 120 days prior to the day the resident became a long-stay resident.

The risk adjustment variables derived from the claims-based data include age, sex, number of hospitalizations in the 365 days before the day the resident became a long-stay resident or beginning of the 1-year measurement period (whichever is later), and an outcome-specific comorbidity index. The MDS-based covariates span multiple domains including functional status, clinical conditions, clinical treatments, and clinical diagnoses.

We refer readers to the measure specifications for additional details on the risk-adjustment model for this measure available at *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/Downloads/Nursing-Home-Compare-Claims-based-Measures-Technical-Specifications-April-2019.pdf.*

(6) Measure Calculation

To get the risk adjusted rate (risk standardized rate), we take the observed Long Stay Hospitalization rate divided by the expected Long Stay Hospitalization rate, multiplied by the national Long Stay Hospitalization rate, as shown by the following formula:

$$Risk\ Standardized\ Rate = \left(\frac{Observed\ Rate}{Expected\ Rate}\right) \times National\ Rate$$

The observed Long Stay Hospitalization rate is the actual number of hospital admissions or observation stays that met the inclusion criteria discussed in section VII.B.4.e.(4) of this proposed rule divided by the actual total number of long-stay days that met the inclusion criteria discussed in section VII.B.4.e.(4) of this proposed rule divided by 1,000 days. The observed rate is shown by the following formula:

$$Observed\ Rate = \frac{Observed\ Number\ of\ Hospitalizations}{Observed\ Number\ of\ Long\ Stay\ \ Days/1{,}000}$$

The expected Long Stay Hospitalization rate is the expected number of hospital admission or observation stays that were calculated using the risk adjustment methodology discussed in section VII.B.4.e.(5) of this proposed rule, divided by the actual total number of long-stay days that met the inclusion criteria discussed in section VII.B.4.e.(4) of this proposed rule divided by 1,000 days. The expected Long Stay Hospitalization rate is shown by the following formula:

$$Expected\ Rate = \frac{Predicted\ Number\ of\ Hospitalizations}{Observed\ Number\ of\ Long\ Stay\ Days\ at\ Facility/1{,}000}$$

The national Long Stay Hospitalization rate is the total number of inpatient hospital admission or observation stays meeting the numerator criteria, divided by the total number of all long stay days that met the denominator criteria divided by 1,000. The national Long Stay Hospitalization rate is shown by the following formula:

$$National\ Rate = \frac{Number\ of\ Long\ Stay\ Hospitalizations}{Number\ of Long\ Stay\ Days/1{,}000}$$

We refer readers to the measure specification for additional details for this measure calculation available at *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/Downloads/Nursing-Home-Compare-Claims-based-Measures-Technical-Specifications-April-2019.pdf.*

We invite public comment on our proposal to adopt the Number of Hospitalizations per 1,000 Long-Stay Resident Days measure beginning with the FY 2027 SNF VBP program year.

f. Proposed Scoring of SNF Performance on the Nursing Staff Turnover, Falls With Major Injury (Long-Stay), and Long Stay Hospitalization Measures

(1) Background

In the FY 2017 SNF PPS final rule (81 FR 52000 through 52001), we finalized a policy to invert SNFRM measure rates such that a higher measure rate reflects better performance on the SNFRM. In that final rule, we also stated our belief that this inversion is important for incentivizing improvement in a clear and understandable manner because a ''lower is better'' rate could cause confusion among SNFs and the public. In the FY 2023 SNF PPS final rule (87 FR 47568), we applied this policy to the

SNF HAI measure such that a higher measure rate reflects better performance on the SNF HAI measure. We also stated our intent to apply this inversion scoring policy to all measures in the Program for which the calculation produces a ''lower is better'' measure rate. We continue to believe that inverting measure rates such that a higher measure rate reflects better performance on a measure is important for incentivizing improvement in a clear and understandable manner.

This measure rate inversion scoring policy does not change the measure specifications or the calculation method. We use this measure rate inversion as part of the scoring methodology under the SNF VBP Program. The measure rate inversion is part of the methodology we use to generate measure scores, and resulting SNF Performance Scores, that are clear and understandable for SNFs and the public.

(2) Proposal To Invert the Nursing Staff Turnover, Falls With Major Injury (Long-Stay), and Long Stay Hospitalization Measures Rates for SNF VBP Program Scoring Purposes

In sections VII.B.4.b., VII.B.4.c., and VII.B.4.e. of this proposed rule, we stated that a lower measure rate for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and Long Stay Hospitalization measures indicate better performance on those measures. Therefore, we are proposing to apply our measure rate inversion scoring policy to these measures. We are proposing to calculate the score for these measures for the SNF VBP Program by inverting the measure rates using the calculations shown in Table 18. We are not proposing to apply this policy to the DC Function measure because that measure, as currently specified and calculated, produces a ''higher is better'' measure rate.

TABLE 18: Proposed Measure Inversion Calculation Formulas

Measure	Inversion Calculation Formula
Nursing Staff Turnover measure	$Nursing\ Staff\ Turnover\ Inverted\ Rate = 1 - Nursing\ Staff\ Turnover\ Rate$
Falls with Major Injury (Long-Stay) measure	$Falls\ with\ Major\ Injury\ (Long\ Stay)\ Inverted\ Rate = 1 - \left(\frac{Facility's\ Falls\ with\ Major\ Injury\ (Long\ Stay)\ Rate}{100}\right)$
Long Stay Hospitalization measure	$Long\ Stay\ Hospitalization\ Inverted\ Rate = 1 - \left(\frac{Long\ Stay\ Hospitalization\ Risk\ Standardize\ Rate}{1{,}000}\right)$

We believe that inverting the measure rates for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and Long Stay Hospitalization measure is important for incentivizing improvement in a clear and understandable manner, and for ensuring a consistent message that a higher measure rate reflects better performance on the measures.

We invite public comment on our proposal to invert the measure rates for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and Long Stay Hospitalization measures for the purposes of scoring under the SNF VBP Program.

g. Confidential Feedback Reports and Public Reporting for Proposed Quality Measures

Our confidential feedback reports and public reporting policies are codified at § 413.338(f) of our regulations. In the FY 2023 SNF PPS final rule (87 FR 47591 through 47592), we revised our regulations such that the confidential feedback reports and public reporting policies apply to each measure specified for a fiscal year, which includes the proposed Nursing Staff Turnover measure beginning with the FY 2026 program year, and the proposed Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures beginning with the FY 2027 program year.

C. SNF VBP Performance Periods and Baseline Proposals

1. Background

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46422) for a discussion of our considerations for determining performance periods and baseline periods under the SNF VBP Program. In the FY 2019 SNF PPS final rule (83 FR 39277 through 39278), we adopted a policy whereby we will automatically adopt the performance period and baseline period for a SNF VBP program year by advancing the performance period and baseline period by 1 year from the previous program year. In the FY 2023 SNF PPS final rule (87 FR 47580 through 47583), we adopted performance periods and baseline periods for three new quality measures beginning with the FY 2026 program year: (1) SNF HAI measure, (2) Total Nurse Staffing measure, and (3) DTC PAC SNF measure, and finalized the application of our policy to automatically adopt performance periods and baseline periods for subsequent program years to those new measures.

2. SNFRM Performance and Baseline Periods for the FY 2024 SNF VBP Program Year

Under the policy finalized in the FY 2019 SNF PPS final rule (83 FR 39277 through 39278), the baseline period for the SNFRM for the FY 2024 program year would be FY 2020 and the performance period for the SNFRM for the FY 2024 program year would be FY 2022. However, in the FY 2022 SNF PPS final rule (85 FR 42512 through 42513), we updated the FY 2024 baseline period for the SNFRM to FY 2019 since the ECE we granted on March 22, 2020, due to the PHE for COVID–19, excepted qualifying claims for a 6-month period in FY 2020 (January 1, 2020 through June 30, 2020) from the calculation of the SNFRM.[284] [285] We refer readers to that final rule for additional discussion of our considerations for updating the FY 2024 baseline period for the SNFRM. Therefore, for the FY 2024 program

[284] CMS. (2020). Press Release: CMS Announces Relief for Clinicians, Providers, Hospitals, and Facilities Participating in Quality Reporting Programs in Response to COVID–19. *https://www.cms.gov/newsroom/press-releases/cms-announces-relief-clinicians-providers-hospitals-and-facilities-participating-quality-reporting.*

[285] CMS memorandum (2020) available at *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf.*

year, the baseline period for the SNFRM is FY 2019 and the performance period for the SNFRM is FY 2022.

3. Proposed Performance Periods and Baseline Periods for the Nursing Staff Turnover, Falls With Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization Measures

a. Proposed Performance Periods for the Nursing Staff Turnover, Falls With Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization Measures

In considering the appropriate performance periods for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures, we recognize that we must balance the length of the performance periods with our need to calculate valid and reliable performance scores and announce the resulting payment adjustments no later than 60 days prior to the program year involved, in accordance with section 1888(h)(7) of the Act. In addition, we refer readers to the FY 2017 SNF PPS final rule (81 FR 51998 through 51999) for a discussion of the factors we should consider when specifying performance periods for the SNF VBP Program, as well as our stated preference for 1-year performance periods. Based on these considerations, we believe that 1-year performance periods for these measures would be operationally feasible for the SNF VBP Program and would provide sufficiently accurate and reliable measure rates and resulting performance scores for the measures.

We also recognize that we must balance our desire to specify performance periods for a fiscal year as close to the fiscal year's start date as possible to ensure clear connections between quality measurement and value-based payment with our need to announce the net results of the Program's adjustments to Medicare payments not later than 60 days prior to the fiscal year involved, in accordance with section 1888(h)(7) of the Act. In considering these constraints, and in alignment with other SNF VBP measures, we believe that performance periods that occur 2 fiscal years prior to the applicable fiscal program year is most appropriate for these measures.

For these reasons, we are proposing to adopt the following performance periods:

- FY 2024 (October 1, 2023 through September 30, 2024) as the performance period for the Nursing Staff Turnover measure for the FY 2026 SNF VBP program year.
- FY 2025 (October 1, 2024, through September 30, 2025) as the performance period for the Falls with Major Injury (Long-Stay) measure for the FY 2027 SNF VBP program year.
- FY 2025 (October 1, 2024 through September 30, 2025) as the performance period for the DC Function measure for the FY 2027 SNF VBP program year.
- FY 2025 (October 1, 2024 through September 30, 2025) as the performance period for the Long Stay Hospitalization measure for the FY 2027 SNF VBP program year.

In alignment with the previously adopted SNF VBP measures, we are also proposing that, for these measures, we would automatically adopt the performance period for a SNF VBP program year by advancing the beginning of the performance period by 1 year from the previous program year.

We invite public comment on our proposals to adopt performance periods for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures.

b. Proposed Baseline Periods for the Nursing Staff Turnover, Falls With Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization Measures

In the FY 2016 SNF PPS final rule (80 FR 46422) we discussed that, as with other Medicare quality programs, we generally adopt baseline periods for a fiscal year that occurs prior to the performance periods for that fiscal year to establish measure performance standards. We also discussed our intent to adopt baseline periods that are as close as possible in duration as performance periods for a fiscal year, as well as our intent to seasonally align baseline periods with performance periods to avoid any effects on quality measurement that may result from tracking SNF performance during different times in a year. Therefore, to align with the proposed performance period length for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures, we are proposing to adopt 1-year baseline periods for those measures.

We also recognize that we are required, under section 1888(h)(3)(C) of the Act, to calculate and announce performance standards no later than 60 days prior to the start of performance periods. Therefore, we believe that baseline periods that occur 4 fiscal years prior to the applicable fiscal program year, and 2 fiscal years prior to the performance periods, is most appropriate for these measures and would provide sufficient time to calculate and announce performance standards prior to the start of the performance periods.

For these reasons, we are proposing to adopt the following baseline periods:

- FY 2022 (October 1, 2021 through September 30, 2022) as the baseline period for the Nursing Staff Turnover measure for the FY 2026 SNF VBP program year.
- FY 2023 (October 1, 2022 through September 30, 2023) as the baseline period for the Falls with Major Injury (Long-Stay) measure for the FY 2027 SNF VBP program year.
- FY 2023 (October 1, 2022 through September 30, 2023) as the baseline period for the Discharge Function measure for the FY 2027 SNF VBP program year.
- FY 2023 (October 1, 2022 through September 30, 2023) as the baseline period for the Long Stay Hospitalization measure for the FY 2027 SNF VBP program year.

In alignment with the previously adopted SNF VBP measures, we are also proposing that, for these measures, we would automatically adopt the baseline period for a SNF VBP program year by advancing the beginning of the baseline period by 1 year from the previous program year.

We invite public comment on our proposals to adopt baseline periods for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures.

4. Proposed Performance Periods and Baseline Periods for the SNF WS PPR Measure Beginning With the FY 2028 SNF VBP Program Year

a. Proposed Performance Period for the SNF WS PPR Measure Beginning With the FY 2028 SNF VBP Program Year

The proposed SNF WS PPR measure is calculated using 2 consecutive years of Medicare FFS claims data, and therefore, we are proposing to adopt a 2-year performance period for this measure. During the re-specification process for the SNF WS PPR measure, we determined that using 2 years of data improved the measure reliability. Specifically, the intraclass correlation coefficient (with the Spearman-Brown correction applied) for the SNF WS PPR measure was 0.71 compared to 0.56 for the SNFRM. We refer readers to section VII.B.2. of this proposed rule and the SNF WS PPR measure technical specifications, available at *https://www.cms.gov/files/document/snfvbp-snfwsppr-draft-techical-specification.pdf,* for additional details.

Accordingly, we are proposing to adopt October 1, 2024 through

September 30, 2026 (FY 2025 and FY 2026) as the performance period for the SNF WS PPR measure for the FY 2028 SNF VBP program year. We believe that using October 1, 2024 through September 30, 2026 (FY 2025 and FY 2026) as the performance period for the FY 2028 program year best balances our need for sufficient data to calculate valid and reliable performance scores with our requirement under section 1888(h)(7) of the Act to announce the resulting payment adjustments no later than 60 days prior to the program year involved.

In alignment with the previously adopted SNF VBP measures, we are also proposing that for the SNF WS PPR measure, we would automatically adopt the performance period for a SNF VBP program year by advancing the beginning of the performance period by 1 year from the previous program year.

We invite public comment on our proposals related to the performance periods for the SNF WS PPR measure beginning with the FY 2028 program year.

b. Proposed Baseline Period for the SNF WS PPR Measure Beginning With the FY 2028 SNF VBP Program Year

Our policy is to generally adopt a baseline period for a fiscal year that occurs prior to the performance period for that fiscal year in order to establish a measure's performance standards. We also generally adopt baseline periods that are as close as possible in duration as the performance period for a fiscal year, as well as seasonally aligning the baseline periods with performance periods to avoid any effects on quality measurement that may result from tracking SNF performance during different times in a year. Therefore, to align with the proposed performance period length for the SNF WS PPR measure, we are proposing a 2-year baseline period for this measure.

We also recognize that we are required, under section 1888(h)(3)(C) of the Act, to calculate and announce performance standards no later than 60 days prior to the start of the performance period. Therefore, we believe that a baseline period that begins 6 fiscal years prior to the applicable fiscal program year, and 3 fiscal years prior to the applicable performance period, is most appropriate for the SNF WS PPR measure and would provide sufficient time to calculate and announce performance standards prior to the start of the performance period. For these reasons, we are proposing to adopt October 1, 2021 through September 30, 2023 (FY 2022 and FY 2023) as the baseline period for the SNF WS PPR measure for the FY 2028 SNF VBP program year.

In alignment with the previously adopted SNF VBP measures, we are also proposing that for the SNF WS PPR measure, we would automatically adopt the baseline period for a SNF VBP program year by advancing the beginning of the baseline period by 1 year from the previous program year.

We invite public comment on our proposals related to the baseline period for the SNF WS PPR measure beginning with FY 2028 SNF VBP program year.

c. SNFRM and SNF WS PPR Performance Period and Baseline Period Considerations

As discussed in the previous section, we are proposing that the first performance period for the SNF WS PPR measure would be October 1, 2024 through September 30, 2026 (FY 2025 and FY 2026), and the first baseline period would be October 1, 2021 through September 30, 2023 (FY 2022 and FY 2023). In section VII.B.3. of this proposed rule, we are proposing to replace the SNFRM with the SNF WS PPR beginning with the FY 2028 program year. Therefore, the last program year that would include the SNFRM would be FY 2027. The last performance period for the SNFRM would be FY 2025 and the last baseline period would be FY 2023. We note that because the SNF WS PPR measure is a 2-year measure and the SNFRM is a 1-year measure, the data used to calculate the baseline and performance period for the SNF WS PPR measure for the FY 2028 program year would include data that is also used to calculate the baseline and performance period for the SNFRM for the FY 2027 program year. We believe the overlap is necessary to ensure that we can transition from the SNFRM to the SNF WS PPR seamlessly, without any gaps in the use of either measure.

D. SNF VBP Performance Standards

1. Background

We refer readers to the FY 2017 SNF PPS final rule (81 FR 51995 through 51998) for a summary of the statutory provisions governing performance standards under the SNF VBP Program and our finalized performance standards policy. In the FY 2019 SNF PPS final rule (83 FR 39276 through 39277), we also adopted a policy allowing us to correct the numerical values of the performance standards. Further, in the FY 2023 SNF PPS final rule (87 FR 47583 through 47584), we amended the definition of ''Performance Standards,'' redesignated that definition as § 413.338(a)(12), and added additional detail for our performance standards correction policy at § 413.338(d)(6).

We adopted the final numerical values for the FY 2024 performance standards in the FY 2022 SNF PPS final rule (86 FR 42513) and adopted the final numerical values for the FY 2025 performance standards in the FY 2023 SNF PPS final rule (87 FR 47584).

We are not proposing any changes to these performance standards policies in this proposed rule.

2. Estimated Performance Standards for the FY 2026 Program Year

In the FY 2023 SNF PPS final rule (87 FR 47564 through 47576), we adopted two new quality measures for the FY 2026 program year: SNF HAI and Total Nurse Staffing measures. In section VII.B.4.b. of this proposed rule, we are proposing to adopt the Nursing Staff Turnover measure beginning with the FY 2026 program year. We are also proposing that the performance period for the Nursing Staff Turnover measure for the FY 2026 program year would be FY 2024 (October 1, 2023 through September 30, 2024). Therefore, the FY 2026 program year would consist of four measures (SNFRM, SNF HAI, Total Nurse Staffing, and Nursing Staff Turnover measures).

To meet the requirements at section 1888(h)(3)(C) of the Act, we are providing estimated numerical performance standards for the FY 2026 program year for the three previously adopted measures (SNFRM, SNF HAI, and Total Nurse Staffing measures), as well as the proposed Nursing Staff Turnover measure. In accordance with our previously finalized methodology for calculating performance standards (81 FR 51996 through 51998), the estimated numerical values for the FY 2026 program year performance standards are shown in Table 19.

TABLE 19—ESTIMATED FY 2026 SNF VBP PROGRAM PERFORMANCE STANDARDS

Measure short name	Achievement threshold	Benchmark
SNFRM	0.78526	0.82818
SNF HAI Measure	0.91468	0.94766
Total Nurse Staffing Measure	3.33289	5.98339
Nursing Staff Turnover Measure	0.37500	0.72925

3. Estimated Performance Standards for the DTC PAC SNF Measure for the FY 2027 Program Year

In the FY 2023 SNF PPS final rule (87 FR 47576 through 47580), we adopted the DTC PAC SNF measure beginning with the FY 2027 program year. In that final rule (87 FR 47582 through 47583), we also finalized that the baseline and performance periods for the DTC PAC SNF measures would be 2 consecutive years, and that FY 2024 and FY 2025 would be the performance period for the DTC PAC SNF measure for the FY 2027 program year.

To meet the requirements at section 1888(h)(3)(C) of Act, we are providing estimated numerical performance standards for the DTC PAC SNF measure for the FY 2027 program year. In accordance with our previously finalized methodology for calculating performance standards (81 FR 51996 through 51998), the estimated numerical values for the DTC PAC SNF measure for the FY 2027 program year performance standards are shown in Table 20.

We note that we will provide the estimated numerical performance standard values for the remaining measures applicable in the FY 2027 program year in the FY 2025 SNF PPS proposed rule.

TABLE 20—ESTIMATED FY 2027 SNF VBP PROGRAM PERFORMANCE STANDARDS FOR THE DTC PAC SNF MEASURE

Measure short name	Achievement threshold	Benchmark
DTC PAC SNF Measure	0.44087	0.68956

E. SNF VBP Performance Scoring Methodology

1. Background

Our performance scoring policies are codified at § 413.338(d) and (e) of our regulations. We also refer readers to the following prior final rules for detailed background on the scoring methodology for the SNF VBP Program:

- In the FY 2017 SNF PPS final rule (81 FR 52000 through 52005), we finalized several scoring methodology policies, including a policy to use the higher of a SNF's achievement and improvement scores as that SNF's performance score for a given program year.
- In the FY 2018 SNF PPS final rule (82 FR 36614 through 36616), we finalized: (1) a rounding policy, (2) a logistic exchange function, (3) a 60 percent payback percentage, and (4) a SNF performance ranking policy.
- In the FY 2019 SNF PPS final rule (83 FR 39278 through 39281), we finalized several scoring methodology policies, including a scoring policy for SNFs without sufficient baseline period data and an extraordinary circumstances exception policy.
- In the FY 2022 SNF PPS final rule (86 FR 42513 through 42515), we finalized a special scoring and payment policy for the FY 2022 SNF VBP Program due to the impact of the PHE for COVID–19.
- In the FY 2023 SNF PPS final rule (87 FR 47584 through 47590), we finalized a special scoring and payment policy for the FY 2023 SNF VBP Program due to the continued impact of the PHE for COVID–19. In that final rule, we also finalized several scoring methodology policies to accommodate the addition of new measures to the Program, including: (1) case minimum and measure minimum policies, including case minimums for the SNFRM, SNF HAI, Total Nurse Staffing, and DTC PAC SNF measures, (2) updates to the scoring policy for SNFs without sufficient baseline period data, (3) removal of the low-volume adjustment policy, and (4) a measure-level and normalization scoring policy to replace the previously adopted scoring methodology policies beginning with the FY 2026 program year.

2. Proposed Case Minimum and Measure Minimum Policies

a. Background

We refer readers to the FY 2023 SNF PPS final rule (87 FR 47585 through 47587) for a detailed description of our considerations for adopting case minimums and measure minimums. Our case minimum and measure minimum policies are also codified at § 413.338(b) of our regulations.

As discussed in section VII.B.4. of this proposed rule, we are proposing to adopt the Nursing Staff Turnover measure beginning with the FY 2026 program year; the Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures beginning with the FY 2027 program year; and the SNF WS PPR measure beginning with the FY 2028 program year. Therefore, we are also proposing to adopt case minimums for the new measures and proposing to update the previously finalized measure minimum for the FY 2027 program year. Although the addition of the Nursing Staff Turnover measure beginning with FY 2026 would increase the total number of measures for that program year, we believe that the previously finalized measure minimum of two measures remains sufficient for that program year.

b. Proposed Case Minimums During a Performance Period for the Nursing Staff Turnover, Falls With Major Injury (Long-Stay), DC Function, Long Stay Hospitalization, and SNF WS PPR Measures

In this proposed rule, we are proposing to adopt the Nursing Staff Turnover measure beginning with the FY 2026 program year; the Falls with Major Injury (Long-Stay), Long Stay Hospitalization, and DC Function measures beginning with the FY 2027 program year; and the SNF WS PPR measure beginning with the FY 2028 program year. Therefore, to meet the requirements at section 1888(h)(1)(C)(i)

of the Act, we are concurrently proposing to adopt case minimums for those proposed measures.

For the Nursing Staff Turnover measure, we are proposing that SNFs must have a minimum of 1 eligible stay during the 1-year performance period and at least 5 eligible nursing staff (RNs, LPNs, and nurse aides) during the 3 quarters of PBJ data included in the measure denominator. SNFs must meet both of these requirements in order to be eligible to receive a score on the measure for the applicable program year. We believe this case minimum requirement is appropriate and consistent with the findings of measure testing analyses and the measure specifications. For example, using FY 2021 data, we estimated that 80 percent of SNFs met the 5-eligible nursing staff minimum. In addition, we note that the 1-eligible stay and 5-eligible nursing staff minimums were determined to be appropriate for publicly reporting this measure on the *Care Compare* website. We believe these case minimum standards for public reporting purposes are also appropriate standards for establishing a case minimum for this measure under the SNF VBP Program. We also believe this case minimum requirement supports our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure.

For the Falls with Major Injury (Long-Stay) measure, we are proposing that SNFs must have a minimum of 20 residents in the measure denominator during the 1-year performance period to be eligible to receive a score on the measure for the applicable fiscal program year. We believe this case minimum requirement is appropriate and consistent with the findings of measure testing analyses. For example, using FY 2021 data, we estimated that nearly 96 percent of SNFs met the 20-resident minimum. In addition, testing results indicated that a 20-resident minimum produced moderately reliable measure rates for the purposes of public reporting.[286] We believe these case minimum standards for public reporting purposes are also appropriate standards for establishing a case minimum for this measure under the SNF VBP Program. We also believe this case minimum requirement supports our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure.

For the Long Stay Hospitalization measure, we are proposing that SNFs must have a minimum of 20 eligible stays during the 1-year performance period to be eligible to receive a score on the measures for the applicable fiscal program year. We believe this case minimum requirement is appropriate and consistent with the findings of measure testing analyses. For example, using CY 2021 data, we estimated that approximately 80 percent of SNFs met the 20-eligible stay minimum. In addition, we note that the 20-eligible stay minimum was determined to be appropriate for publicly reporting this measure under the Five-Star Quality Rating System. We believe these case minimum standards for public reporting purposes are also appropriate standards for establishing a case minimum for this measure under the SNF VBP Program. We also believe this case minimum requirement supports our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure.

For the DC Function measure, we are proposing that SNFs must have a minimum of 20 eligible stays during the 1-year performance period in order to be eligible to receive a score on the measure for the applicable fiscal program year. We believe this case minimum requirement is appropriate and consistent with the findings of measure testing analyses. For example, testing results, which used FY 2019 data, found that nearly 84 percent of SNFs met the 20-eligible stay minimum.[287] In addition, those testing results indicated that a 20-eligible stay minimum produced sufficiently reliable measure rates. We believe this case minimum requirement supports our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure.

For the SNF WS PPR measure, we are proposing that SNFs must have a minimum of 25 eligible stays during the 2-year performance period in order to be eligible to receive a score on the measure for the applicable fiscal program year. We believe this case minimum requirement is appropriate and consistent with the findings of measure testing analyses. For example, using FY 2020 through FY 2021 data, we estimated that nearly 91 percent of non-swing bed SNFs met the 25-eligible stay minimum. In addition, testing results indicated that a 25-eligible stay minimum produced sufficiently reliable measure rates.[288] We believe this case minimum requirement supports our objective, which is to establish case minimums that appropriately balance quality measure reliability with our continuing desire to score as many SNFs as possible on this measure.

We invite public comment on our proposal to adopt case minimums for the Nursing Staff Turnover, Falls with Major Injury (Long-Stay), Long Stay Hospitalization, DC Function, and SNF WS PPR measures.

c. FY 2026 Measure Minimum

In the FY 2023 SNF PPS final rule (87 FR 47587), we finalized the measure minimum for the FY 2026 program year. Specifically, we finalized that for the FY 2026 program year, SNFs must report the minimum number of cases for two of the three measures during the applicable performance period to receive a SNF Performance Score and value-based incentive payment.

In this proposed rule, we are proposing to adopt an additional measure for the FY 2026 program year: Nursing Staff Turnover measure, which means the FY 2026 SNF VBP measure set would consist of a total of four measures. Although we are proposing the Nursing Staff Turnover measure beginning with the FY 2026 program year, which would increase the total number of measures applicable in FY 2026, we believe that our previously finalized minimum of two measures for FY 2026 remains sufficient because if we required a minimum of three or four measures, all swing-bed facilities would be excluded from the Program. Two of the four measures that would be included in the FY 2026 program year are PBJ-based measures. Since swing-bed facilities do not submit PBJ data, those facilities would not meet the measure minimum of reporting three or four measures to the Program. Therefore, to ensure swing-bed facilities continue to have the opportunity to be included in the Program, we are not proposing to update the measure minimum for the FY 2026 program year. SNFs must report the minimum number of cases for two of the four measures during the performance period to be included in the FY 2026 program year.

[286] *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

[287] *Discharge Function Score for Skilled Nursing Facilities (SNFs) Technical Report,* which is available on the SNF Quality Reporting Program Measures and Technical Information web page at *https://www.cms.gov/files/document/snf-discharge-function-score-technical-report-february-2023.pdf.*

[288] *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

d. Proposal To Update the FY 2027 Measure Minimum

In the FY 2023 SNF PPS final rule (87 FR 47587), we finalized the measure minimum for the FY 2027 program year. Specifically, we finalized that for the FY 2027 program year, SNFs must report the minimum number of cases for three of the four measures during the performance period to receive a SNF Performance Score and value-based incentive payment.

In addition to our proposal to adopt the Nursing Staff Turnover measure beginning with the FY 2026 program year, we are proposing to adopt three additional measures beginning with the FY 2027 program year: Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures. Therefore, the FY 2027 SNF VBP measure set would consist of a total of eight measures. Given the proposed changes to the number of measures applicable in FY 2027, we are also proposing to update the measure minimum for the FY 2027 program year.

Specifically, we are proposing that for the FY 2027 program year, SNFs must report the minimum number of cases for four of the eight measures during the performance period to receive a SNF Performance Score and value-based incentive payment. SNFs that do not meet these minimum requirements would be excluded from the FY 2027 program and would receive their full Federal per diem rate for that fiscal year. Under these proposed minimum requirements, we estimate that approximately 8 percent of SNFs would be excluded from the FY 2027 Program. We found that increasing the measure minimum requirement from three to four measures out of a total of eight measures would cause the number of SNFs excluded from the Program to increase from approximately 3 percent to 8 percent of SNFs for FY 2027. However, the measure minimum requirement that we finalized for FY 2027 in the FY 2023 SNF PPS final rule (87 FR 47587), which was based on a measure set of four measures, excluded approximately 16 percent of SNFs. We also found that increasing the measure minimum requirement would have little effect on the percentage of SNFs that would receive a net-positive incentive payment multiplier (IPM) of the overall distribution of IPMs. Based on these testing results, we believe the proposed update to the measure minimum for FY 2027 aligns with our desire to ensure that as many SNFs as possible can receive a reliable SNF Performance Score and value-based incentive payment.

We invite public comment on our proposal to update the measure minimum for the FY 2027 SNF VBP program year.

3. Proposed Application of the SNF VBP Scoring Methodology to Proposed Measures

a. Background

In the FY 2023 SNF PPS final rule (87 FR 47588 through 47590), we finalized several updates to the scoring methodology for the SNF VBP Program beginning with the FY 2026 program year. We finalized a measure-level scoring policy such that SNFs have the opportunity to earn a maximum of 10 points on each measure for achievement, and a maximum of nine points on each measure for improvement. The higher of these two scores will then be the SNF's score for each measure and used to calculate the SNF Performance Score, except if the SNF does not meet the case minimum for a given measure during the applicable baseline period, in which case that SNF will only be scored on achievement for that measure. We also finalized a normalization policy such that we will calculate a raw point total for each SNF by adding up that SNF's score on each of the measures applicable for the given program year. We will then normalize the raw point totals such that the SNF Performance Score is reflected on a 100-point scale.

In this proposed rule, we are proposing to adopt the Nursing Staff Turnover measure beginning with the FY 2026 program year; and the Falls with Major Injury (Long-Stay), Long Stay Hospitalization, and DC Function measures beginning with the FY 2027 program year. To accommodate those proposed measures in our scoring methodology, we are also proposing to adjust our scoring methodology for the FY 2026 and FY 2027 program years, which we discuss in the next section.

We also note that we are proposing to replace the SNFRM with the SNF WS PPR measure beginning with the FY 2028 program year, which would not affect the total number of measures applicable in the Program for FY 2028. We intend to address the FY 2028 performance scoring methodology in future rulemaking.

b. Proposed FY 2026 Performance Scoring

We are proposing to adopt the Nursing Staff Turnover measure beginning with the FY 2026 program year, and therefore, the FY 2026 program year measure set would include four measures (SNFRM, SNF HAI, Total Nurse Staffing, and Nursing Staff Turnover measures).

We are proposing to apply our previously finalized scoring methodology, which is codified at § 413.338(e) of our regulations, to the proposed Nursing Staff Turnover measure. Specifically, we would award up to 10 points based on achievement, and up to nine points based on improvement, so long as the SNF meets the case minimum for the measure. The higher of these two scores would be the SNF's score for the measure for FY 2026, except in the instance that the SNF does not meet the case minimum for the measure during the applicable baseline period, in which case that SNF would only be scored on achievement for the measure.

As previously finalized, we would then add the score for each of the four measures for which the SNF met the case minimum to get the raw point total. The maximum raw point total for the FY 2026 program year would be 40 points. We would then normalize each SNF's raw point total, based on the number of measures for which that SNF met the case minimum, to get a SNF Performance Score that is on a 100-point scale using our previously finalized normalization policy. We would only award a SNF Performance Score to SNFs that meet the measure minimum for FY 2026.

We invite public comment on our proposal to apply our previously finalized scoring methodology to the proposed Nursing Staff Turnover measure beginning with the FY 2026 SNF VBP program year.

c. Proposed FY 2027 Performance Scoring

We are proposing to adopt the Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures beginning with the FY 2027 program year, and therefore, the FY 2027 program year measure set would include eight measures.

Our current scoring methodology is codified at § 413.338(e) of our regulations. Under that scoring methodology, we award up to 10 points for each measure based on achievement, and up to nine points for each measure based on improvement, so long as the SNF meets the case minimum for a given measure. The higher of these two scores would be the SNF's score on that measure for FY 2027, except in the instance that the SNF does not meet the case minimum for a given measure during the applicable baseline period, in which case that SNF would only be scored on achievement for that measure. As previously finalized, we would then

sum the scores for each of the eight measures for which the SNF met the case minimum to get the raw measure point total. The maximum raw measure point total for the FY 2027 program year would be 80 points.

We are proposing to apply these elements of the scoring methodology to the proposed Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures. In addition, and as discussed further in section VII.E.4. of this proposed rule, we are proposing to adopt a Health Equity Adjustment in which eligible SNFs could earn a maximum of two points for each measure (including all previously finalized and newly proposed measures) if they are a top tier performing SNF, which we are proposing to define as a SNF whose score on the measure for the program year falls in the top third of performance (greater than or equal to the 66.67th percentile) on a given measure, and the SNF's resident population during the performance period that applies to the program year includes at least 20 percent of residents with dual eligibility status (DES). This combination of a SNF's performance and proportion of residents with DES would be used to determine a SNF's Health Equity Adjustment (HEA) bonus points. We would then add the total number of HEA bonus points to the normalized measure point total on a scale from 0 to 100, and that total would be the SNF Performance Score earned by the SNF for the program year. We would only award a SNF Performance Score to SNFs that meet the proposed measure minimum for FY 2027.

4. Proposal To Incorporate Health Equity Into the SNF VBP Program Scoring Methodology Beginning With the FY 2027 Program Year

a. Background

Significant and persistent inequities in health outcomes exist in the U.S. Belonging to a racial or ethnic minority group; living with a disability; being a member of the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) communities; living in a rural area; being a member of a religious minority; being near or below the poverty level; or being dually enrolled in Medicare and Medicaid, is often associated with worse health outcomes.[289] [290] [291] [292] [293] [294] [295] [296] [297]

Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, (January 20, 2021) defines ''equity'' as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, queer, [and intersex] (LGBTQ[I] +); [298] persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality'' (86 FR 7009). CMS defines ''health equity'' as the ''attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.'' [299]

Advancing health equity is a key pillar of CMS' strategic vision,[300] and we are working to advance health equity by designing, implementing, and operationalizing policies and programs aimed at identifying and reducing health disparities. This includes the CMS Mapping Medicare Disparities Tool,[301] the CMS Innovation Center's Accountable Health Communities Model,[302] the CMS Disparity Methods stratified reporting program,[303] the collection of standardized patient assessment data elements in the post-acute care setting,[304] and health equity program adjustments like the Medicare Shared Savings Program's recently adopted health equity adjustment for Accountable Care Organizations that report all-payer eCQMs/MIPS CQMs (87 FR 69838 through 69857). Further, the 2022–2032 CMS Framework for Health Equity outlines CMS' priorities to advance health equity, expand coverage, and improve health outcomes for the more than 170 million individuals supported by CMS programs.[305] We also recently updated the CMS National Quality Strategy (NQS), which includes advancing health equity as one of eight strategic goals.[306] As we continue to leverage our programs to improve quality of care, we note it is important to implement strategies that ''create aligned incentives that drive providers to improve health outcomes for all beneficiaries.'' [307]

Prioritizing the achievement of health equity is essential in the SNF VBP Program because disparities in SNFs appear to be widespread, from admissions to quality of care to nurse staffing and turnover.[308] [309] In the 2016

[289] Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income inequality and 30 day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. *British Medical Journal,* 346.

[290] Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and equity of care in U.S. hospitals. *New England Journal of Medicine,* 371(24):2298–2308.

[291] Polyakova, M., et al. (2021). Racial disparities in excess all-cause mortality during the early COVID–19 pandemic varied substantially across states. *Health Affairs,* 40(2): 307–316.

[292] Rural Health Research Gateway. (2018). Rural communities: age, income, and health status. *Rural Health Research Recap. https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-income-health-status-recap.pdf.*

[293] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[294] Vu, M. et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women, Journal of Women's Health 26(6) (2016) at 58; S.B.

[295] Nadimpalli, et al., The Association between Discrimination and the Health of Sikh Asian Indians Health Psychol. 2016 Apr; 35(4): 351–355.

[296] Poteat TC, Reisner SL, Miller M, Wirtz AL. (2020). COVID–19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. preprint. *medRxiv.* 2020;2020.07.21. 20159327. doi:10.1101/2020.07.21.20159327.

[297] Sorbero, ME, AM Kranz, KE Bouskill, R Ross, AI Palimaru, and A Meyer. 2018. Addressing social determinants of health needs of dually enrolled beneficiaries in Medicare Advantage plans: Findings from interviews and case studies. RAND Corporation. Available at *https://www.rand.org/pubs/research_reports/RR2634.html* (accessed December 8, 2022).

[298] We note that the original, cited definition only stipulates, ''LGBTQ+'', however, HHS and the White House now recognize individuals who are intersex/have intersex traits. Therefore, we have updated the term to reflect these changes.

[299] CMS Strategic Plan Pillar: Health Equity. (2022). *https://www.cms.gov/files/document/health-equity-fact-sheet.pdf.*

[300] CMS Strategic Vision. (2022). *https://www.cms.gov/cms-strategic-plan.*

[301] *https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH-Mapping-Medicare-Disparities.*

[302] *https://innovation.cms.gov/innovation-models/ahcm.*

[303] *https://qualitynet.cms.gov/inpatient/measures/disparity-methods.*

[304] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/-IMPACT-Act-Standardized-Patient-Assessment-Data-Elements.*

[305] CMS Framework for Health Equity (2022). *https://www.cms.gov/about-cms/agency-information/omh/health-equity-programs/cms-framework-for-health-equity.*

[306] CMS National Quality Strategy (2022). Centers for Medicare and Medicaid Services. *https://www.cms.gov/files/document/cms-national-quality-strategy-fact-sheet.pdf.*

[307] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Second Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2020. *https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicares-value-based-purchasing-programs.*

[308] Rivera-Hernandez, M, Rahman, M, Mor, V, & Trivedi, AN (2019). Racial Disparities in Readmission Rates among Patients Discharged to Skilled Nursing Facilities. *Journal of the American Geriatrics Society,* 67(8), 1672–1679. *https://doi.org/10.1111/jgs.15960.*

Report to Congress, the Office of the Assistant Secretary for Planning and Evaluation (ASPE) reported that individuals with social risk factors, such as dual eligibility status, had worse outcomes and were more likely to be cared for by lower-quality SNFs.[310] Individuals with dual eligibility status (DES) are those who are eligible for both Medicare and Medicaid coverage. Individuals with DES are more likely to have disabilities or functional impairments, more likely to be medically complex, more likely to have greater social needs, and have a greater risk of negative health outcomes compared to individuals without DES.[311] They are also more likely to be admitted to SNFs that have lower staffing levels, have a higher share of residents who are enrolled in Medicaid in their total resident population, and experience resource constraints.[312] In addition, studies have found that DES is an important predictor of admission to a low-quality SNF.[313] All of these factors indicate that individuals with DES represent an underserved population that is more clinically complex, has greater social needs and is more often admitted to lower-resourced SNFs than those without DES. This presents significant challenges to provide quality care to patients with greater resource-intensive needs by providers that may have fewer resources, as effectively implementing quality improvement initiatives requires time, money, staff, and technology.[314] [315] [316] [317] As a result, competitive programs, like the current SNF VBP Program, may place some SNFs that serve this underserved population at a disadvantage.

In the FY 2023 SNF PPS proposed rule (87 FR 22789), we requested public comments on policy changes that we should consider on the topic of health equity. In the FY 2023 SNF PPS final rule (87 FR 47596 through 47597), we provided a detailed summary of the feedback we received on this topic. Commenters overwhelmingly supported our commitment to advancing health equity for SNF residents, with some suggesting that we examine factors that may lead to care inequities. One commenter suggested we adopt risk adjustment or incentive payments for SNFs that admit individuals that other SNFs will not admit. Another commenter recommended pairing clinical data measures with social risk metrics to help providers deliver more comprehensive care. Overall, commenters were interested in understanding where disparities may exist and wanted us to work with SNFs and other interested parties to understand the greatest needs in achieving health equity to ensure any revisions to the Program could be implemented with minimal data burden. We considered all the comments we received as we developed our Health Equity Adjustment proposal described below.

We believe that SNFs and providers across all settings can consistently perform well even when caring for a high proportion of individuals who are underserved,[318] and, with the right program components,VBP programs can create meaningful incentives for SNFs that serve a high proportion of individuals who are underserved to deliver high quality care.[319] [320] [321] [322] [323] [324] We believe updating the scoring methodology, as detailed in the following sections, would appropriately measure performance and create these meaningful incentives for those who care for a high proportions of residents with DES.

b. Health Equity Adjustment Proposal Summary

Section 1888(h)(4)(A) of the Act requires the Secretary to develop a methodology for assessing the total performance of each SNF based on performance standards established under section 1888(h)(3) of the Act with respect to the measures applied under section 1888(h)(2) of the Act. To further align with our goals to achieve health equity, address health disparities, and assess SNF performance more accurately and completely under the SNF VBP Program, we are proposing to apply an adjustment that would be added to the normalized sum of a SNF's measure points on SNF VBP Program measures. As described previously, residents with DES are an underserved population that is clinically complex, has significant social needs and is more frequently admitted to SNFs that have larger populations of Medicaid residents

[309] Konetzka, R, Yan, K, & Werner, RM (2021). Two Decades of Nursing Home Compare: What Have We Learned? *Medical Care Research and Review,* 78(4), 295–310. *https://doi.org/10.1177/1077558720931652.*

[310] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. First Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2016. *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/171041/ASPESESRTCfull.pdf.*

[311] Johnston, KJ, & Joynt Maddox, KE (2019). The Role of Social, Cognitive, And Functional Risk Factors In Medicare Spending For Dual And Nondual Enrollees. *Health Affairs (Project Hope), 38*(4), 569–576. *https://doi.org/10.1377/hlthaff.2018.05032.*

[312] Rahman, M, Grabowski, DC, Gozalo, PL, Thomas, KS, & Mor, V (2014). Are Dual Eligibles Admitted to Poorer Quality Skilled Nursing Facilities? *Health Services Research*, 49(3), 798–817. *https://doi.org/10.1111/1475-6773.12142.*

[313] Zuckerman, RB, Wu, S, Chen, LM, Joynt Maddox, KE, Sheingold, SH, & Epstein, AM (2019). The Five-Star Skilled Nursing Facility Rating System and Care of Disadvantaged Populations. *Journal of the American Geriatrics Society,* 67(1), 108–114. *https://doi.org/10.1111/jgs.15629.*

[314] Reidt, SL, Holtan, HS, Larson, TA, Thompson, B, Kerzner, LJ, Salvatore, TM, & Adam, TJ (2016). Interprofessional Collaboration to Improve Discharge from Skilled Nursing Facility to Home: Preliminary Data on Postdischarge Hospitalizations and Emergency Department Visits. *Journal of the American Geriatrics Society, 64*(9), 1895–1899. *https://doi.org/10.1111/jgs.14258.*

[315] Au, Y, Holbrook, M, Skeens, A, Painter, J, McBurney, J, Cassata, A, & Wang, SC (2019). Improving the quality of pressure ulcer management in a skilled nursing facility. *International Wound Journal, 16*(2), 550–555. *https://doi.org/10.1111/iwj.13112.*

[316] Berkowitz, RE, Fang, Z, Helfand, BKI, Jones, RN, Schreiber, R, & Paasche-Orlow, MK (2013). Project ReEngineered Discharge (RED) Lowers Hospital Readmissions of Patients Discharged From a Skilled Nursing Facility. *Journal of the American Medical Directors Association, 14*(10), 736–740. *https://doi.org/10.1016/j.jamda.2013.03.004.*

[317] Chisholm, L, Zhang, NJ, Hyer, K, Pradhan, R, Unruh, L, & Lin, F-C (2018). Culture Change in Nursing Homes: What Is the Role of Nursing Home Resources? *INQUIRY: The Journal of Health Care Organization, Provision, and Financing, 55,* 0046958018787043. *https://doi.org/10.1177/0046958018787043.*

[318] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. First Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2016. *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/171041/ASPESESRTCfull.pdf.*

[319] Crook, HL, Zheng, J, Bleser, WK, Whitaker, RG, Masand, J, & Saunders, RS (2021). *How Are Payment Reforms Addressing Social Determinants of Health? Policy Implications and Next Steps.* Milbank Memorial Fund, Duke Margolis Center for Health Policy. *https://www.milbank.org/wp-content/uploads/2021/02/Duke-SDOH-and-VBP-Issue-Brief_v3.pdf.*

[320] Johnston, KJ, & Joynt Maddox, KE (2019). The Role of Social, Cognitive, And Functional Risk Factors In Medicare Spending For Dual And Nondual Enrollees. *Health Affairs (Project Hope),* 38(4), 569–576. *https://doi.org/10.1377/hlthaff.2018.05032.*

[321] Konetzka, R, Yan, K, & Werner, RM (2021). Two Decades of Nursing Home Compare: What Have We Learned? *Medical Care Research and Review,* 78(4), 295–310. *https://doi.org/10.1177/1077558720931652.*

[322] Weech-Maldonado, R, Pradhan, R, Dayama, N, Lord, J, & Gupta, S (2019). Nursing Home Quality and Financial Performance: Is There a Business Case for Quality? *Inquiry: A Journal of Medical Care Organization, Provision and Financing,* 56, 46958018825191. *https://doi.org/10.1177/0046958018825191.*

[323] Rivera-Hernandez, M, Rahman, M, Mukamel, D, Mor, V, & Trivedi, A (2019). Quality of Post-Acute Care in Skilled Nursing Facilities That Disproportionately Serve Black and Hispanic Patients. *The Journals of Gerontology. Series A, Biological Sciences and Medical Sciences,* 74(5). *https://doi.org/10.1093/gerona/gly089.*

[324] Burke, RE, Xu, Y, & Rose, L (2022). Skilled Nursing Facility Performance and Readmission Rates Under Value-Based Purchasing. *JAMA Network Open,* 5(2), e220721. *https://doi.org/10.1001/jamanetworkopen.2022.0721.*

and fewer resources than SNFs that do not care for individuals with DES.[325] [326] [327] These lower-resourced SNFs are less likely to receive positive payment adjustments, which is a considerable limitation of the current SNF VBP program's ability to incentivize equitable care.[328] Careful consideration must be taken to modify the Program in a way that addresses this issue and ensures that we provide appropriate rewards and incentives to all SNFs, including those that serve residents with DES. The goal of this Health Equity Adjustment is to not only appropriately measure performance by rewarding SNFs that overcome the challenges of caring for higher proportions of SNF residents with DES but also to incentivize those who have not achieved such high-quality care to work towards improvement. We believe this Health Equity Adjustment incentivizes high-quality care across all SNFs. We also believe this scoring change, through the creation of an adjustment designed to award points based on the quality of care provided and the proportion of residents with DES, is consistent with our strategy to advance health equity.[329]

The Health Equity Adjustment (HEA) would be calculated using a methodology that considers both the SNF's performance on the SNF VBP Program measures, and the proportion of residents with DES out of the total resident population in a given program year at each SNF. To be eligible to receive HEA bonus points, a SNF's performance would need to meet or exceed a certain threshold and its resident population during the applicable performance period for the program year would have to include at least 20 percent of residents with DES. Thus, SNFs that perform well on quality measures and serve a higher proportion of SNF residents with DES would receive a larger adjustment. The specific methodology for the proposed calculation of the HEA is described in section VII.E.4.d. of this proposed rule. By providing this HEA to SNFs that serve higher proportions of SNF residents with DES and that perform well on quality measures, we believe we can appropriately recognize the resource intensity expended to achieve high performance on quality measures by SNFs that serve a high proportion of SNF residents with DES, while also mitigating the worse health outcomes experienced by underserved populations through incentivizing better care across all SNFs.

An analysis of payment from October 2018 for the SNF VBP Program found that SNFs that served higher proportions of Medicaid residents were less likely to receive positive payment adjustments. As noted previously, residents with DES are more likely to be admitted to SNFs with higher proportions of Medicaid residents [330] suggesting that SNFs serving higher proportions of SNF residents with DES face challenges in utilizing their limited resources to improve the quality of care for their complex residents.[331] Thus, we aimed to adjust the current program scoring methodology to ensure that all SNF residents, including those with DES, receive high-quality care. We conducted an analysis utilizing FY 2018–2021 measure data for our finalized and proposed measures, including a simulation of performance from all 8 finalized and proposed measures for the FY 2027 Program and found that the HEA significantly increased the proportion of SNFs with high proportions of SNF residents with DES that received a positive value-based incentive payment adjustment indicating that this approach would modify the SNF VBP program in the way it is intended.

We are proposing to call this proposed adjustment the Health Equity Adjustment (HEA) and to adopt it beginning with the FY 2027 program year.

c. Proposed Health Equity Adjustment Beginning With the FY 2027 SNF VBP Program Year

We propose to define the term ''underserved population'' as residents with DES for purposes of this HEA. DES has been established in the literature, including research specifically looking at SNFs,[332] [333] and has been found to be an important factor that impacts pay for performance and other quality programs.[334] [335] In addition, DES is currently utilized in the Hospital Readmissions Reduction Program.

The Medicare Shared Savings Program recently adopted a health equity adjustment for Accountable Care Organizations that report all-payer eCQMs/MIPS CQMs, are high-performing on quality, and serve a large proportion of underserved beneficiaries, as defined by dual-eligibility/enrollment in the Medicare Part D low income subsidy (LIS) (meaning the individual is enrolled in a Part D plan and receives LIS) and an Area Deprivation Index (ADI) score of 85 or above, as detailed in the CY 2023 PFS final rule (87 FR 69838 through 69857). At this time, for the SNF VBP Program's proposed HEA, we believe that it is preferable to use DES to identify SNF residents who are underserved. We also explored alternative indicators to identify populations that are underserved for purposes of this proposal, such as a resident's eligibility for the Medicare Part D Low-Income Subsidy (LIS) program or whether the resident lives in an area with high deprivation, as measured by the Area Deprivation Index (ADI), however, we determined that for the current proposal, utilizing residents with DES to identify underserved

[325] Johnston, KJ, & Joynt Maddox, KE (2019). The Role of Social, Cognitive, And Functional Risk Factors In Medicare Spending For Dual And Nondual Enrollees. *Health Affairs (Project Hope), 38*(4), 569–576. *https://doi.org/10.1377/hlthaff.2018.05032.*

[326] Rahman, M, Grabowski, DC, Gozalo, PL, Thomas, KS, & Mor, V (2014). Are Dual Eligibles Admitted to Poorer Quality Skilled Nursing Facilities? *Health Services Research,* 49(3), 798–817. *https://doi.org/10.1111/1475-6773.12142.*

[327] Zuckerman, RB, Wu, S, Chen, LM, Joynt Maddox, KE, Sheingold, SH, & Epstein, AM (2019). The Five-Star Skilled Nursing Facility Rating System and Care of Disadvantaged Populations. *Journal of the American Geriatrics Society,* 67(1), 108–114. *https://doi.org/10.1111/jgs.15629.*

[328] Hefele JG, Wang XJ, Lim E. Fewer Bonuses, More Penalties at Skilled Nursing Facilities Serving Vulnerable Populations. *Health Aff (Millwood).* 2019;38(7):1127–1131. doi:10.1377/hlthaff.2018.05393.

[329] Centers for Medicare & Medicaid Services. (2022) CMS Outlines Strategy to Advance Health Equity, Challenges Industry Leaders to Address Systemic Inequities. Available at *https://www.cms.gov/newsroom/press-releases/cms-outlines-strategy-advance-health-equity-challenges-industry-leaders-address-systemic-inequities#:~:text=In%20effort%20to%20address%20systemic%20inequities%20across%20the,Medicare%2C%20Medicaid%20or%20Marketplace%20coverage%2C%20need%20to%20thrive.*

[330] Rahman, M, Grabowski, DC, Gozalo, PL, Thomas, KS, & Mor, V (2014). Are Dual Eligibles Admitted to Poorer Quality Skilled Nursing Facilities? *Health Services Research,* 49(3), 798–817. *https://doi.org/10.1111/1475-6773.12142.*

[331] Hefele JG, Wang XJ, Lim E. Fewer Bonuses, More Penalties at Skilled Nursing Facilities Serving Vulnerable Populations. *Health Aff (Millwood).* 2019;38(7):1127–1131. doi:10.1377/hlthaff.2018.05393.

[332] Rahman, M, Grabowski, DC, Gozalo, PL, Thomas, KS, & Mor, V (2014). Are Dual Eligibles Admitted to Poorer Quality Skilled Nursing Facilities? *Health Services Research,* 49(3), 798–817. *https://doi.org/10.1111/1475-6773.12142.*

[333] Zuckerman, RB, Wu, S, Chen, LM, Joynt Maddox, KE, Sheingold, SH, & Epstein, AM (2019). The Five-Star Skilled Nursing Facility Rating System and Care of Disadvantaged Populations. *Journal of the American Geriatrics Society,* 67(1), 108–114. *https://doi.org/10.1111/jgs.15629.*

[334] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. First Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2016. *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/171041/ASPESESRTCfull.pdf.*

[335] Zuckerman, RB, Wu, S, Chen, LM, Joynt Maddox, KE, Sheingold, SH, & Epstein, AM (2019). The Five-Star Skilled Nursing Facility Rating System and Care of Disadvantaged Populations. *Journal of the American Geriatrics Society,* 67(1), 108–114. *https://doi.org/10.1111/jgs.15629.*

populations would best serve the goals of the adjustment. Individuals who are eligible for the LIS program have incomes up to 150 percent of the Federal poverty level.[336] Utilizing residents who are eligible for the LIS program would include most residents with DES, as well as additional residents who may be underserved; however, the data on the LIS program are only available for those enrolled in Medicare Part D, which may limit its effectiveness, and it is not uniform across both States and territories. Further, those eligible for the LIS program have not been studied extensively in the SNF setting and the effect of using those eligible for the LIS program to determine a SNF's underserved population has also not been studied extensively. Geographic-based or neighborhood-level economic indices, such as the ADI, have been utilized to look at characteristics of healthcare facilities in low-resourced areas and could be used as a proxy for negative health outcomes due to medical and social risk factors.[337] [338] ADI appears to be an important predictor of poor health outcomes, even when adjusting for individual characteristics, suggesting neighborhood or geography may play an even more important role in health than individual characteristics.[339] [340] However, there is not much literature or analysis that has been conducted linking these indices to negative health outcomes specifically in the SNF setting. Therefore, we propose to only use DES data at this time to identify SNF residents who are underserved for this HEA proposal, given that the DES data are readily available, are evidenced based in the SNF setting, and are already used in the Hospital Readmissions Reduction Program. We intend to consider how to best incorporate the LIS, ADI, and other indicators to identify those who are underserved in future health equity adjustment proposals for the SNF VBP Program as more research is made available. We are seeking comment on the potential future use of these additional indicators in the RFI in section VII.E.5 of this proposed rule. We provide additional detail on how we would calculate SNF residents with DES for the purpose of this adjustment later in this section of this proposal.

In order to calculate the HEA, we first propose to assign to each SNF 2 points for each measure for which it is a top tier performing SNF. We propose to define a top tier performing SNF as a SNF whose performance during the program year is in the top third (greater than or equal to the 66.67th percentile) of the performance of all SNFs on the measure during the same program year. Each measure would be assessed independently such that a SNF that is a top tier performing SNF for one measure would be assigned 2 points for that measure even if they are not a top tier performing SNF for any other measure. Similarly, if a SNF is a top tier performing SNF for all measures, they would be assigned 2 points for all measures.

We also propose to assign a measure performance scaler for each SNF that would be equal to the total number of assigned points that the SNF earns on all measures as a result of its performance. Under this approach, for the FY 2027 Program Year, a SNF would receive a maximum measure performance scaler of 16 if the SNF is a top tier performing SNF on all 8 measures (both proposed and already finalized) for that program year. As described in more detail in the following paragraph and in section VII.E.4.e of this proposed rule, we decided on assigning a maximum point value of 2 for each measure because we believe that it provides an appropriate incentive to top tier performing SNFs that serve a high proportion of SNF residents with DES to continue their quality efforts, as well as an incentive for all SNFs that serve SNF residents with DES to improve their quality.

Based on our calculation of measure data from FY 2018–2021 the average SNF Performance Score for SNFs in the top third of performance that care for high proportions of residents with DES (SNFs with proportions of residents with DES in the top third) is 8.4 points lower than the SNF Performance Score for SNFs in the top third of performance that do not care for high proportions of residents with DES (40.8 for high performing SNFs with high proportions of residents with DES and 49.2 for all other high performing SNFs). Allowing for a maximum measure performance scaler of 16 for the FY 2027 program year would provide an opportunity for top tier performing SNFs that treat a high proportion of SNF residents with DES to close this gap. We also considered assigning 3 points for each measure to calculate the measure performance scaler. However, we determined that the maximum measure performance scaler a SNF could earn based on the assignment of 3 points per measure, 24 points, would exceed the number of points that many SNFs receive for their SNF Performance Score based on all Program measures, which diminishes the intent of the HEA as a bonus. We further discuss this option in section VII.E.4.e of this proposed rule. We also considered assigning a point value of 2 to SNFs in the middle third of performance (SNFs whose performance falls between the 33.33rd percentile and 66.67th percentile in performance) and assigning a point value of 4 to top tier performing SNFs for each measure to align with the Medicare Shared Savings Program's health equity adjustment (87 FR 69843 through 69845). This approach would provide a greater number of SNFs with the opportunity to benefit from the adjustment. However, in the SNF VBP, this approach could reduce the size of the payment adjustment available to SNFs whose performance is in the top tier, reducing the incentives to improve and deviating considerably from the primary goal of the program to appropriately assess performance and reward high quality performance among SNFs that care for high proportions of residents with DES.

We propose to define the term ''underserved multiplier'' for a SNF as the number representing the SNF's proportion of residents with DES out of its total resident population in the applicable program year, translated using a logistic exchange function. Due to the structure of the logistic exchange function, those SNFs with lower proportions of residents with DES have smaller underserved multipliers than their actual proportion of residents with DES and those SNFs with higher proportions of SNF residents with DES have underserved multipliers higher than their proportion of SNF residents with DES. The specific logistic function used to translate the SNF's proportion of residents with DES is described in section VII.E.4.d. of this proposed rule.

[336] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. First Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2016. *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/171041/ASPESESRTCfull.pdf.*

[337] The University of Wisconsin Neighborhood Atlas website (*https://www.neighborhoodatlas.medicine.wisc.edu/*).

[338] Falvey, JR, Hade, EM, Friedman, S, Deng, R, Jabbour, J, Stone, RI, & Travers, JL (2022). Severe neighborhood deprivation and nursing home staffing in the United States. *Journal of the American Geriatrics Society. https://doi.org/10.1111/jgs.17990.*

[339] Chamberlain, AM, Finney Rutten, LJ, Wilson, PM, Fan, C, Boyd, CM, Jacobson, DJ, Rocca, WA, & St. Sauver, JL (2020). Neighborhood socioeconomic disadvantage is associated with multimorbidity in a geographically-defined community. *BMC Public Health, 20*(1), 13. *https://doi.org/10.1186/s12889-019-8123-0.*

[340] Hu, J, Kind, AJH, & Nerenz, D (2018). Area Deprivation Index (ADI) Predicts Readmission Risk at an Urban Teaching Hospital. *American Journal of Medical Quality: The Official Journal of the American College of Medical Quality, 33*(5), 493–501. *https://doi.org/10.1177/1062860617753063.*

We propose to define the total resident population at each SNF as Medicare beneficiaries identified from the SNF's Part A claims during the performance period of the 1-year measures. We propose to define residents with DES, for purposes of this proposal, as the percentage of Medicare SNF residents who are also eligible for Medicaid. We propose to assign DES for any Medicare beneficiary who was deemed by Medicaid agencies to be eligible to receive Medicaid benefits for any month during the performance period of the 1-year measures. For example, during the FY 2027 program year, we would calculate the proportion of residents with DES during any month of FY 2025 (October 1, 2024—September 30, 2025), which is the performance period of the FY 2027 Program year's 1-year measures. Similarly, a SNF's total resident population of Medicare beneficiaries identified from the SNF's Part A claims would be calculated from the SNF's Part A claims during FY 2025. Data on DES is sourced from the State Medicare Modernization Act (MMA) file of dual eligible beneficiaries, which each of the 50 States and the District of Columbia submit to CMS at least monthly. This file is utilized to deem individuals with DES automatically eligible for the Medicare Part D Low Income Subsidy, as well as other CMS program needs and thus can be considered the gold standard for determining DES. We note that this is the same file used for determining DES in the Hospital Readmissions Reduction Program. More detail on this file can be found on the CMS website at *https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/DataStatistical Resources/StateMMAFile* and at the Research Data Assistance Center website at *https://resdac.org/cms-data/variables/monthly-medicare-medicaid-dual-eligibility-code-january.*

We are proposing to calculate an underserved multiplier for a SNF if that SNF's proportion of residents with DES out of its total resident population during the applicable performance period of the 1-year measures is at least 20 percent. Imposing a floor of 20 percent for the underserved multiplier for a SNF to be eligible to receive HEA bonus points, reinforces that the adjustment is intended to appropriately measure performance by rewarding SNFs that are serving higher proportions of SNF residents with DES while also achieving high levels of quality performance. We describe this 20 percent floor in further detail in section VII.E.4.d. of this proposed rule. Lastly, we propose to define HEA bonus points for a SNF as the product of the SNF's measure performance scaler and the SNF's underserved multiplier. The HEA bonus points would then be added to the normalized sum of all points a SNF is awarded for each measure.

Through the proposed HEA bonus points, we seek to improve outcomes by providing incentives to SNFs to strive for high performance across measures, as well as to care for high proportions of residents with DES. The HEA bonus points calculation is purposefully designed to not reward poor quality. Instead, the HEA incentivizes SNFs that care for higher proportions of SNF residents with DES to improve their overall quality of care across the entire SNF population. As described more fully in section VII.E.4.d. of this proposed rule, the combination of the measure performance scaler and the underserved multiplier would result in a range of possible HEA bonus points that is designed to give the highest rewards to SNFs caring for a larger proportion of SNF residents with DES and delivering high quality care.

We welcome comments on this proposal. We are proposing to amend our regulations at § 413.338(a) to define these new scoring methodology terms, including underserved population, the measure performance scaler, top tier performing SNF, the underserved multiplier, and the HEA bonus points. We are also proposing to amend our regulations by adding a new paragraph (k) in § 413.338 that implements the Health Equity Adjustment beginning with the FY 2027 program year.

d. Proposed Calculation Steps and Examples

In this section, we outline the calculation steps and provide examples of the determination of HEA bonus points and the application of these HEA bonus points to the normalized sum of a SNF's measure points. These example calculations illustrate possible HEA bonus points resulting from the proposed approach, which accounts for both a SNF's quality performance and its proportion of residents with DES. For each SNF, the HEA bonus points would be calculated according to the following formula:

HEA bonus points = measure performance scaler × underserved multiplier

The proposed calculation of the HEA bonus points would be as follows:

Step One—Calculate the Number of Measure Performance Scaler Points for Each SNF

We propose to first calculate a measure performance scaler based on a SNF's score on each of the SNF VBP program measures. We would assign a point value of 2 for each measure where a SNF is a top tier performing SNF on that measure, such that for the FY 2027 program year, a SNF could receive a maximum 16 point measure performance scaler for being a top tier performing SNF for each of the 8 finalized and proposed measures. Top tier performance on each measure is calculated by determining the percentile that the SNF falls in based on their score on the measure as compared to the score earned by other SNFs who are eligible to receive a score on the measure. A SNF whose score is greater than or equal to the 66.67th (two-thirds) percentile on a given measure compared to all other SNFs would be considered a top tier performing SNF and would be assigned a point value of 2 for that measure. This is depicted in Table 21 for the FY 2027 program year. We note that if a SNF performs in the bottom two-thirds (less than 66.67th percentile) of performance on all measures, that SNF would be assigned a point value of 0 for each measure, resulting in a measure performance scaler of 0.

As described previously, we are proposing to assign to each SNF a point value of 2 for each measure for which it is a top tier performing SNF, and we are proposing that the measure performance scaler would be the sum of the point values assigned to each measure in the SNF VBP Program. We modeled this proposed measure performance scaler after the performance scaler finalized in the Medicare Shared Savings Program's health equity adjustment (87 FR 69843 through 69845) for consistency across CMS programs, although that adjustment allows for a middle performance group as well. However, as described previously, because we aim to specifically target the highest performing SNFs for this adjustment, we are limiting our adjustment to the top third of performers only.

TABLE 21—EXAMPLE OF THE MEASURE PERFORMANCE SCALER ASSIGNED TO SNFS BASED ON PERFORMANCE BY MEASURE

Measure	Example SNF 1		Example SNF 2		Example SNF 3		Example SNF 4	
	Performance group	Value	Performance group	Value	Performance group	Value	Performance group	Value
SNFRM*	Top third	2	Top Third	2	Top Third	2	Bottom Two-Thirds	0
SNF HAI Measure	Top third	2	Top Third	2	Top Third	2	Bottom Two-Thirds	0
Total Nurse Staffing Measure.	Top third	2	Bottom Two-Thirds	0	Bottom Two-Thirds	0	Top Third	2
DTC–PAC SNF Measure.	Top third	2	Top Third	2	Bottom Two-Thirds	0	Bottom Two-Thirds	0
Falls with Major Injury (Long-Stay) Measure**.	Top Third	2	Top Third	2	Bottom Two-Thirds	0	Bottom Two-Thirds	0
Discharge Function Measure**.	Top Third	2	Top Third	2	Top Third	2	Bottom Two-Thirds	0
Long Stay Hospitalization Measure**.	Top Third	2	Top Third	2	Top Third	2	Bottom Two-Thirds	0
Nursing Staff Turnover Measure**.	Top Third	2	Top Third	2	Top Third	2	Bottom Two-Thirds	0
	Measure Performance Scaler.	16	Measure Performance Scaler.	14	Measure Performance Scaler.	10	Measure Performance Scaler.	2

Notes:
*We are proposing to replace the SNFRM would be replaced with the SNF WS PPR beginning with the FY 2028 program year.
**We are proposing to adopt the Nursing Staff Turnover Measure beginning with the FY 2026 program year and the Falls with Major Injury (Long-Stay) Measure, Discharge Function Measure, and Long Stay Hospitalization Measure beginning with the FY 2027 program year.

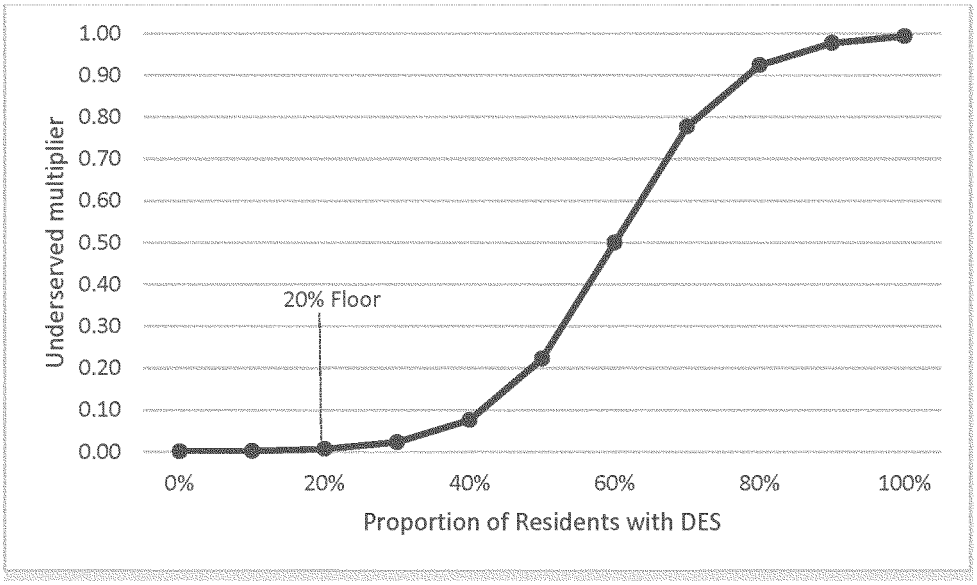
Step Two—Calculate the Underserved Multiplier

We propose to calculate an underserved multiplier, which, as stated previously, we propose to define as, for a SNF, the number representing the SNF's proportion of residents with DES out of its total resident population in the applicable program year, translated using a logistic exchange function. As stated previously, the primary goal of the adjustment is to appropriately measure performance by rewarding SNFs that are able to overcome the challenges of caring for high proportions of residents with DES while still providing high quality care. Another way that we are able to accomplish the goal of this adjustment is by utilizing a logistic exchange function to calculate the underserved multiplier, which would provide SNFs who care for the highest proportions of SNF residents with DES with the most HEA bonus points. Thus, we are proposing to utilize a logistic exchange function to calculate the underserved multiplier for scoring SNFs such that there would be a lower rate of increase at the beginning and the end of the curve. The formula for the underserved multiplier using a logistic exchange function would be as follows:

$$underserved\ multiplier = \frac{1}{1 + e^{-12.5(percent\ of\ residents\ with\ DES - 0.6)}}$$

Due to the structure of the logistic exchange function, those SNFs with lower proportions of residents with DES have smaller underserved multipliers than their actual proportion of residents with DES and those SNFs with higher proportions of SNF residents with DES have underserved multipliers higher than their proportion of SNF residents with DES. A logistic exchange function assumes a large difference between SNFs treating the most and fewest residents with DES. Therefore, the logistic exchange function provides higher HEA bonus points to SNFs serving greater proportions of SNF residents with DES. For example, as shown in Figure A, if a SNF serves 70 percent of SNF residents with DES, the SNF would receive an underserved multiplier of 0.78.

Figure A—Determining the Underserved Multiplier From a SNF's Proportion of Residents With DES Using the Logistic Exchange Function



We propose that SNFs would receive an underserved multiplier of 0 if the SNF's proportions of SNF residents with DES is less than 20 percent, thereby establishing a ''floor'' on the magnitude of the SNF's underserved population proportion in order for the SNF to be eligible for any HEA bonus points. Because SNFs with proportions of SNF residents with DES below 20 percent receive a value of 0 for their underserved multiplier, any multiplication with the measure performance scaler would be 0 and would lead to those SNFs receiving no HEA bonus points. Imposing a floor of 20 percent for the underserved multiplier for a SNF to be eligible to receive HEA bonus points, reinforces that the adjustment is intended to appropriately measure performance by rewarding SNFs that are serving higher proportions of SNF residents with DES while also achieving high levels of quality performance. We believe this approach is necessary to remain consistent with the goal to reward high quality care specifically among SNFs that care for higher proportions of SNF residents with DES. We anticipate the vast majority of SNFs would be able to earn HEA bonus points despite this floor, and we expect the percent of SNFs meeting the 20 percent floor for the underserved multiplier might increase over time, as existing SNFs seek to expand their resident population to earn HEA bonus points. We also believe that the challenges associated with caring for residents with DES, a complex resident population, would be negligible if 80 percent of a SNF's resident population is not underserved. This 20 percent floor is consistent with the new health equity adjustment for ACOs that report all payer eCQMs/MIPS CQMs, as finalized in the CY 2023 PFS final rule (87 FR 69849 through 69852).

Alternatively, we considered establishing a floor of 60 percent such that all SNFs with proportions of SNF residents with DES below 60 percent would receive an underserved multiplier of 0, and therefore, would not receive any HEA bonus points. Although this would provide a greater value-based incentive payment amount to top tier performing SNFs that serve the highest proportions of SNF residents with DES and thus would support the primary goal of the adjustment, it would also mean SNFs that care for high proportions of SNF residents with DES who likely face similar challenges, albeit to a lesser extent, would receive no adjustment at all.

Step Three—Calculate the HEA Bonus Points

We are proposing to calculate the HEA bonus points that apply to a SNF for a program year by multiplying the measure performance scaler by the underserved multiplier. We believe that combining the measure performance scaler and the underserved multiplier to calculate the HEA bonus points allows for us to reward those SNFs with high quality that are also serving high proportions of SNF residents with DES, while incentivizing other SNFs to improve their performance (by a higher measure performance scaler) and serve more SNF residents with DES (by a higher underserved multiplier) in order to earn more HEA bonus points. Table 22 shows examples of how the measure performance scaler and underserved multiplier would be used to calculate the HEA bonus points. It also demonstrates how the logistic exchange function that we are proposing to use to calculate the underserved multiplier interacts with the measure performance scaler and results in SNFs serving higher proportion of SNF residents with DES receiving more HEA bonus points. For instance, example SNF 1 with 16 points and a proportion of residents with DES of 50 percent received a measure performance scaler of 16 and an underserved multiplier of 0.22. In other words, they would receive 22 percent of the points from their measure performance scaler because of how the logistic exchange function translates their proportion of residents with DES. Their measure performance scaler of 16 and underserved multiplier of 0.22 would then be multiplied together to get their HEA bonus points of 3.52. Alternatively, example SNF 2 with 14 points and a proportion of residents with DES of 70 percent, received an underserved multiplier of 0.78. Their measure performance scaler of 14 and underserved multiplier of 0.78 would then be multiplied together to get their HEA bonus points of 10.92. Note that although SNF 1 had a higher measure performance scaler, they received fewer HEA bonus points because they had a lower proportion of residents with DES. Finally, example SNF 3 had a proportion of SNF residents with DES of less than 20 percent and so they received an underserved multiplier of 0, resulting in no HEA bonus points

HEA Bonus Points = Measure Performance Scaler × Underserved Multiplier

TABLE 22—EXAMPLE OF THE HEA BONUS POINTS CALCULATION

Example SNF	Measure performance scaler [A]	Proportion of residents with DES (%) [B]	Underserved multiplier [C]	HEA bonus points [D] ([A] * [C])
SNF 1	16	50	0.22	3.52
SNF 2	14	70	0.78	10.92
SNF 3	10	10	0	0
SNF 4	2	80	0.92	1.84

Step Four—Add HEA Bonus Points to the Normalized Sum of all Points Awarded for Each Measure

Finally, we are proposing that we would add a SNF's HEA bonus points as calculated in Step Three of this section to the normalized sum of all points awarded to a SNF for each measure. This normalized sum would be the SNF Performance Score earned by the SNF for the program year, except that we would cap the SNF's Performance Score at 100 points to ensure the HEA creates a balanced incentive that has the potential to increase the SNF Performance Score without dominating the score and creating unintended incentives. Table 23 displays the final HEA bonus points added to the normalized sum of all points awarded to a SNF for each measure for 4 example SNFs.

TABLE 23—EXAMPLE OF THE HEA BONUS POINTS CALCULATION

Example SNF	Normalized sum of all points awarded for each measure [A]	HEA bonus points (step 3, column [D]) [B]	SNF performance score ([A] + [B])
SNF 1	80	3.52	83.52
SNF 2	65	10.92	75.92
SNF 3	42	0	42.00
SNF 4	10	1.84	11.84

By adding these HEA bonus points to the normalized sum of all points awarded to a SNF for each measure, SNFs can be rewarded for delivering excellent care to all residents they serve and can be appropriately recognized for the resource intensity expended to achieve high performance when caring for higher proportion of SNF residents with DES. We believe this scoring adjustment, designed to advance health equity through the SNF VBP Program, is consistent with CMS's goal to incentivize greater inclusion of underserved populations, as well as the delivery of high-quality care to all.

We invite public comment on this proposed scoring change and calculations including the use of the measure performance scaler, underserved multiplier, and HEA bonus points. We are proposing to amend our regulations at § 413.338(e) and (k) to update the steps for performance scoring with the incorporated health equity scoring adjustment.

e. Proposal To Increase the Payback Percentage To Support the HEA

We adopted 60 percent as the SNF VBP Program's payback percentage for FY 2019 and subsequent fiscal years, subject to increases as needed to implement the Program's Low-Volume Adjustment policy for SNFs without sufficient data on which to base measure scores. We based this decision on numerous considerations, including our estimates of the number of SNFs that would receive a positive payment adjustment under the Program, the marginal incentives for all SNFs to reduce hospital readmissions and make quality improvements, and the Medicare Program's long-term sustainability. We also stated that we intended to monitor the effects of the payback percentage policy on Medicare beneficiaries, on participating SNFs, and on their measured performance, and we stated that we intended to consider proposing to adjust the payback percentage in future rulemaking.

In previous rules, we have received many public comments urging us to increase the payback percentage. For example, in the FY 2018 SNF PPS final rule (82 FR 36620), we responded to comments urging us to finalize a 70 percent payback percentage. We stated at that time that we did not believe that a 70 percent payback percentage appropriately balanced the policy considerations that we considered when we proposed the 60 percent policy. We responded to similar comments in the FY 2019 SNF PPS final rule (83 FR 39281), where commenters urged us to revisit the payback percentage policy and adopt 70 percent as the Program's policy. We reiterated that we did not believe it was appropriate to revisit the payback percentage at that time, which was prior to the Program's first incentive payments taking effect on October 1, 2018.

As part of our ongoing monitoring and evaluation efforts associated with the SNF VBP Program, we have considered whether to revise the Program's payback percentage policy to support the proposed HEA. Specifically, in conjunction with our HEA bonus point proposal, we are proposing to increase the total amount available for a fiscal year to fund the value-based incentive payment amounts beginning with the FY 2027 program year.

We are proposing this update to our payback percentage policy both to increase SNFs' incentives under the Program to undertake quality improvement efforts and to minimize

the impact of the proposed HEA on the distribution of value based incentive payments to SNFs that do not earn the HEA. Because the SNF VBP Program's value-based incentive payment amounts depend on the distribution of SNF Performance Scores in each SNF VBP program year, providing additional incentives to SNFs serving higher proportions of SNF residents with DES without increasing the payback percentage could reduce other SNFs' value-based incentive payment amounts. While we do not believe that those reductions would be significant, we view a change to the payback percentage to further increase SNFs' quality improvement incentives to be more effective.

In determining how to modify the payback percentage, we considered the maximum number of HEA bonus points that would be awarded, as it is important that those points translate into meaningful enough rewards for SNFs to meet our goals of this adjustment to appropriately measure performance by rewarding SNFs that overcome the challenges of caring for higher proportions of SNF residents with DES and to incentivize SNFs who have not achieved such high-quality care to work towards improvement. However, we also have to ensure that the additional HEA bonus points available do not lead to value-based incentive payments that exceed the maximum 70 percent payback percentage authorized under section 1888(h)(5)(C)(ii)(III) of the Act. Additionally, we considered the maximum number of HEA bonus points that would be awarded in comparison to the average SNF Performance Score as we believe providing more HEA bonus points for our proposed HEA relative to the average a SNF receives for their performance on the Program measures could undermine the incentives for SNFs to perform in the SNF VBP Program.

We conducted an analysis utilizing FY 2018–2021 measure data for our finalized and proposed measures, including a simulation of performance from all 8 finalized and proposed measures for the FY 2027 Program, to determine what would be the greatest amount we could increase the payback percentage by for the HEA while not exceeding the 70 percent maximum or allowing for too many HEA bonus points. We examined the interaction of the two factors that directly impact the size of the incentives, the assigned point value for each measure and the payback percentage. For the first factor, as stated previously, we are proposing to assign 2 points per measure to each SNF that is a top tier performing SNF for that measure. This assigned point value would be used to calculate the measure performance scaler and resulting HEA bonus points. In this analysis, we also tested alternatives of assigning a point value of 1 or 3 per measure to determine how each option would impact the payback percentage and resulting value-based incentive payment amounts. For the payback percentage factor, we tested increasing the payback percentage to a fixed amount of 65 percent. We also tested an option in which we allow the payback percentage to vary based on performance data such that SNFs that do receive the HEA would not experience a decrease in their value-based incentive payment amount, to the greatest extent possible, relative to no HEA in the Program and maintaining a payback percentage of 60 percent.

Table 24 has three columns representing possible point values assigned to each measure that are then used to calculate the measure performance scaler. As shown in Table 24, regardless of the assigned points per measure, 78 percent of SNFs would receive the HEA in this analysis. This means that 78 percent of SNFs were top tier performing SNFs for at least 1 measure and had at least 20 percent of their residents with DES, so would have received some HEA bonus points. Table 24 also shows the mean number of HEA bonus points per SNF receiving the HEA, as well as the HEA bonus points at the 90th percentile and the maximum HEA bonus points that would have been received for the HEA. Table 24 then provides an estimate of the payback percentage that would have been required such that SNFs that do receive the HEA would not experience a decrease in their value-based incentive payment amount, to the greatest extent possible, relative to no HEA in the Program and maintaining a payback percentage of 60 percent. This analysis also identified that the average SNF, prior to the implementation of the HEA, would have received a SNF Performance Score of 31.6 and that the 90th percentile SNF Performance Score was 49.7.

As stated previously, we are proposing to assign a point value of 2 for each measure in which a SNF is a top tier performing SNF. Table 24 shows that assigning a point value of 2 per measure would have resulted in a 66 percent payback percentage, meaning once all SNFs have been awarded HEA bonus points, the value-based incentive payment amounts would result in a payback percentage of 66 percent. Assigning a point value of any higher number, such as 3 points per measure could result in the payback percentage exceeding the 70 percent maximum. This is because the amount of HEA bonus points would vary with performance, and so we expect the HEA bonus points to vary from year to year, creating a significant risk that assigning a point value of 3 for each measure would result in a payback percentage above the 70 percent maximum. Further, assigning a point value of 3 for each measure would result in HEA bonus points as high as 20. Considering the average SNF Performance Score during this same time period would have been 31.6, the addition of 20 bonus points puts far too much weight on the HEA compared to each of the Program measures.

TABLE 24—ESTIMATED HEA BONUS POINTS AND PAYMENT ADJUSTMENTS RESULTING FROM SCORING OPTIONS BASED ON FY 2018–2021 DATA

	1 assigned point value per measure	2 assigned point value per measure	3 assigned point value per measure
SNFs receiving HEA			
Total Number of SNFs receiving HEA	10,668	10,668	10,668
Percentage of SNFs receiving HEA	78%	78%	78%
HEA bonus points (among SNFs receiving HEA)			
Mean	0.89	1.78	2.68
90th percentile	2.25	4.50	6.76

TABLE 24—ESTIMATED HEA BONUS POINTS AND PAYMENT ADJUSTMENTS RESULTING FROM SCORING OPTIONS BASED ON FY 2018–2021 DATA—Continued

	1 assigned point value per measure	2 assigned point value per measure	3 assigned point value per measure
Max	6.67	13.33	20.00
Assume payback will vary based on assigned points per measure			
Estimate of percent payback required such that SNFs not receiving the HEA would not experience a decrease in their value-based incentive payment amount*	63%	66%	69%
Amount to SNFs receiving HEA ($MM)	$ 23.5	$ 27.6	$ 35.6

Notes:
* Relative to no HEA in the Program and maintaining a payback percentage of 60 percent.

Because we are proposing to assign a point value of 2 for each measure in the Program and based on this analysis, we propose that the payback percentage would vary by program year to account for the application of the HEA such that SNFs that do receive the HEA would not experience a decrease in their value-based incentive payment amount, to the greatest extent possible, relative to no HEA in the Program and maintaining a payback percentage of 60 percent. Utilizing a variable approach ensures a very limited number of SNFs (if any) that do not receive HEA bonus points will experience a downward payment adjustment. For a given program year, we propose to calculate the final payback percentage using the following steps. First, we would calculate SNF value-based incentive payment amounts with a payback percentage of 60 percent and without the application of the proposed HEA. Second, we would identify which SNFs receive the HEA and which do not based on their proportion of residents with DES and individual measure performance. Third, while maintaining the value-based incentive payment amounts calculated in the first step for those SNFs that do not receive the HEA, we would calculate the payback percentage needed to apply the HEA as described in section VII.E.4.d. of this proposed rule. As shown in Table 25, through our analysis, we estimate that assigning 2 points per measure would require an increase in the 60 percent payback percentage of 6.02 percentage points for the FY 2027 program year and 5.40 percentage points for the FY 2028 program year. These are estimates and we would expect some variation that could be the result of SNFs with high proportions of residents with DES significantly changing their performance, changes in Medicaid eligibility requirements such that the proportions of residents with DES changes, changes to the Program such as adding additional measures which could add additional points available for the HEA, and other possible factors. For the last factor, increasing the points available could result in an increased payback percentage beyond the 70 percent maximum; however, we intend to adjust the number of points available through the rulemaking process if we add measures to the Program. With our current proposal of assigning a point value of 2 for each measure, we do not anticipate that any factors would result in an increase in payback beyond the 70 percent maximum. However, we will continue to monitor the data closely and intend to make further proposals if necessary in future rulemaking. Thus, as shown in Table 25, a variable payback percentage would allow all SNFs that receive the HEA to also receive increased value-based incentive payment amounts, and would also mean that SNFs that do receive the HEA would not experience a decrease in their value-based incentive payment amount, to the greatest extent possible, relative to no HEA in the Program and maintaining a payback percentage of 60 percent.

We also explored setting a fixed payback percentage of 65 percent. This would mean that despite assigning higher point values for each measure, the resulting value-based incentive payment amounts would be capped to ensure the payback percentage would not exceed 65 percent. This would ensure that the payback percentage is below the 70 percent maximum. However, as shown in Table 25, including a 65 percentage payback would result in some SNFs, including SNFs that care for the highest quintile of residents with DES and almost one-third of rural SNFs, receiving reduced value-based incentive payment amounts compared to the absence of the HEA in the Program. This would be a significant negative consequence of this proposal, and our proposal is structured to avoid this outcome. We do not want SNFs that provide high quality care and that serve large proportions of residents who are underserved to be disadvantaged by this HEA.

TABLE 25—ESTIMATED DIFFERENCES FOR THE FY 2027 AND 2028 PROGRAM YEARS BETWEEN A VARIABLE PAYBACK PERCENTAGE AND A FIXED PAYBACK PERCENTAGE BASED ON FY 2018–2021 DATA*

	FY 2027 Program		FY 2028 Program	
	Variable**	Fixed	Variable**	Fixed
Payback percentage	66.02%	65%	65.40%	65%
# (%) SNFs* among . . .**				
All SNFs	0 (0%)	5,233 (38%)	0 (0%)	4,105 (29%)
Rural SNFs	0 (0%)	1,146 (32%)	0 (0%)	853 (23%)
SNFs that care for highest quintile of residents with DES	0 (0%)	372 (14%)	0 (0%)	409 (15%)

TABLE 25—ESTIMATED DIFFERENCES FOR THE FY 2027 AND 2028 PROGRAM YEARS BETWEEN A VARIABLE PAYBACK PERCENTAGE AND A FIXED PAYBACK PERCENTAGE BASED ON FY 2018–2021 DATA *—Continued

	FY 2027 Program		FY 2028 Program	
	Variable **	Fixed	Variable **	Fixed
Mean value-based incentive payment amount change per SNF among . . .				
All SNFs	$2,162	$1,796	$1,901	$1,759
SNFs that are worse off ***	0	(366)	0	(162)
SNFs that are better off ***	2,771	3,136	2,433	2,552
Rural SNFs	969	808	940	877
SNFs that care for highest quintile of residents with DES	5,997	5,691	4,949	4,846
Value-based incentive payment amounts				
Amount of value-based incentive payments with HEA ($MM)	324.18	319.17	323.23	321.24
Amount of value-based incentive payments without HEA (60% of withhold) ($MM)	294.62	294.62	296.53	296.53
Amount of increase due to HEA ($MM)	29.56	24.55	26.70	24.71

Notes:
* Based on assigning a point value of 2 for each measure in which the SNF is a top tier performing SNF.
** Actual payback percentage may change from what was modeled based on final Program data.
*** Payment changes, ''worse off'', and ''better off'' all compare to the absence of the HEA in the Program and a payback percentage of 60 percent.

We welcome public comment on this proposal to adopt a variable payback percentage. We are also proposing to amend our regulations at § 413.338(c)(2)(i) to update this change to the payback percentage for FY 2027 and subsequent fiscal years.

In developing this HEA proposal, we considered approaches other than providing HEA bonus points to top tier performing SNFs with a high proportion of SNF residents with DES that could be implemented in the SNF VBP Program. More specifically, we considered the addition of risk adjustment to the payment methodology, peer grouping, or providing an opportunity to earn additional improvement points. First, we considered risk adjusting the measures used in the SNF VBP program. Currently, most measures in the SNF VBP Program are risk adjusted for the clinical characteristics of the resident that are included in the calculation of the measure. We do not risk adjust for social risk factors. Although it would require us to respecify the measures and then revisit the pre-rulemaking process for each measure, it is an operationally feasible approach. However, there is a significant concern around adding additional risk adjustment to the measures in the Program to account for social risk factors. Although additional risk adjustment can help account for factors outside of a SNF's control, such as social risk factors like socioeconomic status,[341] it can also have potential unintended consequences. For instance, in a 2021 Report to Congress on Medicare and the Health Care Delivery System, the Medicare Payment Advisory Commission (MedPAC) recommended against adjusting SNF VBP measures results for social risk factors, stating that those types of adjustments can mask disparities.[342] This would mean that disparities that currently exist would be more challenging to identify in the data, and thus harder for providers or the Program to eliminate. Additionally, in an analysis conducted by ASPE, it did not appear that additional risk adjustment would significantly impact SNF performance in the Program.[343] Thus, we decided against incorporating additional risk adjustment into the SNF VBP Program at this time.

Second, we considered adding a peer grouping component to our scoring methodology, under which we would divide SNFs into groups based on the proportion of residents with DES that a SNF serves. With this peer grouping, different performance standards would then be set for each group, and thus payment adjustments would be made based on the group or strata in which a SNF falls.[344] However, ASPE noted in their second report to congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program that although they support stratifying quality measures by DES to identify disparities, they had concerns that peer grouping could risk setting different standards of care for SNFs caring for underserved populations.[345]

Finally, we considered an approach of adding additional improvement points to the Program. This could be achieved by either providing bonus points to SNFs for measures in which they had significant improvement or by increasing the points available for improvement from 9 points to some higher quantity, such as 15 points. It is important that even poorer performing SNFs be provided incentives to improve as all residents should have the opportunity to receive high quality care, and currently lower performers have the greatest opportunity for improvement. Since SNFs that care for higher proportions of SNF residents with DES tend to have lower SNF Performance Scores compared to SNFs that do not care for higher proportions of SNF residents with DES, this Program adjustment could address health equity by providing lower performing SNFs that care for higher proportions of SNF residents with DES additional

[341] *https://mmshub.cms.gov/sites/default/files/Risk-Adjustment-in-Quality-Measurement.pdf.*

[342] MedPAC, 2021 *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/jun21_medpac_report_to_congress_sec.pdf.*

[343] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Second Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2020. *https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicares-value-based-purchasing-programs.*

[344] Chen, A, Ghosh, A, Gwynn, KB, Newby, C, Henry, TL, Pearce, J, Fleurant, M, Schmidt, S, Bracey, J, & Jacobs, EA (2022). Society of General Internal Medicine Position Statement on Social Risk and Equity in Medicare's Mandatory Value-Based Payment Programs. *Journal of General Internal Medicine, 37*(12), 3178–3187. *https://doi.org/10.1007/s11606-022-07698-9.*

[345] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Second Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2020. *https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicares-value-based-purchasing-programs.*

incentives to improve the care they provide. However, we had concerns with this approach. First, this approach is not focused specifically on populations that are underserved, and it is unclear whether the additional improvement points available would provide sufficient incentives for SNFs that care for higher proportions of SNF residents with DES to invest the limited resources they have to make the changes necessary to benefit from it. We were also concerned that this change could primarily incentivize poorer performing SNFs that do not care for a higher proportion of SNF residents with DES. Although we aim to incentivize improvement in care for all SNFs, this alternative approach has a significant risk of not meeting the goals of a health equity-focused adjustment in the Program. Therefore, in considering how to modify the existing SNF VBP Program to advance health equity, we believe that rather than utilizing risk adjustment, peer grouping or adjusting the improvement point allocation process, it would be more appropriate to adopt an approach that rewards overall high-quality performance and incentivizes health equity.

In conclusion, we believe the HEA proposal would allow us to appropriately measure performance by rewarding SNFs that overcome the challenges of caring for higher proportions of SNF residents with DES and to incentivize those who have not achieved such high-quality care to work towards improvement. As the Program greatly expands beyond one measure, we believe this HEA will support high-quality care for all populations and recognize top tier performing SNFs serving residents with DES. We seek comment on all aspects of the proposed methodology. In particular, we seek comment on the following:

- Using the proportion of SNF residents with DES as a measure of the proportion of residents who are underserved.
- The requirement that a SNF be in the top third of performance for a measure to receive any points for the measure performance scaler.
- Assigning a point value of 2 for each measure as opposed to a higher point value such as 3.
- Using a logistic exchange function based off the proportion of SNF residents with DES to calculate the underserved multiplier.
- The requirement that a SNF's proportion of residents with DES be at least 20 percent for a SNF to be eligible for HEA bonus points.
- Increasing the payback percentage and allowing for it to vary such that SNFs that do receive the HEA would not experience a decrease in their value-based incentive payment amounts, to the greatest extent possible, relative to no HEA in the Program and maintaining a payback percentage of 60 percent.

Given that the proposed approach, if finalized, would be the initial implementation of a health equity adjustment under the SNF VBP Program, we note our intent to monitor the impact of the adjustment to ensure it achieves the goal of rewarding SNFs for high-quality performance while caring for higher proportions of SNF residents with DES. As necessary, we would consider modifications to the design of the HEA through future rulemaking. We invite public comment on our proposal to adopt the HEA proposal beginning with the FY 2027 program year.

5. Health Equity Approaches Under Consideration for Future Program Years: Request for Information (RFI)

As described in section VII.E.4. of this proposed rule, we are committed to achieving equity in health outcomes for residents by promoting SNF accountability for health disparities, supporting SNFs' quality improvement activities to reduce these disparities, and incentivizing better care for all residents. The proposed Health Equity Adjustment, as described previously, would revise the SNF VBP scoring methodology to reward SNFs that provide high quality care to residents with DES and create an incentive for all SNFs to treat residents with DES. We also aim to incentivize the achievement of health equity in the SNF VBP Program in other ways, including focusing specifically on reducing disparities to ensure we are incentivizing improving care for all populations, including residents who may be underserved. In order to do so, we are seeking comments on possible health equity advancement approaches to incorporate into the Program in future program years that could supplement the proposed Health Equity Adjustment described in section VII.E.4 of this proposed rule. We are also seeking input on potential ways to assess improvements in health equity in SNFs. As is the case across healthcare settings, significant disparities persist in the skilled nursing environment.[346] [347] [348] [349] The goal of explicitly incorporating health equity-focused components into the Program is to both measure and incentivize equitable care in SNFs. By doing so, we not only aim to encourage SNFs to focus on achieving equity for all residents, but also to afford individuals and families the opportunity to make more informed decisions about their healthcare.

This RFI consists of four main sections. The first section requests input on resident-level demographic and social risk indicators, as well as geographic-level indices that could be used to assess health equity gaps. The second section requests input on possible health equity advancement approaches that could be added to the Program and describes questions that should be considered for each. The third section requests input on other approaches that could be considered for inclusion in the SNF VBP Program in conjunction with the approaches described in the second section. Finally, the fourth section requests input on adopting domains that could incorporate health equity.

a. Resident-Level Indicators and Geographic-Level Indices To Assess Disparities in Healthcare Quality

To identify SNFs that care for residents who are underserved and determine their performance among these populations, we need to select an appropriate indicator of such. Identifying and prioritizing social risk or demographic variables to consider for measuring equity can be challenging. This is due to the high number of variables that have been identified in the literature as risk factors for poorer health outcomes and the limited availability or quality of standardized data. Each source of data has advantages and disadvantages in identifying populations to assess the presence of underlying disparities. Income-based indicators are a frequently used measure for assessing disparities,[350] but other

[346] Li, Y, Glance, LG, Yin, J, & Mukamel, DB (2011). Racial Disparities in Rehospitalization Among Medicare Patients in Skilled Nursing Facilities. *American Journal of Public Health, 101*(5), 875–882. *https://doi.org/10.2105/AJPH.2010.300055.*

[347] Rahman, M, Grabowski, DC, Gozalo, PL, Thomas, KS, & Mor, V (2014). Are Dual Eligibles Admitted to Poorer Quality Skilled Nursing Facilities? *Health Services Research, 49*(3), 798–817. *https://doi.org/10.1111/1475-6773.12142.*

[348] Rivera-Hernandez, M, Rahman, M, Mukamel, D, Mor, V, & Trivedi, A (2019). Quality of Post-Acute Care in Skilled Nursing Facilities That Disproportionately Serve Black and Hispanic Patients. *The Journals of Gerontology. Series A, Biological Sciences and Medical Sciences, 74*(5). *https://doi.org/10.1093/gerona/gly089.*

[349] Zuckerman, RB, Wu, S, Chen, LM, Joynt Maddox, KE, Sheingold, SH, & Epstein, AM (2019). The Five-Star Skilled Nursing Facility Rating System and Care of Disadvantaged Populations. *Journal of the American Geriatrics Society, 67*(1), 108–114. *https://doi.org/10.1111/jgs.15629.*

[350] National Academies of Sciences, Engineering, and Medicine. 2016. Accounting for Social Risk

Continued

social risk indicators can also provide important insights. As described in section VII.E.4. of this proposed rule, we are proposing to utilize dual eligibility status (DES) to measure the underserved population in SNFs, as this data is readily available and DES as a metric has been used extensively to study the SNF population.[351] [352] However, as additional data and research becomes available we may be able to utilize other social risk factors to define the underserved population. We refer readers to the ASPE Report to Congress on Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs for additional indicators we could consider for use in the Program, including the LIS Program, ADI, and others.[353] We invite comment on which demographic variables, social risk indicators, or combination of indicators would be most appropriate for assessing disparities and measuring improvements in health equity in the SNF VBP Program for the health equity approaches described in this RFI.

b. Approaches To Assessing Health Equity Advancement in the SNF VBP Program

CMS is interested in developing approaches that would incentivize the advancement of health equity for all SNFs, focusing on improving care for all residents, including those who may currently face disparities in their care. Such an approach would aim to include as many SNFs as possible and would not be restricted to those serving 20 percent or more of residents with DES like the Health Equity Adjustment proposed in section VII.E.4. of this proposed rule. There are many different ways to add a health equity-focused component or adjustment to the Program to meet these objectives. In the FY 2023 proposed rule (87 FR 22789), we requested commenters' views on which adjustments would be most effective for the SNF VBP Program to account for any equity gaps that we may observe in the SNF setting. Although many commenters were supportive of incorporating health equity-focused adjustments into the Program, there was no clear consensus on the type of adjustment that would be most effective. In this proposed rule, we are requesting additional comments on potential approaches to assessing health equity advancement in the Program. We have outlined approaches to assess underlying equity gaps or designed to promote health equity, which may be considered for use in the Program and grouped them into three broad categories for assessment: applying points to current measures, equity-focused measures, and composite measures. The remainder of this section discusses these categories and relevant questions to consider for each. We also highlight two methods used for calculating disparities.

We identified four key considerations that CMS should consider when employing quality measurement as a tool to address health disparities and advance health equity. When considering which equity-focused measures could be prioritized for development for SNF VBP, we examined past reports that assess such measures and encourage commenters to review each category against the following considerations:[354] [355]

- *To what extent does the approach support consumer choice?* It is essential that quality measures reflect consumer needs and allow consumers to make informed choices about their care.[356] [357] In the Program, measure data is available on the Provider Data Catalog website. Having access to and understanding this data would empower consumers with more information in selecting their optimal SNF, including one that demonstrates greater performance in advancing equity.
- *How long would it take to include this approach in the program?* Some approaches may take considerably longer than others to include in the Program. For instance, we intend to consult the CMS appointed consensus-based entity for any new measures we propose to ensure we have appropriate feedback, which would add additional time to their development. Although we do not want this time to deter interested parties from recommending their inclusion in the program, we are interested in understanding commenters' prioritization of measures as it relates to the amount of time they may take to implement when deciding on the best approach for the Program.
- *Is this approach aligned with other Medicare quality reporting and VBP programs?* Implementing quality initiatives requires time and resources.[358] It is one of our top priorities to ensure alignment between quality programs to limit the burden of quality reporting and implementation. Thus, it is important for us to consider in developing a health equity component, if and how other programs are incorporating health equity to align and standardize measures wherever possible.
- *What is the impact on populations that are underserved or the SNFs that serve these populations?* Although the goal of a health equity-focused adjustment to the Program would be to decrease disparities and incentivize high-quality care for all populations including those who are underserved, we also want to create appropriate guardrails that protect SNFs against potential unintended consequences. It is important for us to understand if any proposed approach may create potential negative consequences for residents who are underserved or the SNFs that treat these individuals and any steps we can take to mitigate that.

(1) Applying Points to Current Measures To Assess Health Equity

The first category of health equity advancement approaches we are requesting comments on are mechanisms that apply points to current measures to assess health equity, rewarding SNFs based on the extent to which they provide equitable care. This category affords each SNF the ability to

Factors in Medicare Payment: Identifying Social Risk Factors. Washington, DC: The National Academies Press. *https://doi.org/10.17226/21858.*

[351] Rahman, M, Grabowski, DC, Gozalo, PL, Thomas, KS, & Mor, V (2014). Are Dual Eligibles Admitted to Poorer Quality Skilled Nursing Facilities? *Health Services Research,* 49(3), 798–817. *https://doi.org/10.1111/1475-6773.12142.*

[352] Zuckerman, RB, Wu, S, Chen, LM, Joynt Maddox, KE, Sheingold, SH, & Epstein, AM (2019). The Five-Star Skilled Nursing Facility Rating System and Care of Disadvantaged Populations. *Journal of the American Geriatrics Society,* 67(1), 108–114. *https://doi.org/10.1111/jgs.15629.*

[353] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. First Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2016. *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/171041/ASPESESRTCfull.pdf.*

[354] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Second Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2020. *https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicares-value-based-purchasing-programs.*

[355] RAND Health Care. 2021. Developing Health Equity Measures. Washington, DC: US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, and RAND Health Care.

[356] Heenan, MA, Randall, GE & Evans, JM (2022). Selecting Performance Indicators and Targets in Health Care: An International Scoping Review and Standardized Process Framework. *Risk Management and Healthcare Policy, 15,* 747–764. *https://doi.org/10.2147/RMHP.S357561.*

[357] Meyer, GS, Nelson, EC, Pryor, DB, James, B, Swensen, SJ, Kaplan, GS, Weissberg, JI, Bisognano, M, Yates, GR, & Hunt, GC (2012). More quality measures versus measuring what matters: A call for balance and parsimony. *BMJ Quality & Safety, 21*(11), 964–968. *https://doi.org/10.1136/bmjqs-2012-001081.*

[358] Blanchfield, BB, Demehin, AA, Cummings, CT, Ferris, TG, & Meyer, GS (2018). The Cost of Quality: An Academic Health Center's Annual Costs for Its Quality and Patient Safety Infrastructure. *Joint Commission Journal on Quality and Patient Safety, 44*(10), 583–589. *https://doi.org/10.1016/j.jcjq.2018.03.012.*

score additional points for all measures where they demonstrate a high level of equity or a reduction in disparities over time. An approach that applies points to current measures to assess health equity could include, but is not limited to, the following:

- Points applied to one, some, or all measures for SNFs that achieve higher health equity performance on those measures. This would include measuring a SNF's performance on each measure for residents who are undeserved and comparing that to the same SNF's performance among all other residents on the same measures effectively assessing health equity gaps. This approach would utilize a Within-Facility Disparity method for assessing disparities, as described in more detail later in this section of this proposed rule.
- Points applied to one, some, or all measures for SNFs that have better performance among residents who are underserved. This would include only measuring performance among residents who are underserved and comparing that performance across all SNFs. This approach would utilize an Across-Facility Disparity method for assessing disparities, as described in more detail later in this section of this proposed rule.
- Points applied to one, some, or all measures based on a weighted average of each SNF's performance among resident groups with the worst and best outcomes for each measure. We could define resident groups by any social risk indicator, for example DES. This approach measures performance among all residents in the SNF and places greater weight on the performance of the worst performing group, with the goal of raising the quality floor at every SNF.

Note, any social risk indicator could be used to assess health equity gaps. We welcome comments on any approach in this section or any other approach that applies additional points to current measures to assess health equity that should be considered for inclusion in the SNF VBP Program.

(2) New Measure Approach

The second category of health equity advancement approaches we are requesting comments on is a new health equity-focused measure, which would be included as one of the 10 allowable measures in the Program. This category includes the development of a new measure that assesses health equity and could include a structural, process, or outcome measure. A health equity-focused measure would be included as one of the measures in the program and thus would be included in the scoring calculations like other measures. A health equity-focused measure could include, but is not limited to, the following:

- A structural measure. For example, a facility commitment to health equity measure, in which SNFs are assessed on factors like leadership engagement, data collection, and improvement activities that support addressing disparities in quality outcomes. This measure could be similar to the ''Hospital Commitment to Health Equity'' measure that was finalized in the FY 2023 Inpatient Prospective Payment System/Long Term Care Hospital Prospective Payment System final rule (87 FR 48785).
- A process measure. For example, a drivers of health measure, in which residents are screened for specific health-related social needs (HRSNs) to ensure a successful transition home, like transportation or food insecurity. This measure could be similar to the ''Screening for Social Drivers of Health'' measure that was finalized in the FY 2023 Inpatient Prospective Payment System/Long Term Care Hospital Prospective Payment System final rule (87 FR 48785).
- An outcome measure. For example, a measure that is calculated using data stratified for specific populations that are underserved, such as residents with DES.

Note each of these possible measures are only suggestions for what might be included in the Program. We welcome comments on any measures that should be considered for inclusion in the SNF VBP Program including the ones described in this section and what data sources should be considered to construct those measures.

(3) Composite Measure Approach

The third category of health equity advancement approaches we are requesting comments on is the development and implementation of a new health equity-focused composite measure. An equity-focused composite measure would be included as one of the 10 allowable measures in the program and thus would be included in the scoring calculations like other measures. Generally, a composite measure can provide a simplified view of a rather complex topic by combining multiple factors into one measure. A composite measure could include, but is not limited to, the following:

- A composite of all measure scores for residents who are underserved to compare across all SNFs. This could utilize an Across-Facility Disparity method for assessing disparities, as described in more detail later in this section of this proposed rule.
- A composite of the health disparity performance within each SNF for some or all measures. This approach could utilize a Within-Facility Disparity method for assessing disparities, as described in more detail later in this section of this proposed rule.

Note any social risk indicator could be used to assess health equity gaps. We welcome comments on each of the composite measures described in this section. We also welcome comments on the specific factors or measures that should be included in a composite measure.

In considering whether to include in the Program any of the approaches described in this section, points applied to current measures based on equity, new measures, or composite measures, we encourage commenters to consider the following questions:

- *To what extent do these approaches support consumer choice?* What approaches described in this section best support consumer choice? Would any approach be easier to interpret than others? Would any of the approaches described in this section provide information that other approaches would not that would aid consumer choice? Are there other factors we should consider in developing any of the approaches described in this section that are easiest for consumers to utilize and understand? How should any of the approaches described in this section be displayed and shared with consumers to facilitate understanding of how to interpret the approach?
- *How long would it take to include this approach in the program?* If some approaches would take longer to implement, should they still be considered for inclusion in the Program or should a different approach be prioritized? For instance, a measure that is already being utilized by another program could be implemented sooner than a measure that still needs to be developed. Should any of the approaches described in this section be considered regardless of the time it would take to include the approach in the Program?
- *Is this approach aligned with other Medicare quality reporting and VBP programs?* Are there similar approaches to those described in this section that are aligned with other programs that we should consider for SNF VBP? If any of the approaches described in this section are not aligned with other programs, should they still be considered for inclusion in the Program? If these approaches are only aligned somewhat with other programs, should they still be considered for inclusion in the Program? Several other programs,

including the End-Stage Renal Disease Quality Incentive Program, the Merit-based Incentive Payment System, the Hospital Inpatient Quality Reporting Program, the Inpatient Psychiatric Facility Quality Reporting Program, and the PPS-Exempt Cancer Hospital Quality Reporting Program also submitted equity-focused measures to the 2022 MUC List that could be considered for the Program.[359] Further, we are in the process of developing a Hospital Equity Index. Should any of these measures be considered for SNF VBP?

- *What is the impact on populations that are underserved or the SNFs that serve these populations?* Are there any potential impacts, including negative or positive unintended consequences, that could occur when implementing the approaches described in this section? Are there steps we should take to mitigate any potential negative unintended consequences? How can we ensure these approaches provide a strong enough incentive to improve care for all populations by identifying areas of inequities? We are interested in all perspectives and particularly of those living in and serving underserved communities.

(4) Disparity Method Approaches

Many of the approaches described previously in this section of this proposed rule would rely on calculating disparities. There are several different conceptual approaches to calculating disparities to assess health equity gaps. Currently in the acute care setting, two complementary approaches are used to confidentially provide disparity information to hospitals for a subset of existing measures. The first approach, referred to as the Within-Facility Disparity method, compares measure performance results for a single measure between subgroups of patients with and without a given factor. This type of comparison directly estimates disparities in outcomes between subgroups and can be helpful to identify potential disparities in care. This type of approach can be used with most measures that include patient-level data. The second approach, referred to as the Across-Facility Disparity method, provides performance on measures for only the subgroup of patients with a particular social risk factor. These approaches can be used by a SNF to compare their own measure performance on a particular subgroup of patients against subgroup-specific State and national benchmarks. Alone, each approach may provide an incomplete picture of disparities in care for a particular measure, but when reported together with overall quality performance, these approaches may provide detailed information about where differences in care may exist or where additional scrutiny may be appropriate. For example, the Across-Facility Disparity method indicates that a SNF underperformed (when compared to other SNFs on average) for patients with a given social risk indicator, which would signal the need to improve care for this population. However, if the SNF also underperformed for patients without that social risk indicator (the Within-Facility Disparity method, as described earlier in this section), the measured difference, or disparity in care, could be negligible even though performance for the group that particular social risk factor remains poor. We refer readers to the technical report describing the CMS Disparity Methods in detail, as well as the FY 2018 IPPS/LTCH PPS final rule (82 FR 38405 through 38407) and the posted Disparity Methods Updates and Specifications Report posted on the QualityNet website at *https://qualitynet.cms.gov/inpatient/measures/disparity-methods*.

We request comments on whether similar approaches to the two discussed in the previous paragraph could be used for calculating disparities to assess health equity in a SNF. These calculations would then be used for scoring purposes for each of the approaches described previously in this section, either to calculate a SNF's performance on a new measure or a composite measure, or to determine the amount of points that should be applied to current measures to assess heath equity.

c. Other Approaches To Assessing Health Equity Advancement in the SNF VBP Program

There are also many other health equity approaches that could be considered for inclusion in the Program. In particular, we explored risk adjustment, stratification/peer grouping, and adding improvement points when developing the proposed Health Equity Adjustment in section VII.E.4. We have specific concerns when applying each of these approaches to the SNF VBP Program independently; however, we are requesting comment on the potential of incorporating these approaches in conjunction with the approaches outlined previously in this section of this proposed rule.

d. The Development of Domains and Domain Weighting for Inclusion in the SNF VBP Program

As we expand the number of measures on which we assess performance under the SNF VBP, we are considering whether we should group the measures into measure domains. Creating domains would align SNF VBP with other CMS programs such as the Hospital Value-Based Purchasing (VBP) Program. The HVBP Program currently groups its measures into four domains that are defined based on measure type, and then weights the sum of a hospital's performance score on each measure in the domain such that the domain is weighted at 25 percent of the hospital's total performance score. Although the HVBP Program uses four domains, each with a 25 percent weight, we could consider for the SNF VBP grouping measures into a different number of domains and then weighting each domain by different amounts.

We request comments on whether we should consider proposing the addition of quality domains for future program years. We also request comments on if those domains should be utilized to advance health equity in the Program.

F. Proposed Update to the Extraordinary Circumstances Exception Policy Regulation Text

In the FY 2019 SNF PPS final rule (83 FR 39280 through 39281), we adopted an Extraordinary Circumstances Exception (ECE) policy for the SNF VBP Program. We have also codified this policy in our regulations at § 413.338(d)(4).

To accommodate the SNF VBP Program's expansion to additional quality measures and apply the ECE policy to those measures, we are proposing to update our regulations at § 413.338(d)(4)(v) to remove the specific reference to the SNF Readmission Measure. The proposed new language would specify, in part, that CMS would calculate a SNF performance score for a program year that does not include the SNF's ''performance during the calendar months affected by the extraordinary circumstance.''

We invite public comment on this proposal.

G. Proposal to Update the Validation Processes for the SNF VBP Program

1. Background

Section 1888(h)(12) of the Act requires the Secretary to apply a validation process to SNF VBP Program measures and ''the data submitted under [section 1888(e)(6)] [. . .] as appropriate[. . .].''

[359] *https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports.*

We have finalized a validation approach for the SNFRM and codified that approach at section 413.338(j) of our regulations. In the FY 2023 SNF PPS proposed rule, we requested comment on the validation of additional SNF measures and assessment data (87 FR 22788 through 22789). In the FY 2023 SNF PPS final rule, we summarized commenters' views and stated that we would take this feedback into consideration as we develop our policies for future rulemaking (87 FR 47595 through 47596).

Beginning with the FY 2026 program year, the SNFRM will no longer be the only measure in the SNF VBP. We have adopted a second claims-based measure, SNF HAI, beginning with that program year and have proposed to replace the SNFRM with another claims-based measure, the SNF WS PPR measure, beginning with the FY 2028 program year. We have adopted the DTC PAC SNF measure beginning with the FY 2027 program year and we are proposing to adopt a fourth claims-based measure, Long Stay Hospitalization, beginning with that program year. We have adopted the total nurse staffing measure, which is calculated using Payroll Based Journal (PBJ) data, beginning with the FY 2026 program year and are proposing to adopt the nursing staff turnover measure, which is also calculated using PBJ data, beginning with the FY 2026 program year. We are also proposing to adopt the DC Function and the Falls with Major Injury (Long-Stay) measures calculated using Minimum Data Set (MDS) data beginning with the FY 2027 program year. The addition of measures calculated from these data sources has prompted us to consider the most feasible way to expand our validation program under the SNF VBP Program.

After considering our existing validation process and the data sources for the new measures, and for the reasons discussed more fully below, we are proposing to: (1) apply the validation process we have adopted for the SNFRM to all claims-based measures; (2) adopt a validation process that would apply to SNF VBP measures for which the data source is PBJ data; and (3) adopt a validation process that would apply to SNF VBP measures for which the data source is MDS data. We believe these proposals would ensure that the data we use to calculate the SNF VBP measures are accurate for quality measurement purposes.

We note that these proposals would apply only to the SNF VBP Program, and we intend to propose a validation process that would apply to the data SNFs report under the SNF QRP, in future rulemaking.

2. Proposal To Apply the Existing Validation Process for the SNFRM to All Claims-Based Measures Reported in the SNF VBP Program

Beginning with the FY 2026 program year, we would need to validate the SNF HAI measure and beginning with the FY 2027 program year, we would need to validate the Long Stay Hospitalization and DTC PAC SNF measures to meet our statutory requirements. Beginning with the FY 2028 program year, we would also need to validate the SNF WS PPR measure. Therefore, we are proposing to expand the previously adopted SNFRM validation process to include all claims-based measures, including the SNF HAI, Long Stay Hospitalization, DTC PAC SNF, and SNF WS PPR measures, as well as any other claims-based measures we could adopt for the SNF VBP in the future.

The SNF HAI measure is calculated using Medicare SNF FFS claims data and Medicare inpatient hospital claims data. As discussed in the FY 2023 SNF PPS final rule (87 FR 47590), information reported through claims are validated for accuracy by Medicare Administrative Contractors (MACs) who use software to determine whether billed services are medically necessary and should be covered by Medicare, review claims to identify any ambiguities or irregularities, and use a quality assurance process to help ensure quality and consistency in claim review and processing. They conduct prepayment and post-payment audits of Medicare claims, using both random selection and targeted reviews based on analyses of claims data.

Beginning with the FY 2027 program year, we are proposing to adopt the Long Stay Hospitalization measure in the SNF VBP Program. This measure utilizes SNF FFS claims and inpatient hospital claims data. We believe that adopting the existing MAC's process of validating claims for medical necessity through targeted and random audits, as detailed in the prior paragraph, would satisfy our statutory requirement to adopt a validation process for the Long Stay Hospitalization measure for the SNF VBP Program.

The DTC PAC SNF measure also uses claims-based data, including data from the ''Patient Discharge Status Code''. We refer readers to the FY 2023 SNF PPS final rule (87 FR 47577 through 47578) for additional discussion of the data source for the DTC PAC SNF measure. We also refer readers to the FY 2017 SNF PPS final rule (81 FR 52021 through 52029) for a thorough analysis on the accuracy of utilizing the discharge status field. We believe that adopting the existing MAC's process for validating the claims portion of the DTC PAC SNF measure for payment accuracy would satisfy our statutory requirement to adopt a validation process for the SNF VBP Program because MACs review claims for medical necessity, ambiguities and quality assurance through random and targeted reviews, as detailed in the second paragraph in this section.

Beginning with the FY 2028 program year, we are proposing to replace the SNFRM with the SNF WS PPR. The SNFRM and SNF WS PPR utilize the same claims-based data sources. Therefore, the SNFRM's validation process based on data that are validated for accuracy by MACs as detailed in the second paragraph in this section, would fulfill the statutory requirement to adopt a validation process for the SNF WS PPR measure for the SNF VBP Program.

We invite the public to comment on this proposal and also propose to codify it at § 413.338(j).

3. Proposal To Adopt a Validation Process That Applies to SNF VBP Measures That Are Calculated Using PBJ Data

Beginning with the FY 2026 program year, the Total Nurse Staffing measure, adopted in the FY 2023 SNF PPS final rule, and the Nursing Staff Turnover measure, which we are proposing to adopt in this proposed rule, would be calculated using PBJ data that nursing facilities with SNF beds are already required to report to CMS. PBJ data includes direct care staffing information (including agency and contract staff) based on payroll and other auditable data.[360] CMS conducts quarterly audits aimed at verifying that the staffing hours submitted by facilities are aligned with the hours staff were paid to work over the same timeframe. The PBJ audit process requires selected facilities to submit documentation, that may include payroll, invoice, or contractual obligation data, supporting the staffing hours reported in the PBJ data.[361] This

[360] Centers for Medicare and Medicaid Services. (2022, October 12). *Staffing Data Submission Payroll Based Journal (PBJ). https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/staffing-data-submission-pbj.*

[361] Centers for Medicare and Medicaid (CMS). (2018). *Transition to Payroll-Based Journal (PBJ) Staffing Measures on the Nursing Home Compare tool on Medicare.gov and the Five Star Quality Rating System.* Center for Clinical Standards and Quality/Quality, Safety and Oversight Group. *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf.*

documentation of hours is compared against the reported PBJ staffing hours data and a facility whose audit identifies significant inaccuracies between the hours reported and the hours verified will be presumed to have low levels of staffing. We believe that this existing PBJ data audit process is sufficient to ensure that the PBJ data we use to calculate the Total Nurse Staffing and Nursing Staff Turnover measures are an accurate representation of a facility's staffing. Accordingly, we are proposing to adopt that process for purposes of validating SNF VBP measures that are calculated using PBJ data. We are also proposing to codify this policy at § 413.338(j) in our regulations.

We invite public comment on this proposal.

4. Proposal To Adopt a Validation Process That Applies to SNF VBP Measures That Are Calculated Using MDS Data

In section VII.B.4. of this proposed rule, we are proposing to adopt two MDS measures in the SNF VBP Program, the DC Function and Falls with Major Injury (Long Stay) measures beginning with the FY 2027 program year/FY 2025 performance period. The MDS is a federally mandated resident assessment instrument that is required to be completed for all residents in a Medicare or Medicaid certified nursing facility, and for patients whose stay is covered under SNF PPS in a non-critical access hospital swing bed facility. The MDS ''includes the resident in the assessment process, and [uses] standard protocols used in other settings. . .supporting the primary legislative intent that MDS be a tool to improve clinical assessment and supports the credibility of programs that rely on MDS''.[362] There is no current process to verify that the MDS data submitted by providers to CMS for quality measure calculations is accurate for use in our SNF quality reporting and value-based purchasing programs. While MDS data are audited to ensure accurate payments, we do not believe that this audit process focuses sufficiently on the Program's quality measurement data for use in a quality reporting or value-based purchasing program. While the update to MDS 3.0 was designed to improve the reliability, accuracy, and usefulness of reporting than prior versions,[363] we believe we need to validate MDS data when those data would be used for the purpose of a quality reporting or value-based purchasing program. We are proposing to adopt a new validation method that we would apply to the SNF VBP measures that are calculated using MDS data to meet our statutory requirement. This proposed method is similar to the method we use to validate measures reported by hospitals under the Hospital Inpatient Quality Reporting Program.

We are proposing to validate the MDS data used to calculate these measures as follows:

- We propose to randomly select, on an annual basis, up to 1,500 active and current SNFs, including non-critical access hospital swing bed facilities providing SNF-level services, that submit at least one MDS record in the calendar year 3 years prior to the fiscal year of the relevant program year or were included in the SNF VBP Program in the year prior to the relevant program year. For example, for the FY 2027 SNF VBP Program, we would choose up to 1,500 SNFs that submitted at least one MDS record in calendar year 2024 or were participating in the FY 2026 SNF VBP Program/FY 2024 performance period for validation in FY 2025.
- We propose that the validation contractor would, for each quarter that applies to validation, request up to 10 randomly selected medical charts from each of the selected SNFs.
- We propose that the validation contractor would request either digital or paper copies of the randomly selected medical charts from each SNF selected for audit. The SNF would have 45 days from the date of the request (as documented on the request) to submit the requested records to the validation contractor. If the SNF has not complied within 30 days, the validation contractor would send the SNF a reminder to inform the SNF that it must return digital or paper copies of the requested medical records within 45 calendar days following the date of the initial validation contractor medical record request.

We believe the process would be minimally burdensome on SNFs selected to submit up to 10 charts.

We intend to propose a penalty that would apply to a SNF that either does not submit the requested number of charts or that we otherwise conclude has not achieved a certain validation threshold in future rulemaking. We also intend to propose in future rulemaking the process by which we would evaluate the submitted medical charts against the MDS to determine the validity of the MDS data used to calculate the measure results. We invite public comment on what that process could include.

We invite the public to comment on our proposal to adopt the above validation process for MDS measures beginning with the FY 2027 program year.

H. SNF Value-Based Incentive Payments for FY 2024

We refer readers to the FY 2018 SNF PPS final rule (82 FR 36616 through 36621) for discussion of the exchange function methodology that we have adopted for the Program, as well as the specific form of the exchange function (logistic, or S-shaped curve) that we finalized, and the payback percentage of 60 percent of the amounts withheld from SNFs' Medicare payments as required by the SNF VBP Program statute.

We also discussed the process that we undertake for reducing SNFs' adjusted Federal per diem rates under the Medicare SNF PPS and awarding value-based incentive payments in the FY 2019 SNF PPS final rule (83 FR 39281 through 39282).

For the FY 2024 SNF VBP Program Year, we will reduce SNFs' adjusted Federal per diem rates for the fiscal year by the applicable percentage specified under section 1888(h)(6)(B) of the Act, 2 percent, and will remit value-based incentive payments to each SNF based on their SNF Performance Score, which is calculated based on their performance on the Program's quality measure.

I. Public Reporting on the Provider Data Catalog Website

Section 1888(g)(6) of the Act requires the Secretary to establish procedures to make SNFs' performance information on SNF VBP Program measures available to the public on the Nursing Home Compare website or a successor website, and to provide SNFs an opportunity to review and submit corrections to that information prior to its publication. We began publishing SNFs' performance information on the SNFRM in accordance with this directive and the statutory deadline of October 1, 2017. In December 2020, we retired the *Nursing Home Compare* website and are now using the Provider Data Catalog website (*https://data.cms.gov/provider-data/*) to make quality data available to the public, including SNF VBP performance information.

[362] Centers for Medicare and Medicaid Services (CMS). (2023, March 29). Minimum Data Set (MDS) 3.0 for Nursing Homes and Swing Bed Providers. *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqimds30.*

[363] Centers for Medicare and Medicaid Services (CMS). (2023, March 29). Minimum Data Set (MDS) 3.0 for Nursing Homes and Swing Bed Providers. *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/nhqimds30.*

Additionally, section 1888(h)(9)(A) of the Act requires the Secretary to make available to the public certain information on SNFs' performance under the SNF VBP Program, including SNF Performance Scores and their ranking. Section 1888(h)(9)(B) of the Act requires the Secretary to post aggregate information on the Program, including the range of SNF Performance Scores and the number of SNFs receiving value-based incentive payments, and the range and total amount of those payments.

In the FY 2017 SNF PPS final rule (81 FR 52006 through 52009), we discussed the statutory requirements governing confidential feedback reports and public reporting of SNFs' performance information under the SNF VBP Program and finalized our two-phased review and correction process. In the FY 2018 SNF PPS final rule (82 FR 36621 through 36623), we finalized additional requirements for phase two of our review and correction process, a policy to publish SNF VBP Program performance information on the *Nursing Home Compare* or a successor website after SNFs have had the opportunity to review and submit corrections to that information. In that final rule, we also finalized the requirements to rank SNFs and adopted data elements that are included in the ranking to provide consumers and interested parties with the necessary information to evaluate SNF's performance under the Program. In the FY 2020 SNF PPS final rule (84 FR 38823 through 38825), we finalized a policy to suppress from public display SNF VBP performance information for low-volume SNFs, and finalized updates to the phase one review and correction deadline. In the FY 2021 SNF PPS final rule (85 FR 47626 through 47627), we finalized additional updates to the phase one review and correction deadline. In the FY 2022 SNF PPS final rule (86 FR 42516 through 42517), we finalized a phase one review and correction claims ''snapshot'' policy. In the FY 2023 SNF PPS final rule (87 FR 47591 through 47592), we finalized updates to our data suppression policy for low-volume SNFs due to the addition of new measures and case and measure minimum policies.

IX. Civil Money Penalties: Waiver of Hearing, Automatic Reduction of Penalty Amount

Section 488.436 provides a facility the option to waive its right to a hearing in writing and receive a 35 percent reduction in the amount of civil money penalties (CMPs) owed in lieu of contesting the enforcement action. This regulation was first adopted in a 1994 final rule (59 FR 56116, 56243), with minor corrections made to the regulation text in 1997 (62 FR 44221) and in 2011 (76 FR 15127) to implement section 6111 of the Affordable Care Act of 2010. Over the years, we have observed that most facilities who have been imposed CMPs do not request a hearing to appeal the survey findings of noncompliance on which their CMPs are based.

In CY 2016, 81 percent of LTC facilities submitted a written waiver of a hearing and an additional 15 percent of facilities failed to submit a waiver although they did not contest the penalty and its basis. Only 4 percent of facilities availed themselves of the full hearing process. The data from CY 2018 and CY 2019 stayed fairly consistent with 80 percent of facilities submitting a written waiver of a hearing and 14 percent of facilities failing to submit the waiver nor contest the penalty and its basis. Only 6 percent of facilities availed themselves of the full hearing process. In CY 2020, 81 percent of facilities submitted a written waiver of the hearing, 15 percent of facilities did not submit a waiver nor contest the penalty and its basis, and only 4 percent of facilities availed themselves of the full hearing process. In CY 2021, 91 percent of facilities submitted a written waiver of the hearing, 7 percent of facilities did not submit the waiver nor contest the penalty and its basis, and only 2 percent of facilities utilized the full hearing process. Data from CY 2022 continues this trend showing that 81 percent of LTC facilities submitted a written waiver of their hearing rights and 17 percent of facilities did not submit a waiver of appeal rights but did not contest the penalty nor its basis. Again, only 2 percent of facilities availed themselves of the full hearing process in CY2022. Therefore, based on our experience with LTC facilities with imposed CMPs and the input provided by our CMS Locations (formerly referred to as Regional Offices) who impose and collect CMPs, we propose to revise these requirements at § 488.436 by creating a constructive waiver process that would produce the same results for less money and effort.

Specifically, we propose to revise the current express written waiver process to one that seamlessly flows to a constructive waiver and retains the accompanying 35 percent penalty reduction. Removal of the facility's requirement to submit a written request to avail itself of this widely used option would result in lower costs for most LTC facilities facing CMPs and would streamline and reduce the administrative burden for all interested parties. We propose to amend the language at § 488.436(a), by eliminating the requirement to submit a written waiver and create in its place a constructive waiver process that would operate by default when a timely request for a hearing has not been received. Facilities that wish to request a hearing to contest the noncompliance leading to the imposition of the CMP would continue to follow all applicable appeals process requirements, including those at § 498.40, as currently referenced at § 488.431(d).

Specifically, we propose to revise § 488.436(a) to state that a facility is deemed to have waived its rights to a hearing if the time period for requesting a hearing has expired and timely request for a hearing has not been received. We have observed that many facilities submitting a request for a waiver of hearing wait until close to the end of the 60-day timeframe within which a waiver must be submitted, thus delaying the ultimate due date of the CMP amount. Under this proposed process, the 35 percent reduction would be applied after the 60-day timeframe.

We note that we continue to have the opportunity under § 488.444, to settle CMP cases at any time prior to a final administrative decision for Medicare-only SNFs, State-operated facilities, or other facilities for which our enforcement action prevails, in accordance with § 488.30. This provides the opportunity to settle a case, even if the facility's hearing right was not previously waived. Even if a hearing had been requested, if all parties can reach an agreement over deficiencies to be corrected and the CMP to be paid until corrections are made (for example, CMS agrees to lower a CMP amount based on actions the facility has taken to protect resident health and safety), then costly hearing procedures could be avoided. We believe that eliminating the current requirements at § 488.436 for a written waiver will not negatively impact facilities, and as such, we especially welcome comments from the public addressing any potential circumstances in which facilities' needs or the public interest could best be met or only be met by the use of an express, written waiver.

In addition to the changes to § 488.436(a), we propose corresponding changes to §§ 488.432 and 488.442 which currently reference only the written waiver process. We propose to make conforming changes that establish that a facility is deemed to have waived its rights to a hearing if the time period for requesting a hearing has expired, in lieu of a written waiver of appeal rights. Finally, we note that the current

requirements at § 488.436(b) would remain unchanged.

These proposed revisions were previously proposed and published in the July 18, 2019 proposed rule entitled, ''Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency'' (84 FR 34737, 34751). Although on July 14, 2022, we announced an extension of the timeline for publication of the final rule for the 2019 proposals (*see* 87 FR 42137), we are withdrawing that proposal revising § 488.436 and are re-proposing here the proposed revisions for a facility to waive its hearing rights in an effort to gather additional feedback from interested parties. While this regulatory action is administrative in nature, in the future, we may assess whether the 35 percent penalty reduction is functioning as intended to make the civil money penalties administrative process more efficient, or whether a lesser penalty reduction is warranted.

IX. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purpose of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the 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 (see section IX.D. of this proposed rule) on each of these issues for the following sections of this document that contain information collection requirements. Comments, if received, will be responded to within the subsequent final rule.

A. Wage Estimates

To derive average private sector costs, we used data from the U.S. Bureau of Labor Statistics' (BLS') May 2021 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 26 presents BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 26—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and other indirect costs ($/hr)	Adjusted hourly wage ($/hr)
Computer Programmer	15–1251	46.46	46.46	92.92
Licensed Vocational Nurse (LVN)	29–2061	24.93	24.93	49.86
Medical Records Specialist	29–2072	23.23	23.23	46.46
Occupational Therapist (OT)	29–1122	43.02	43.02	86.04
Physical Therapist (PT)	29–1123	44.67	44.67	89.34
Registered Nurse (RN)	29–1141	39.78	39.78	79.56
Speech Language Pathologist (SLP)	29–1127	41.26	41.26	82.52

As mentioned above, we have adjusted the private sector's employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Cost for Beneficiaries We believe that the cost for beneficiaries undertaking administrative and other tasks on their own time is a post-tax wage of $20.71/hr.

The Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices [364] identifies the approach for valuing time when individuals undertake activities on their own time. To derive the costs for beneficiaries, a measurement of the usual weekly earnings of wage and salary workers of $998, divided by 40 hours to calculate an hourly pre-tax wage rate of $24.95/hr. This rate is adjusted downwards by an estimate of the effective tax rate for median income households of about 17%, resulting in the post-tax hourly wage rate of $20.71/hr. Unlike our private sector wage adjustments, we are not adjusting beneficiary wages for fringe benefits and other indirect costs since the individuals' activities, if any, would occur outside the scope of their employment.

[364] Office of the Assistant Secretary for Planning an Evaluation. Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices. Final Report. June 2017. Available at *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//176806/VOT.pdf.*

B. Proposed Information Collection Requirements (ICRs)

1. ICRs Regarding the Skilled Nursing Facility Quality Reporting Program (SNF QRP)

In accordance with section 1888(e)(6)(A)(i) of the Act, the Secretary must reduce by 2-percentage points the otherwise applicable annual payment update to a SNF for a fiscal year if the SNF does not comply with the requirements of the SNF QRP for that fiscal year.

In section VI.C. of this proposed rule, we are proposing to modify one measure, adopt three new measures, and remove three measures from the SNF QRP. In section VI.F. of this proposed rule, we are also proposing to increase the data completion thresholds for the MDS items. We discuss these information collections below.

As stated in section VI.C.1.a. of this rule, we are proposing to modify the

COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP COVID–19 Vaccine) measure beginning with the FY 2025 SNF QRP. While we are not proposing any changes to the data submission process for the HCP COVID–19 Vaccine measure, we are proposing that for purposes of meeting FY 2025 SNF QRP compliance, SNFs would report data on the modified measure beginning with reporting period of the fourth quarter of CY 2023. Under the proposal, SNFs would continue to report data for the HCP COVID–19 Vaccine measure to the CDC's National Healthcare Safety Network (NHSN) for at least one self-selected week during each month of the reporting quarter. The burden associated with the HCP COVID–19 Vaccine measure is accounted for under OMB control number 0920–1317, entitled ''[NCEZID] National Healthcare Safety Network (NHSN) Coronavirus (COVID–19) Surveillance in Healthcare Facilities.'' Because we are not proposing any updates to the form, manner, and timing of data submission for this measure, we are not proposing any changes to the currently approved (active) requirements or burden estimates under control number 0920–1317. See the FY 2022 SNF PPS final rule (86 FR 42480 through 42489) for a discussion of the form, manner, and timing of data submission of this measure.

In this proposed rule, we are proposing to adopt three new measures and remove two measures from the SNF QRP. We present the burden associated with these proposals in the same order they were proposed in section VI.C. of this proposed rule.

As stated in section VI.C.1.b. of this rule, we propose to adopt the Discharge Function Score (DC Function) measure beginning with the FY 2025 SNF QRP. This proposed assessment-based quality measure would be calculated using data from the minimum data set (MDS) that are already reported to the Medicare program for payment and quality reporting purposes. The burden is currently approved under OMB control number 0938–1140 (CMS–10387). Under this proposal, there would be no additional burden for SNFs since it does not require the collection of new or revised data elements.

As stated in section VI.C.1.c. of this rule, we propose to remove the Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan that Addresses Function (Application of Functional Assessment/Care Plan) measure beginning with the FY 2025 SNF QRP. We believe that the removal of the measure would result in a decrease of 18 seconds (0.3 min or 0.005 hr) of clinical staff time at admission beginning with the FY 2025 SNF QRP. We believe that the MDS item affected by the proposed removal of the Application of Functional Assessment/Care Plan measure is completed by Occupational Therapists (OT), Physical Therapists (PT), Registered Nurses (RN), Licensed Practical and Licensed Vocational Nurses (LVN), and/or Speech-Language Pathologists (SLP) depending on the functional goal selected. We identified the staff type per MDS item based on past SNF burden calculations. Our assumptions for staff type were based on the categories generally necessary to perform an assessment, however, individual SNFs determine the staffing resources necessary. Therefore, we averaged BLS' National Occupational Employment and Wage Estimates (See Table 26) for these labor types and established a composite cost estimate using our adjusted wage estimates. The composite estimate of $86.21/hr was calculated by weighting each hourly wage based on the following breakdown (see Table 27) regarding provider types most likely to collect this data: OT 45 percent at $86.04/hr; PT 45 percent at $89.34/hr; RN 5 percent at $79.56/hr; LVN 2.5 percent at $49.86/hr; and SLP 2.5 percent at $82.52/hr.

For purposes of deriving the composite wage we also estimate 2,406,401 admission assessments from 15,471 SNFs annually.

TABLE 27—ESTIMATED COMPOSITE WAGE FOR THE APPLICATION OF FUNCTIONAL ASSESSMENT/CARE PLAN MEASURE

Occupation title	Occupation code	Mean hourly wage, fringe benefits, and other indirect costs ($/hr)	Percent of assessments collected	Number of assessments collected *	Total hours	Total burden ($)
Occupational Therapist (OT)	29–1122	86.04	45	1,082,880.5	5,414	465,855
Physical Therapist (PT)	29–1123	89.34	45	1,082,880.5	5,414	483,723
Registered Nurse (RN)	29–1141	79.56	5	120,320	602	47,863
Licensed Vocational Nurse (LVN)	29–2061	49.86	2.5	60,160	301	14,998
Speech Language Pathologist (SLP)	29–1127	82.52	2.5	60,160	301	24,822
Total	n/a	n/a	100	2,406,401	12,032	1,037,261
Composite Wage	$1,037,261/12,032 hours = $86.2085/hour					

We estimate the total burden for complying with the SNF QRP requirements would be decreased by minus 12,032 hours (0.005 hr × 2,406,401 admission assessments) and minus $1,037,261 (12,032 hrs × $86.2085/hr) for all SNFs annually based on the proposed removal of the Application of Functional Assessment/Care Plan measure. The burden associated with the Application of Functional Assessment/Care Plan measure is included in the currently approved (active) burden estimates under OMB control number 0938–1140 (CMS–10387). The proposal to remove this measure in section VI.C.1.c. of this rule would remove this burden.

As stated in section VI.C.1.d. of this rule, we propose to remove the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (Change in Self-Care Score) measure as well as the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (Change in Mobility) measure beginning with the FY 2025 SNF QRP. While these assessment-based quality measures are proposed for removal, the data elements used to calculate the measures would still be reported by SNFs for other payment and quality reporting purposes. Therefore, we believe that the proposal to remove the

Change in Self-Care and Change in Mobility measures would not have any impact on our currently approved reporting burden for SNFs.

As stated in section VI.C.3.a. of this rule, we propose to adopt the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date (Patient/Resident COVID–19 Vaccine) measure beginning with the FY 2026 SNF QRP. This proposed assessment-based quality measure would be collected using the MDS. The MDS 3.0 is currently approved under OMB control number 0938–1140 (CMS–10387). One data element would need to be added to the MDS at discharge in order to allow for the collection of the Patient/Resident COVID–19 Vaccine measure. We believe this would result in an increase of 18 seconds (0.3 min or 0.005 hr) of clinical staff time at discharge beginning with the FY 2026 SNF QRP. We believe that the added data element for the proposed Patient/Resident COVID–19 Vaccine measure would be completed equally by registered nurses (0.0025 hr/2 at $79.56/hr) and licensed vocational nurses (0.0025 hr/2 at $49.86/hr), however, individual SNFs determine the staffing resources necessary. Therefore, we averaged BLS' National Occupational Employment and Wage Estimates (see Table 26) for these labor types and established a composite cost estimate using our adjusted wage estimates. The composite estimate of $64.71/hr was calculated by weighting each hourly wage based on the following breakdown (see Table 28) regarding provider types most likely to collect this data: RN 50 percent at $79.56/hr and LVN 50 percent at $49.86/hr.

For purposes of deriving the burden impact, we estimate a total of 2,406,401 discharges from 15,471 SNFs annually.

TABLE 28—ESTIMATED COMPOSITE WAGE FOR THE APPLICATION OF FUNCTIONAL ASSESSMENT/CARE PLAN MEASURE

Occupation title	Occupation code	Mean hourly wage, fringe benefits, and other indirect costs ($/hr)	Percent of assessments collected	Number of assessments collected *	Total hours	Total burden ($)
Registered Nurse (RN)	29–1141	79.56	50	1,203,200.5	6,016	478,633
Licensed Vocational Nurse (LVN)	29–2061	49.86	50	1,203,200.5	6,016	299,958
Total	n/a	n/a	100	2,406,401	12,032	778,591
Composite Wage	$778,591/12,032 hours = $64.71/hour					

We estimate the total burden for complying with the SNF QRP requirements would be increased by 12,032 hours (0.005 hr × 2,406,401 discharge assessments) and $778,591 (12,032 hrs × $64.71/hr) for all SNFs annually based on the proposed adoption of the Patient/Resident COVID–19 Vaccine measure. The burden would be accounted for in a future revised information collection request under OMB control number 0938–1140 (CMS–10387).

As stated in section VI.F.6. of this rule, we propose to increase the SNF QRP data completion thresholds for MDS data items beginning with the FY 2026 SNF QRP. We propose that SNFs would be required to report 100 percent of the required quality measures data and standardized patient assessment data collected using the MDS on at least 90 percent of the assessments they submit through the CMS designated submission system. Because SNFs have been required to submit MDS quality measures data and standardized patient assessment data for the SNF QRP since October 1, 2016, we are not making any changes to the burden that is currently approved by OMB under control number 0938–1140 (CMS–10387).

In summary, we estimate the proposed SNF QRP changes associated with proposed removal of the Application of Functional Assessment/Care Plan measure and the proposed adoption of Patient/Resident COVID–19 measure would result in no change in the total time and a decrease of $258,670 (see Table 29).

TABLE 29—PROPOSALS ASSOCIATED WITH OMB CONTROL NUMBER 0938–1140 (CMS–10387)

Requirement	Number respondents	Total responses	Time per response (hr)	Total time (hr)	Wage ($/hr)	Total cost ($)
Change in Burden associated with proposed removal of the Application of Functional Assessment/Care Plan measure beginning with the FY 2025 SNF QRP.	15,471 SNFs.	(2,406,401)	(0.005)	(12,032)	Varies	(1,037,261)
Change in Burden associated with proposed Patient/Resident COVID–19 Vaccine measure beginning with the FY 2026 SNF QRP.	15,471 SNFs.	2,406,401	0.005	12,032	Varies	778,591
Total Change	n/a	0	0	0	n/a	(258,670)

In section VI.C.2.a. of this rule, we propose to adopt the CoreQ: Short Stay Discharge (CoreQ: SS DC) measure, beginning with the FY 2026 SNF QRP. We describe in this section the following sources of burden associated with the proposed adoption of the CoreQ: SS DC measure: (1) exemption requests; (2) vendor costs; (3) submission of resident information files; and (4) costs to beneficiaries. We have provided an estimate burden here and in Tables 28 and 29, and note that the increase in burden would be accounted

for in a new information collection request.

Under this proposal, SNFs would be required to participate in the CoreQ: SS DC measure's survey requirements unless they meet the proposed low volume exemption criteria (see section VI.F.3.b.(1) of this proposed rule). Using data from July 1, 2021 through June 30, 2022, we estimate 3,272 SNFs (out of 15,435 total SNFs) would meet the proposed low volume exemption criteria for the measure's reporting requirements, and therefore would be expected to request an exemption. We believe the submission of a request for exemption would be completed by a medical record specialist. Our assumption for staff type is based on our experience with the home health and hospice Community Assessment of Healthcare Providers and Systems (CAHPS®) surveys which have been in place since 2010 and 2015, respectively. However, individual SNFs determine the staffing resources necessary. We believe it would take 35 minutes (0.58 hr) at $46.46/hr for a medical record specialist to submit a request for exemption from the CoreQ: SS DC measure's survey requirement. In aggregate, we estimate a burden of 1,898 hours (3,272 exemptions × 0.58 hr per request at a cost of $88,181 (1,898 hr × $46.46./hr) for all SNFs requesting an exemption from the CoreQ: SS DC measure survey requirement.

Under this proposal, SNFs that do not qualify for an exemption would be required to contract with a CMS-approved CoreQ survey vendor to administer the CoreQ: SS DC measure's survey on their behalf and submit the results to the CoreQ Survey Data Center (see section VI.F.3. of this proposed rule). We estimate a SNF's annual cost of contracting with a CMS-approved CoreQ survey vendor to be $4,000. Our assumption for the cost of a CMS-approved CoreQ survey vendor is based on our experience with the home health and hospice CAHPS® surveys which have been in place since 2010 and 2015, respectively. Therefore, we estimate the cost to SNFs participating in the CoreQ SS DC measure (15,435 total SNFs − 3,272 SNF exemptions = 12,163 SNFs) would be increased by $48,652,000 ($4,000 × 12,163 SNFs).

After contracting with a CMS-approved CoreQ survey vendor, SNFs would be required to submit one resident information file (as described in section VI.F.3.c. of this proposed rule) to their CMS-approved CoreQ survey vendor during the initial submission period from January 1, 2024 through June 30, 2024. Beginning July 1, 2024, SNFs would be required to submit resident information files to their CMS-approved CoreQ survey vendor no less than weekly for the remainder of CY 2024. Our assumptions for staff type who would be responsible for collecting information for the proposed CoreQ: SS DC measure were based on our experience with the home health and hospice CAHPS® surveys which have been in place since 2010 and 2015, respectively. However, individual SNFs determine the staffing resources necessary. We believe it would take 4 hours at $92.92/hr for a computer programmer to complete the initial set-up of the resident information files. After the initial set-up, we believe it would take 30 minutes per week (or 26 hr/year) at $46.46/hr for a medical record specialist to create and submit the resident information file to the CMS-approved CoreQ survey vendor.

For the FY 2026 SNF QRP (data submission period January 1, 2024 through December 31, 2024), we estimate a burden of 212,853 hours (12,163 SNFs × [4 hr for a computer programmer/SNF + (0.5 hr for a medical record specialist × 27 resident information files/SNF)]) at a cost of $12,149,449 (12,163 SNFs × [4 hr × $92.92/hr to initially set up the resident information file/SNF) + (13.5 hr × $46.46/hr to submit 27 resident information files to the CMS-approved CoreQ survey vendor/SNF]).

Beginning with the FY 2027 SNF QRP (data submission period January 1, 2025 through December 31, 2025), we estimate a burden of 316,238 hours (12,163 SNFs × [0.5 hr for a medical record specialist × 52 weeks]) at a cost of $14,692,417 (316,238 hrs across all SNFs × $46.46/hr to submit resident information files to the CMS-approved CoreQ survey vendor).

The CoreQ: SS DC measure's survey contains a total of 6 questions (four primary questions and two help provided questions) and is estimated to require a SNF respondent an average of 6 minutes (0.1 hr) to complete. This is based on the original testing of the CoreQ: SS DC measure described in the CoreQ National Quality Forum (NQF) application. Using data from July 1, 2021 through June 30, 2022, we estimate there would be 1,330,284 completed surveys (27 weeks/52 weeks = 0.52); (0.52 × 2,558,238 completed surveys) in the first year of data submission (January 1, 2024 through December 31, 2024). In aggregate, we estimate a burden of 133,028 hours (1,330,284 × 0.1 hr/completed survey) at a cost of $2,755,010 (133,028 hr × $20.71/hr for beneficiaries). Beginning with the FY 2027 SNF QRP (data submission period January 1, 2025 through December 31, 2025), we estimate a burden of 255,824 hr (2,558,238 completed surveys × 0.1 hr/survey) at a cost of $5,298,115 = (255,824 hrs × $20.71/hr).

Table 30 estimates the overall SNF burden for the proposed CoreQ: SS DC measure while Table 31 estimates the overall respondent burden for the proposed CoreQ: SS DC Measure.

TABLE 30—PROPOSED SNF BURDEN FOR THE COREQ SURVEY (OMB 0938–TBD, CMS–10852)

Requirement	Number of respondents	Total responses	Time per response (hr)	Total time (hr)	Wage ($/hr)	Total cost ($)
FY 2026 CoreQ: SS DC Measure Burden						
Requesting an exemption to the CoreQ: SS DC measure survey reporting requirements.	3,272 SNFs	3,272	0.58	1,898	46.46	88,181
Contracting with a CMS-approved CoreQ survey vendor.	12,163 SNFs	12,163	NA	NA	NA	48,652,000 (12,163 × $4,000)
Data submission requirements for the proposed CoreQ: SS DC measure for the FY 2026 SNF QRP*.	12,163 SNFs	328,401	0.50/wk after initial 4 hr set-up.	212,853	*Varies	12,149,499

TABLE 30—PROPOSED SNF BURDEN FOR THE COREQ SURVEY (OMB 0938–TBD, CMS–10852)—Continued

Requirement	Number of respondents	Total responses	Time per response (hr)	Total time (hr)	Wage ($/hr)	Total cost ($)
Total	15,435 SNFs	331,673	5.05	214,751	Varies	88,181 for exempted SNFs 60,801,499 for participating SNFs
Burden Beginning with the FY 2027 CoreQ: SS DC Measure						
Requesting an exemption to the CoreQ: SS DC measure survey reporting requirements.	3,272 SNFs	3,272	0.58	1898	$46.46	88,181
Contracting with a CMS-approved CoreQ survey vendor.	12,163 SNFs	12,163	NA	NA	4,000	48,652,000 (12,163 × $4,000)
Data submission requirements for the proposed CoreQ: SS DC measure beginning with the FY 2027 SNF QRP.	12,163 SNFs	632,476	0.50	316,238	46.46	14,692,417
Total	15,435 SNFs	635,748	1.08	318,147	NA	88,181 for exempted SNFs 63,344,417 for participating SNFs

* For the first year of implementation (January 1, 2024 through December 31, 2024), we estimate 4 hours of computer programmer time and 13.5 hours of medical record specialist time.

** Burden is calculated based on 27 weeks of required participation: submission at least one weekly resident information file to the CMS-approved CoreQ survey vendor January 1, 2024 through June 30, 2024; submission of resident information file to the CMS-approved CoreQ survey vendor no less than weekly July 1, 2024 through December 31, 2024.

TABLE 31—PROPOSED BURDEN TO BENEFICIARIES FOR THE COREQ SURVEY (OMB 0938–TBD, CMS–10852)

Requirement	Number of respondents	Total responses	Time per response (hr)	Total time (hr)	Wage ($/hr)	Total cost ($)
FY 2026 CoreQ: SS DC Measure Beneficiary Burden						
Completing the CoreQ: SS DC survey	1,330,284	1,330,284	0.1	133,028	20.71	2,755,010
FY 2027 CoreQ: SS DC Measure Beneficiary Burden						
Completing the CoreQ: SS DC survey	2,558,238	2,558,238	0.1	255,824	20.71	5,298,115

2. ICRs Regarding the Skilled Nursing Facility Value-Based Purchasing Program

In section VII.B.3. of this rule, we are proposing to replace the SNFRM with the SNF WS PPR measure beginning with the FY 2028 SNF VBP program year. The measure is calculated using Medicare FFS claims data, which are the same data we use to calculate the SNFRM, and therefore, this measure would not create any new or revised burden for SNFs.

We are also proposing to adopt four new quality measures in the SNF VBP Program as discussed in section VII.B.4. of this proposed rule. One of the measures is the Total Nursing Staff Turnover Measure beginning with the FY 2026 SNF VBP Program Year. This measure is calculated using PBJ data that nursing facilities with SNF beds currently report to CMS as part of the Five Star Quality Rating System, and therefore, this measure would not create new or revised burden for SNFs. We are also proposing to adopt three additional quality measures beginning with the FY 2027 SNF VBP Program Year: (1) the Percent of Residents Experiencing One or More Falls with Major Injury (Long-Stay) Measure (''Falls with Major Injury (Long-Stay) measure''), (2) the Skilled Nursing Facility Cross-Setting Discharge Function Score Measure (''DC Function measure''), and (3) the Number of Hospitalizations per 1,000 Long-Stay Resident Days Measure (''Long-Stay Hospitalizations measure''). The Falls with Major Injury (Long-Stay) measure, and the DC Function measure are calculated using MDS 3.0 data and are calculated by CMS under the Nursing Home Quality Initiative and SNF QRP Program, respectively. The Long-Stay Hospitalization measure is calculated using Medicare FFS claims data. Therefore, these three measures would not create new or revised burden for SNFs.

Furthermore, in section VII.F. of this proposed rule, we are proposing to update the validation process for the SNF VBP Program, including adopting a new process for the Minimum Data Set (MDS) measures beginning with the FY 2027 SNF VBP program year. Under this proposal, we would validate data used to calculate the measures used in the

SNF VBP Program, and 1,500 randomly selected SNFs a year would be required to submit up to 10 charts that would be audited to validate the MDS measures.

Finally, in section VII.E.5. of this rule, we are proposing to adopt a Health Equity Adjustment beginning with FY 2027 SNF VBP program year. The source of data we would use to calculate this adjustment is the State Medicare Modernization Act (MMA) file of dual eligibility, and therefore our calculation of this adjustment would not create any additional reporting burden for SNFs.

The aforementioned FFS-related claims submission requirements and burden, which are previously mentioned in the preceding paragraphs, are active and approved by OMB under control number 0938–1140 (CMS–10387). The aforementioned MDS submission requirements and burden are active and approved by OMB under control number 0938–1140 and the burden associated with the items used to calculate the measures is already accounted for in the currently approved information collection since it is used for the SNF QRP. The aforementioned PBJ submission requirements and burden are PRA exempt (as are all nursing home requirements for participation). The increase in burden for the SNFs would be accounted for in the submission of up to 10 charts for review, and the proposed process would not begin until FY 2025. The required 60-day and 30-day notices would be published in the **Federal Register** and the comment periods would be separate from those associated with this rulemaking. The proposals in this proposed rule would have no impact on any of the requirements and burden that are currently approved under these control numbers.

C. Summary of Proposed Burden Estimates

TABLE 32—SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FY 2025

Regulatory section(s) under title 42 of the CFR	OMB Control No. (CMS ID No.)	Number of respondents	Total number of responses	Time per response (hr)	Total time (hr)	Labor cost ($/hr)	Total cost ($)
413.360(b)(1)	0938–1140 CMS–10387.	15,471 SNFs	(2,406,401)	0.005	(12,032)	86.21	(1,037,261)

TABLE 33—SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FY 2026

Regulatory section(s) under title 42 of the CFR	OMB Control No. (CMS ID No.)	Number of respondents	Total number of responses	Time per response (hr)	Total time (hr)	Labor cost ($/hr)	Total cost ($)
413.360	0938–1140 CMS–10387.	15,471 SNFs	2,406,401	0.005	12,032	79.56	778,591
413.360	0938–TBD CMS–10852.	3,272 exempted SNFs.	3,272	0.58	1,898	46.46	88,181
413.360(b)(2)	0938–INSERT CMS–10852.	1,330,284 beneficiaries.	1,330,284	0.1	133,028	20.71	2,755,010
413.360(b)(2)	0938–TBD CMS–10852.	12,163 participating SNFs.	328,401	0.5/wk after initial 4 hr set up.	212,853	Varies	12,149,449
413.360(b)(2)	0938–INSERT CMS–10852.	12,163 participating SNFs.	12,163	NA	NA	NA	48,652,000 (12,163 × $4,000)
Total for SNFs exempt from CoreQ AND reporting Patient/Resident COVID–19 Vaccine measure data.		18,743	2,409,673	Varies	13,930	Varies	866,772
Total for SNFs not exempt from CoreQ AND reporting Patient/Resident COVID–19 Vaccine measure data*.		1,370,081	4,077,249	Varies	357,913	Varies	61,580,040

TABLE 34—SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FY 2027

Regulatory section(s) under title 42 of the CFR	OMB Control No. (CMS ID No.)	Number of respondents	Total number of responses	Time per response (hr)	Total time (hr)	Labor cost ($/hr)	Total cost ($)
413.360	0938–TBD CMS–10852.	3,272 exempted SNFs.	3,272	0.58	1,898	46.46	88,181
413.360(b)(2)	0938–INSERT CMS–10852.	2,558,238 beneficiaries.	2,558,238	0.1	255,824	20.71	5,298,115

TABLE 34—SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FY 2027—Continued

Regulatory section(s) under title 42 of the CFR	OMB Control No. (CMS ID No.)	Number of respondents	Total number of responses	Time per response (hr)	Total time (hr)	Labor cost ($/hr)	Total cost ($)
413.360(b)(2)	0938–TBD CMS–10852.	12,163 participating SNFs.	632,476	0.5	316,238	Varies	14,692,417
413.360(b)(2)	0938–TBD CMS–10852.	12,163 participating SNFs.	12,163	NA	NA	NA	48,652,000 (12,163 × $4,000)
Total for SNFs exempt from CoreQ reporting requirements		3,272	3,272	0.58	1,878	46.46	88,181
Total for SNFs not exempt from CoreQ reporting requirements *		2,582,564	3,202,877	0.6	572,062	Varies	63,344,417

** Totals represent SNF burden only and do not include the beneficiary burden.*

D. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule's information collection requirements to OMB for their review. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit the CMS website at *https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/pra-listing,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this proposed rule and identify the rule (CMS–1779–P), the ICR's CFR citation, and OMB control number.

X. 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.

XI. Economic Analyses

A. Regulatory Impact Analysis

1. Statement of Need

a. Statutory Provisions

This rule proposes updates to the FY 2024 SNF prospective payment rates as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication in the **Federal Register** before the August 1 that precedes the start of each FY, the unadjusted Federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. These are statutory provisions that prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, and we do not have the discretion to adopt an alternative approach on these issues.

With respect to the SNF QRP, this proposed rule proposes updates beginning with the FY 2025, FY 2026, and FY 2027 SNF QRP. Specifically, we are proposing a modification to a current measure in the SNF QRP beginning with the FY 2025 SNF QRP, which we believe will encourage healthcare personnel to remain up to date with the COVID–19 vaccine, resulting in fewer cases, less hospitalizations, and lower mortality associated with the virus. We are proposing three new measures: (1) one to meet the requirements of the IMPACT Act which would replace the current cross-setting process measure with one more strongly associated with desired patient functional outcomes beginning with the FY 2025 SNF QRP; (2) one that supports the goals of CMS Meaningful Measures Initiative 2.0 to empower consumers, as well as assist SNFs leverage their care processes to increase vaccination coverage in their settings to protect residents and prevent negative outcomes beginning with the FY 2027 SNF QRP; and (3) one that would measure residents' satisfaction in order to assess whether the goals of person-centered care are achieved beginning with the FY 2026 SNF QRP. We are proposing the removal of three measures from the SNF QRP, beginning with the FY 2025 SNF QRP, as they meet the criteria specified at § 413.360(b)(2) for measure removal. We are further proposing to increase the data completion threshold for Minimum Data Set (MDS) data items, beginning with the FY 2026 SNF QRP, which we believe would improve our ability to appropriately analyze quality measure data for the purposes of monitoring SNF outcomes. For consistency in our regulations, we are also proposing conforming revisions to the requirements related to these proposals under the SNF QRP at § 413.360.

With respect to the SNF VBP Program, this rule proposes updates to the SNF VBP Program requirements for FY 2024 and subsequent years. Section 1888(h)(2)(A)(ii) of the Act (as amended by section 111(a)(2)(C) of the CAA 2021) allows the Secretary to add up to nine new measures to the SNF VBP Program. We are proposing to adopt four new measures for the SNF VBP Program. We propose to adopt one new measure beginning with the FY 2026 SNF VBP program year and three new measures beginning with the FY 2027 program year. We are also proposing to replace the SNFRM with the SNF WS PPR measure beginning with the FY 2028 SNF VBP Program year. Additionally, to better address health disparities and achieve health equity we are proposing to adopt a Health Equity Adjustment (HEA) beginning with the FY 2027 program year. As part of the HEA, we plan to adopt a variable payback percentage (for additional information on the HEA and the fluctuating payback percentage see section VII.E.4. of this proposed rule). Section 1888(h)(3) of the Act requires the Secretary to establish and announce performance standards

for SNF VBP Program measures no later than 60 days before the performance period, and this proposed rule estimates numerical values of the performance standards for the SNFRM, the SNF Healthcare-Associated Infection Requiring Hospitalization (SNF HAI), Total Nurse Staffing, Nursing Staff Turnover, and the Discharge to Community—Post-Acute Care (DTC PAC SNF) measures. Section 1888(h)(12)(A) of the Act requires the Secretary to apply a validation process to SNF VBP Program measures and ''the data submitted under [section 1888(e)(6)] [. . .] as appropriate[. . .].'' We are proposing to adopt new validation processes for measures beginning in FY 2026.

b. Discretionary Provisions

In addition, this proposed rule includes the following discretionary provisions:

(1) PDPM Parity Adjustment Recalibration

In the FY 2023 SNF final rule (87 FR 47502), we finalized a recalibration of the PDPM parity adjustment with a 2-year phase-in period, resulting in a reduction of 2.3 percent, or $780 million, in FY 2023 and a planned reduction in FY 2024 of 2.3 percent. We finalized the phased-in approach to implementing this adjustment based on a significant number of comments supporting this approach. Accordingly, we are implementing the second phase of the 2-year phase-in period, resulting in a reduction of 2.3 percent, or approximately $745 million, in FY 2024.

(2) SNF Forecast Error Adjustment

Each year, we evaluate the SNF market basket forecast error for the most recent year for which historical data is available. The forecast error is determined by comparing the projected SNF market basket increase in a given year with the actual SNF market basket increase in that year. In evaluating the data for FY 2022, we found that the forecast error for FY 2022 was 3.6 percentage points, exceeding the 0.5 percentage point threshold we established in regulation for proposing adjustments to correct for forecast error. Given that the forecast error exceeds the 0.5 percentage point threshold, current regulations require that the SNF market basket percentage increase for FY 2024 be adjusted upward by 3.6 percentage points to account for forecasting error in the FY 2022 SNF market basket update.

(3) Technical Updates to ICD–10 Mappings

In the FY 2019 SNF PPS final rule (83 FR 39162), we finalized the implementation of the PDPM, effective October 1, 2019. The PDPM utilizes ICD–10 codes in several ways, including using the patient's primary diagnosis to assign patients to clinical categories under several PDPM components, specifically the PT, OT, SLP and NTA components. In this proposed rule, we propose several substantive changes to the PDPM ICD–10 code mapping.

(4) Civil Money Penalties: Waiver of Hearing, Automatic Reduction of Penalty Amount

We are proposing to eliminate the requirement for facilities to actively waive their right to a hearing in writing and create in its place a constructive waiver process that would operate by default when CMS has not received a timely request for a hearing. The accompanying 35 percent penalty reduction would remain. This revision eliminating the LTC requirement to submit a written request for a reduced penalty amount when a hearing has been waived would simplify and streamline the current requirement, while maintaining a focus on providing high quality care to residents. Ultimately, this proposal would reduce administrative burden for facilities and for CMS.

2. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999).

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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is ''significant'' as measured by the $100 million threshold. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below.

3. Overall Impacts

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2023 (87 FR 47502). We estimate that the aggregate impact will be an increase of approximately $1.2 billion (3.7 percent) in Part A payments to SNFs in FY 2024. This reflects a $2 billion (6.1 percent) increase from the proposed update to the payment rates and a $745 million (2.3 percent) decrease as a result of the second phase of the parity adjustment recalibration. We note in this proposed rule that these impact numbers do not incorporate the SNF VBP Program reductions that we estimate would total $184.85 million in FY 2024. We note that events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented, and thus, very susceptible to forecasting errors due to events that may occur within the assessed impact time period.

In accordance with sections 1888(e)(4)(E) and (e)(5) of the Act and implementing regulations at § 413.337(d), we are updating the FY 2023 payment rates by a factor equal to the market basket percentage increase adjusted for the forecast error adjustment and reduced by the productivity adjustment to determine the payment rates for FY 2024. The impact to Medicare is included in the total column of Table 35. The annual update in this rule applies to SNF PPS payments in FY 2024. Accordingly, the analysis of the impact of the annual update that follows only describes the impact of this single year. Furthermore, in accordance with the requirements of the Act, we will publish a rule or notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

4. Detailed Economic Analysis

The FY 2024 SNF PPS payment impacts appear in Table 35. Using the most recently available data, in this case FY 2022 we apply the current FY 2023 CMIs, wage index and labor-related share value to the number of payment days to simulate FY 2023 payments. Then, using the same FY 2022 data, we apply the FY 2024 CMIs, wage index and labor-related share value to simulate FY 2024 payments. We tabulate the resulting payments according to the classifications in Table

35 (for example, facility type, geographic region, facility ownership), and compare the simulated FY 2023 payments to the simulated FY 2024 payments to determine the overall impact. The breakdown of the various categories of data in Table 35 is as follows:

- The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.
- The first row of figures describes the estimated effects of the various proposed changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).
- The second column shows the number of facilities in the impact database.
- The third column shows the effect of the second phase of the parity adjustment recalibration discussed in section III.C. of this rule.
- The fourth column shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available as well as accounts for the 5 percent cap on wage index transitions. The total impact of this change is 0.0 percent; however, there are distributional effects of the proposed change.
- The fifth column shows the effect of all of the changes on the FY 2024 payments. The update of 6.1 percent is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments would increase by 6.1 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 35, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes in this proposed rule, rural providers would experience a 3.0 percent increase in FY 2024 total payments.

In this chart and throughout the rule, we use a multiplicative formula to derive total percentage change. This formula is:

(1 + Parity Adjustment Percentage) * (1 + Wage Index Update Percentage) * (1 + Payment Rate Update Percentage) − 1 = Total Percentage Change

For example, the figures shown in Column 5 of Table 35 are calculated by multiplying the percentage changes using this formula. Thus, the Total Change figure for the Total Group Category is 3.7 percent, which is (1 − 2.3%) * (1 + 0.0%) * (1 + 6.1%) − 1.

As a result of rounding and the use of this multiplicative formula based on percentages, derived dollar estimates may not sum.

TABLE 35—IMPACT TO THE SNF PPS FOR FY 2024

Impact categories	Number of facilities	Parity adjustment recalibration (%)	Update wage data (%)	Total change (%)
Group				
Total	15,435	−2.3	0.0	3.7
Urban	11,206	−2.3	0.1	3.8
Rural	4,229	−2.2	−0.7	3.0
Hospital-based urban	359	−2.3	0.1	3.7
Freestanding urban	10,847	−2.3	0.1	3.8
Hospital-based rural	375	−2.2	−0.4	3.3
Freestanding rural	3,854	−2.2	−0.7	3.0
Urban by region				
New England	734	−2.3	−0.7	2.9
Middle Atlantic	1,468	−2.4	1.4	5.1
South Atlantic	1,935	−2.3	0.0	3.7
East North Central	2,176	−2.3	−0.7	3.0
East South Central	555	−2.2	0.0	3.7
West North Central	957	−2.3	−0.7	3.0
West South Central	1,432	−2.3	0.0	3.7
Mountain	545	−2.3	−0.8	2.9
Pacific	1,398	−2.4	0.2	3.7
Outlying	6	−2.0	−2.5	1.4
Rural by region				
New England	114	−2.3	−1.0	2.6
Middle Atlantic	205	−2.2	−0.4	3.3
South Atlantic	484	−2.2	−0.1	3.7
East North Central	906	−2.2	−0.8	2.9
East South Central	490	−2.2	−1.0	2.8
West North Central	1,009	−2.2	−0.9	2.8
West South Central	732	−2.2	−0.5	3.3
Mountain	197	−2.3	−0.6	3.1
Pacific	91	−2.3	−2.0	1.5
Outlying	1	−2.3	0.0	3.6
Ownership				
For profit	10,884	−2.3	0.0	3.7

TABLE 35—IMPACT TO THE SNF PPS FOR FY 2024—Continued

Impact categories	Number of facilities	Parity adjustment recalibration (%)	Update wage data (%)	Total change (%)
Non-profit	3,550	−2.3	0.0	3.6
Government	1,001	−2.3	−0.4	3.3

Note: The Total column includes the FY 2024 6.1 percent market basket update factor. The values presented in Table 35 may not sum due to rounding.

5. Impacts for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) for FY 2025

Estimated impacts for the SNF QRP are based on analysis discussed in section VI.C. of this proposed rule. In accordance with section 1888(e)(6)(A)(i) of the Act, the Secretary must reduce by 2 percentage points the annual payment update applicable to a SNF for a fiscal year if the SNF does not comply with the requirements of the SNF QRP for that fiscal year.

As discussed in section VI.C.1.a. of this proposed rule, we propose to modify one measure in the SNF QRP beginning with the FY 2025 SNF QRP, the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP COVID–19 Vaccine) measure. We believe that the burden associated with the SNF QRP is the time and effort associated with complying with the non-claims-based measures requirements of the SNF QRP. The burden associated with the COVID–19 Vaccination Coverage among HCP measure is accounted for under the CDC PRA package currently approved under OMB control number 0938–1317 (expiration January 31, 2024).

As discussed in section VI.C.1.b. of this proposed rule, we propose that SNFs would collect data on one new quality measure, the Discharge Function Score (DC Function) measure, beginning with resident assessments completed on October 1, 2023. However, the DC Function measure utilizes data items that SNFs already report to CMS for payment and quality reporting purposes, and therefore, the burden is accounted for in the PRA package approved under OMB control number 0938–1140 (expiration November 30, 2025).

As discussed in section VI.C.1.c. of this proposed rule, we propose to remove a measure from the SNF QRP, the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure, beginning with admission assessments completed on October 1, 2023. Although the proposed decrease in burden will be accounted for in a revised information collection request under OMB control number (0938–1140), we are providing impact information.

With 2,406,401 admissions from 15,471 SNFs annually, we estimate an annual burden decrease of 12,032 fewer hours (2,406,401 admissions × 0.005 hr) and a decrease of $1,037,261 (12,038 hrs × $86.2085/hr). For each SNF we estimate an annual burden decrease of 0.78 hours [(12,032 hours/15,471 SNFs) at a savings of $67.05 ($1,037,261 total burden/15,471 SNFs).

As discussed in section VI.C.1.d. of this rule, we propose to remove two measures from the SNF QRP, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (Change in Self-Care Score) and Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (Change in Mobility Score) measures, beginning with assessments completed on October 1, 2023. However, the data items used in the calculation of the Change in Self-Care Score and Change in Mobility Score measures are used for other payment and quality reporting purposes, and therefore there is no change in burden associated with this proposal.

As discussed in section VI.C.3.a. of this rule, we propose to add a second measure to the SNF QRP, the COVID–19 Vaccine: Percent of Patients/Residents Who are Up to Date (Patient/Resident COVID–19 Vaccine) measure, which would result in an increase of 0.005 hours of clinical staff time beginning with discharge assessments completed on October 1, 2024. Although the proposed increase in burden will be accounted for in a revised information collection request under OMB control number (0938–1140), we are providing impact information. With 2,406,401 discharges from 15,471 SNFs annually, we estimate an annual burden increase of 12,032 hours (2,406,401 discharges × 0.005 hr) and an increase of $778,5914 (12,032 hrs × $64.71/hr). For each SNF we estimate an annual burden increase of 0.78 hours (12,032 hrs/15,471 SNFs) at an additional cost of $50.33 ($778,591 total burden/15,471 SNFs).

We also propose in section VI.F.5. of this proposed rule that SNFs would begin reporting 100 percent of the required quality measures data and standardized patient assessment data collected using the MDS on at least 90 percent of the assessments they submit through the CMS designated submission system beginning January 1, 2024. As discussed in section IX.B.1. of this proposed rule, this change would not affect the information collection burden for the SNF QRP.

Finally, we propose in section VI.C.2. of this proposed rule to adopt the CoreQ: Short Stay Discharge (CoreQ: SS DC) measure to the SNF QRP beginning with the FY 2026 SNF QRP. Although the proposed increase in burden will be accounted for in a new information collection request, we are providing impact information. The impact of the proposed CoreQ: SS DC measure is discussed in three parts: (1) the burden for small SNFs requesting an exemption; (2) the burden for participating SNFs in the first year of national implementation; and (3) the burden for participating SNFs beginning with the second year of implementation. We describe each of these next and in Table 36.

As described in section VI.C.2.a.(5)(i) of this proposed rule, eligible SNFs may request an exemption from the proposed CoreQ: SS DC measure's reporting requirements. We estimate an increase of 0.58 hours of staff time for SNFs who request this exemption.

We estimate 3,272 SNFs would request an exemption, resulting in an annual burden increase of 1,898 hours (3,272 SNFs × 0.58 hrs) and an increase of $88,181 [3,272 SNFs × (0.58 hrs × $46.46/hr)]. For each SNF requesting an exemption, we estimate an annual burden increase of 0.58 hours and $26.95 (0.58 hrs × $46.46/hr).

In the first year of implementation of the proposed CoreQ: SS DC measure (January 1, 2024 through December 31, 2024), participating SNFs would need to

contract with an independent, CMS approved survey vendor to administer the CoreQ survey on their behalf and submit the results to the CoreQ Data Center. We estimate $4,000 annual cost for a participating SNF to contract with a survey vendor, resulting in an annual cost increase of $48,652,000 ($4,000 × 12,163 estimated participating SNFs). Participating SNFs would also incur an increase of 17.5 hours of staff time to assemble and submit the resident information files, specifically four hours of computer programmer's time and 30 minutes per week for 27 weeks of a medical record specialist's time. We estimate a burden increase in CY 2024 of 212,853 hours (12,163 SNFs × 17.5 hours) and an increase of $12,149,499 [((4 hours × $92.92) + (13.5 hours × $46.46)) × 12,163]. For each SNF, we estimate an annual burden increase of 17.5 hours [4 + ((27 weeks × 30 min)/60)] and $998.89 [(4 hours × $92.92) + (13.5 hours × $46.46)].

Beginning with the second year of implementation of the proposed CoreQ: SS DC measure (January 1, 2025 through December 31, 2025), the potential impact of requesting an exemption or contracting with a survey vendor would not change and be the same as described above. However, as described in section VI.F.5.b. of this proposed rule, the second year of implementation of the proposed CoreQ measure requires participating SNFs to submit data for the entire CY. Therefore, we estimate the additional impact for participating SNFs would be 26 hours of medical record specialist time to assemble and submit the resident information files (52 weeks × 0.5 hr). We estimate an additional impact in CY 2025 of 316,238 hours (12,163 SNFs × 26 hours) and an increase of $14,692,417 [(26 hours × $46.46) × 12,163]. For each participating SNF, we estimate an additional impact of 26 hours and $1,207.96 (26 hours × $46.46).

TABLE 36—ESTIMATED SNF QRP PROGRAM IMPACTS FOR FY 2025 THROUGH FY 2027

Total benefit for the FY2025 SNF QRP	Per SNF		All SNFs	
	Change in annual burden hours	Change in annual cost	Change in annual burden hours	Change in annual cost
Decrease in burden from the removal of the Functional Assessment/Care Plan measure	(0.78)	($67)	(12,032)	($1,037,261)
Total burden for the FY2026 SNF QRP				
Total burden for SNFs exempt from the proposed CoreQ: SS DC measure reporting AND Increase in burden from the addition of the Patient/Resident COVID–19 Vaccine measure	1.36	77	13,941	866,772
Total burden for SNFs participating in the proposed CoreQ: SS DC measure reporting AND Increase in burden from the addition of the Patient/Resident COVID–19 Vaccine measure	18.28	5,049	224,885	61,580,090
Total burden for the FY 2027 SNF QRP				
Total for SNFs exempt from the proposed CoreQ: SS DC measure reporting	0.58	26.95	1,898	88,181
Total for SNFs participating in the proposed CoreQ: SS DC measure reporting	26	1,208	316,238	63,344,417

We invite public comments on the overall impact of the SNF QRP proposals for FY 2025, 2026 and 2027.

6. Impacts for the SNF VBP Program

The estimated impacts of the FY 2024 SNF VBP Program are based on historical data and appear in Table 37. We modeled SNF performance in the Program using SNFRM data from FY 2019 as the baseline period and FY 2021 as the performance period. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent, as we finalized in the FY 2018 SNF PPS final rule (82 FR 36619 through 36621).

For the FY 2024 year, we will award each participating SNF 60 percent of their 2 percent withhold. Additionally, in the FY 2023 SNF PPS final rule (87 FR 47585 through 47587), we finalized our proposal to apply a case minimum requirement for the SNFRM. As a result of these provisions, SNFs that do not meet the case minimum specified for the SNFRM for the FY 2024 program year will be excluded from the Program and will receive their full Federal per diem rate for that fiscal year. As previously finalized, this policy will maintain the overall payback percentage at 60 percent for the FY 2024 program year. Based on the 60 percent payback percentage, we estimated that we would redistribute approximately $277.27 million (of the estimated $462.12 million in withheld funds) in value-based incentive payments to SNFs in FY 2024, which means that the SNF VBP Program is estimated to result in approximately $184.85 million in savings to the Medicare Program in FY 2024.

Our detailed analysis of the impacts of the FY 2024 SNF VBP Program is shown in Table 37.

TABLE 37—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2024

Characteristic	Number of facilities	Mean risk-standardized readmission rate (SNFRM) (%)	Mean performance score	Mean incentive payment multiplier	Percent of total payment
Group					
Total *	11,176	20.47	28.3029	0.99140	100.00
Urban	8,710	20.58	27.1026	0.99084	87.12
Rural	2,436	20.07	32.7202	0.99346	12.88
Hospital-based urban **	196	19.92	36.8240	0.99531	1.72
Freestanding urban **	8,501	20.60	26.8949	0.99074	85.38
Hospital-based rural **	87	19.58	39.2697	0.99636	0.36
Freestanding rural **	2,275	20.08	32.6780	0.99347	12.38
Urban by region					
New England	627	20.62	27.4602	0.99121	5.45
Middle Atlantic	1,287	20.35	30.2740	0.99220	18.03
South Atlantic	1,691	20.83	25.4855	0.99011	17.75
East North Central	1,593	20.88	22.3914	0.98856	12.69
East South Central	468	20.83	24.1778	0.98938	3.55
West North Central	620	20.24	29.7294	0.99207	3.87
West South Central	912	21.11	18.7872	0.98700	6.75
Mountain	384	19.95	34.9771	0.99429	3.79
Pacific	1,125	19.93	36.2085	0.99528	15.24
Outlying	3	20.46	23.6945	0.98431	0.00
Rural by region					
New England	75	19.51	40.6317	0.99752	0.55
Middle Atlantic	164	19.56	39.1621	0.99692	0.91
South Atlantic	340	20.37	29.6459	0.99162	2.06
East North Central	602	19.94	33.4406	0.99376	3.07
East South Central	383	20.48	28.5196	0.99167	2.14
West North Central	364	19.81	34.7097	0.99451	1.29
West South Central	345	20.74	24.3765	0.98937	1.68
Mountain	92	19.34	42.4305	0.99792	0.53
Pacific	71	18.48	58.5164	1.00597	0.64
Outlying	0				
Ownership					
Government	464	19.98	34.5948	0.99435	2.86
Profit	8,101	20.60	26.4146	0.99049	75.05
Non-Profit	2,581	20.16	33.2172	0.99378	22.08

* The total group category excludes 3,721 SNFs that failed to meet the finalized measure minimum policy. The total group category includes 30 SNFs that did not have facility characteristics in the CMS Provider of Services (POS) file or historical payment data used for this analysis.

** The group category which includes hospital-based/freestanding by urban/rural excludes 87 swing bed SNFs that satisfied the current measure minimum policy.

In section VII.B.4.b. of this proposed rule, we are proposing to adopt one additional measure (Nursing Staff Turnover measure) beginning with the FY 2026 program year. Additionally, in section VII.E.2.b. of this proposed rule, we are proposing to adopt a case minimum requirement for the Nursing Staff Turnover measure. In section VII.E.2.c. of this proposed rule, we are proposing to maintain the previously finalized measure minimum for FY 2026. Therefore, we are providing estimated impacts of the FY 2026 SNF VBP Program, which are based on historical data and appear in Tables 38 and 39. We modeled SNF performance in the Program using measure data from FY 2019 as the baseline period and FY 2021 as the performance period for the SNFRM, SNF HAI, Total Nurse Staffing, and Nursing Staff Turnover measures. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent. Based on the 60 percent payback percentage, we estimated that we will redistribute approximately $294.75 million (of the estimated $491.24 million in withheld funds) in value-based incentive payments to SNFs in FY 2026, which means that the SNF VBP Program is estimated to result in approximately $196.50 million in savings to the Medicare Program in FY 2026.

Our detailed analysis of the impacts of the FY 2026 SNF VBP Program is shown in Tables 38 and 39.

TABLE 38—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2026

Characteristic	Number of facilities	Mean risk-standardized readmission rate (SNFRM) (%)	Mean total nursing hours per resident day (total nurse staffing)	Mean risk-standardized rate of hospital-acquired infections (SNF HAI) (%)	Mean total nursing staff turnover rate (nursing staff turnover) (%)
Group					
Total *	13,879	20.39	3.91	7.67	52.74
Urban	10,266	20.52	3.93	7.69	52.43
Rural	3,613	20.04	3.87	7.61	53.62
Hospital-based urban **	239	20.01	5.22	6.52	45.90
Freestanding urban **	10,018	20.53	3.90	7.72	52.57
Hospital-based rural **	143	19.75	4.82	6.88	45.57
Freestanding rural **	3,399	20.04	3.83	7.68	53.93
Urban by region					
New England	706	20.54	4.04	7.09	45.50
Middle Atlantic	1,408	20.31	3.68	7.55	46.06
South Atlantic	1,810	20.77	4.01	7.86	51.79
East North Central	1,956	20.74	3.59	7.72	55.47
East South Central	538	20.73	3.96	8.02	55.78
West North Central	839	20.18	4.19	7.41	57.73
West South Central	1,207	20.97	3.74	8.02	59.10
Mountain	490	19.94	4.15	7.15	56.54
Pacific	1,309	19.98	4.45	7.84	46.97
Outlying	3	20.46	3.30	6.20	N/A
Rural by region					
New England	106	19.55	4.30	6.63	54.74
Middle Atlantic	192	19.60	3.42	7.17	53.04
South Atlantic	432	20.24	3.72	7.79	52.83
East North Central	802	19.94	3.63	7.46	53.02
East South Central	451	20.43	3.93	8.18	51.90
West North Central	802	19.85	4.12	7.50	53.49
West South Central	577	20.58	3.82	7.99	55.76
Mountain	168	19.54	4.18	7.16	55.96
Pacific	83	18.64	4.34	6.73	53.75
Outlying	0				
Ownership					
Government	735	20.00	4.34	7.36	48.93
Profit	9,975	20.51	3.72	7.89	54.29
Non-Profit	3,169	20.11	4.43	7.04	48.74

* The total group category excludes 1,028 SNFs that failed to meet the finalized measure minimum policy.
** The group category that includes hospital-based/freestanding by urban/rural excludes 80 swing bed SNFs that satisfied the proposed measure minimum policy.
N/A = Not available because no facilities in this group received a measure result.

TABLE 39—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2026

Characteristic	Number of facilities	Mean performance score	Mean incentive payment multiplier	Percent of total payment
Group				
Total *	13,879	24.5877	0.99108	100.00
Urban	10,266	24.4964	0.99106	85.88
Rural	3,613	24.8470	0.99112	14.12
Hospital-based urban **	239	40.2184	1.00671	1.60
Freestanding urban **	10,018	24.1217	0.99069	84.26
Hospital-based rural **	143	41.0606	1.00583	0.38
Freestanding rural **	3,399	24.0807	0.99041	13.62
Urban by region				
New England	706	30.1328	0.99463	5.31

TABLE 39—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2026—Continued

Characteristic	Number of facilities	Mean performance score	Mean incentive payment multiplier	Percent of total payment
Middle Atlantic	1,408	26.0014	0.99182	17.27
South Atlantic	1,810	24.1128	0.99014	17.07
East North Central	1,956	18.8610	0.98737	12.69
East South Central	538	21.3335	0.98858	3.49
West North Central	839	26.4267	0.99302	3.99
West South Central	1,207	16.8688	0.98557	7.20
Mountain	490	27.4320	0.99295	3.81
Pacific	1,309	34.7925	0.99925	15.02
Outlying	3	21.6999	0.98682	0.00
Rural by region				
New England	106	33.4096	0.99729	0.59
Middle Atlantic	192	22.9268	0.98939	0.91
South Atlantic	432	21.3377	0.98797	2.10
East North Central	802	22.3282	0.98960	3.20
East South Central	451	24.1187	0.99020	2.17
West North Central	802	29.2268	0.99485	1.80
West South Central	577	21.1394	0.98792	2.10
Mountain	168	30.0191	0.99532	0.63
Pacific	83	37.8989	1.00119	0.62
Outlying	0	.....	.....	0.00
Ownership				
Government	735	33.4591	0.99976	3.20
Profit	9,975	21.0738	0.98806	75.04
Non-Profit	3,169	33.5907	0.99856	21.76

* The total group category excludes 1,028 SNFs that failed to meet the finalized measure minimum policy.
** The group category that includes hospital-based/freestanding by urban/rural excludes 80 swing bed SNFs that satisfied the proposed measure minimum policy.
N/A = Not available because no facilities in this group received a measure result.

In section VII.B.4. of this proposed rule, we are proposing to adopt three additional measures (Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures) beginning with the FY 2027 program year. Additionally, in section VII.E.2.b. of this proposed rule, we are proposing to adopt case minimum requirements for the Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures. In section VII.E.2.d. of this proposed rule, we are also proposing to update our previously finalized measure minimum for the FY 2027 program year. Therefore, we are providing estimated impacts of the FY 2027 SNF VBP Program, which are based on historical data and appear in Tables 40 and 41. We modeled SNF performance in the Program using measure data from FY 2019 (SNFRM, SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and DC Function measures), CY 2019 (Long Stay Hospitalization measure), and FY 2018 through FY 2019 (DTC PAC SNF measure) as the baseline period and FY 2021 (SNFRM, SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and DC Function measures), CY 2021 (Long Stay Hospitalization measure), and FY 2020 through FY 2021 (DTC PAC SNF measure) as the performance period. Additionally, we modeled a logistic exchange function with an approximate payback percentage of 66.02 percent, as we propose in section VII.E.4.e. of this proposed rule. Based on the increase in payback percentage, we estimated that we will redistribute approximately $324.18 million (of the estimated $491.03 million in withheld funds) in value-based incentive payments to SNFs in FY 2027, which means that the SNF VBP Program is estimated to result in approximately $166.86 million in savings to the Medicare Program in FY 2027.

Our detailed analysis of the impacts of the FY 2027 SNF VBP Program is shown in Tables 40 and 41.

TABLE 40—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2027

Characteristic	Number of facilities	Mean risk-standardized readmission rate (SNFRM) (%)	Mean case-mix adjusted total nursing hours per resident day (total nurse staffing)	Mean risk-standardized hospital-acquired infection rate (SNF HAI) (%)	Mean total nursing staff turnover rate (nursing staff turnover) (%)	Mean risk-standardized discharge to community rate (DTC PAC) (%)	Mean number of risk-adjusted hospitalizations per 1,000 long-stay resident days (long stay hospitalization) (Hosp. per 1,000)	Mean percentage of stays meeting or exceeding expected discharge function score (DC function) (%)	Mean percentage of stays with a fall with major injury (falls with major injury (long-stay)) (%)
Group									
Total *	13,672	20.39	3.92	7.68	52.64	51.28	1.47	51.96	3.36
Urban	10,083	20.52	3.94	7.69	52.30	52.03	1.50	51.72	3.07
Rural	3,589	20.03	3.86	7.63	53.58	49.18	1.39	52.61	4.16
Hospital-based urban **	227	20.00	5.26	6.47	46.33	60.97	1.10	46.90	2.17
Freestanding urban **	9,852	20.53	3.91	7.72	52.42	51.82	1.51	51.84	3.09
Hospital-based rural **	138	19.72	4.84	6.86	45.96	52.78	1.07	49.82	4.22
Freestanding rural **	3,409	20.04	3.82	7.68	53.87	48.80	1.40	52.85	4.16
Urban by region									
New England	706	20.54	4.05	7.09	45.51	55.47	1.41	56.04	3.67
Middle Atlantic	1,397	20.31	3.67	7.56	45.98	49.63	1.40	54.87	2.95
South Atlantic	1,805	20.76	4.02	7.86	51.79	52.38	1.52	50.96	3.10
East North Central	1,871	20.76	3.62	7.72	55.11	52.56	1.52	48.29	3.23
East South Central	533	20.75	3.97	8.04	55.79	50.89	1.49	48.03	3.37
West North Central	827	20.17	4.19	7.41	57.62	51.24	1.51	55.00	3.82
West South Central	1,183	20.98	3.74	8.03	58.96	49.37	1.73	52.38	3.24
Mountain	472	19.93	4.16	7.13	56.75	57.52	1.17	55.02	2.96
Pacific	1,286	19.97	4.44	7.84	47.08	52.86	1.52	49.62	1.89
Outlying	3	20.46	3.30	6.20	N/A	66.54	N/A	50.77	0.00
Rural by region									
New England	108	19.54	4.32	6.65	54.60	53.27	1.04	57.92	4.18
Middle Atlantic	191	19.57	3.41	7.13	52.89	47.82	1.13	53.15	3.99
South Atlantic	421	20.24	3.73	7.79	52.89	48.10	1.42	49.41	3.84
East North Central	799	19.94	3.63	7.47	52.80	51.48	1.30	49.59	4.14
East South Central	439	20.42	3.92	8.25	51.98	48.11	1.57	48.57	3.65
West North Central	800	19.84	4.10	7.51	53.61	47.74	1.35	56.70	4.77
West South Central	577	20.55	3.82	8.02	55.64	47.69	1.73	53.31	4.17
Mountain	173	19.55	4.17	7.16	55.65	51.94	1.02	58.19	4.22
Pacific	81	18.63	4.32	6.76	54.33	54.64	0.96	55.69	3.11
Outlying	0								
Rural by region									
Government	717	19.96	4.34	7.38	49.01	50.37	1.41	51.75	3.80
Profit	9,825	20.52	3.73	7.90	54.16	50.32	1.53	51.24	3.17
Non-Profit	3,130	20.10	4.44	7.04	48.71	54.49	1.33	54.25	3.85

* The total group category excludes 1,235 SNFs that failed to meet the proposed four out of eight measure minimum policy.
** The group category that includes hospital-based/freestanding by urban/rural excludes 46 swing bed SNFs that satisfied the proposed measure minimum policy.
N/A = Not available because no facilities in this group received a measure result.

TABLE 41—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2027

Characteristic	Number of facilities	Mean health equity bonus points ***	Mean performance score ****	Mean incentive payment multiplier	Percent of total payment
Group					
Total *	13,672	1.3922	32.9455	0.99185	100.00
Urban	10,083	1.4065	33.2266	0.99208	85.82
Rural	3,589	1.3522	32.1558	0.99119	14.18
Hospital-based urban **	227	1.0527	45.8943	1.00332	1.59
Freestanding urban **	9,852	1.4151	32.9329	0.99182	84.23
Hospital-based rural **	138	1.0851	43.4161	1.00072	0.38
Freestanding rural **	3,409	1.3752	31.5523	0.99069	13.70
Urban by region					
New England	706	1.6512	37.2281	0.99477	5.32
Middle Atlantic	1,397	1.5283	34.0874	0.99249	17.29
South Atlantic	1,805	1.2317	32.5500	0.99129	17.10
East North Central	1,871	0.9931	28.9562	0.98911	12.59
East South Central	533	0.9183	29.0674	0.98909	3.49
West North Central	827	0.7315	32.7553	0.99175	3.98
West South Central	1,183	1.3010	27.3676	0.98777	7.18
Mountain	472	1.0725	39.2626	0.99648	3.82
Pacific	1,286	2.8460	42.4505	0.99940	15.04
Outlying	3	0.0000	36.5564	0.99256	0.00
Rural by region					
New England	108	1.9869	42.3485	0.99953	0.61
Middle Atlantic	191	1.7348	31.4130	0.99020	0.91
South Atlantic	421	1.6187	29.0528	0.98846	2.09
East North Central	799	1.1916	31.2626	0.99059	3.22
East South Central	439	1.6169	29.8730	0.98945	2.16
West North Central	800	0.6760	33.9294	0.99251	1.81
West South Central	577	1.7368	29.1213	0.98892	2.12
Mountain	173	1.3443	39.8837	0.99746	0.64
Pacific	81	2.3226	45.2226	1.00188	0.62
Outlying	0	.....	.....	.....	0.00
Ownership					
Government	717	1.5059	37.5369	0.99586	3.17
Profit	9,825	1.5991	30.8612	0.99018	75.10
Non-Profit	3,130	0.7168	38.4361	0.99618	21.72

* The total group category excludes 1,235 SNFs that failed to meet the proposed four out of eight measure minimum policy.
** The group category that includes hospital-based/freestanding by urban/rural excludes 46 swing bed SNFs that satisfied the proposed measure minimum policy.
*** Because performance scores are capped at 100 points, SNFs may not receive all health equity bonus points they earn.
**** The mean total performance score is calculated by adding the proposed Health Equity Adjustment bonus points to the normalized sum of individual measure scores.
N/A = Not available because no facilities in this group received a measure result.

In section VII.B.3. of this proposed rule, we are proposing to replace the SNFRM with the SNF WS PPR measure beginning with the FY 2028 program year. Additionally, in section VII.E.2.b. of this rule, we are proposing to adopt a case minimum requirement for the SNF WS PPR measure. Therefore, we are providing estimated impacts of the FY 2028 SNF VBP Program, which are based on historical data and appear in Tables 42 and 43. We modeled SNF performance in the Program using measure data from FY 2019 (SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and DC Function measures), CY 2019 (Long Stay Hospitalization measure), FY 2018 through FY 2019 (DTC PAC SNF measure), and FY 2019 through FY 2020 (SNF WS PPR measure) as the baseline period and FY 2021 (SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, Falls with Major Injury (Long-Stay), and DC Function measures), CY 2021 (Long Stay Hospitalization measure), FY 2020 through FY 2021(DTC PAC SNF measure), and FY 2020 through FY 2021 (SNF WS PPR measure) as the performance period. Additionally, we modeled a logistic exchange function with an approximate payback percentage of 65.4 percent, as we propose in section VII.E.4.e. of this proposed rule. Based on the increase in payback percentage, we estimated that we will redistribute approximately $323.23 million (of the estimated $494.21 million in withheld funds) in value-based incentive payments to SNFs in FY 2028, which means that the SNF VBP Program is estimated to result in approximately $170.98 million in savings to the Medicare Program in FY 2028.

Our detailed analysis of the impacts of the FY 2028 SNF VBP Program is shown in Tables 42 and 43.

TABLE 42—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2028

Characteristic	Number of facilities	Mean SNF within-stay potentially preventable readmission rate (SNF WS PPR) (%)	Mean total nursing hours per resident day (total nurse staffing)	Mean risk-standardized hospital-acquired infection rate (SNF HAI) (%)	Mean total nursing staff turnover rate (nursing staff turnover) (%)	Mean risk-standardized discharge to community rate (DTC PAC) (%)	Mean number of risk-adjusted hospitalizations per 1,000 long-stay resident days (Long Stay Hospitalization) (Hosp. per 1,000)	Mean percentage of stays meeting or exceeding expected discharge function score (DC Function) (%)	Mean percentage of stays with a fall with major injury (falls with major injury (long-stay)) (%)
Group									
Total *	14,048	11.57	3.92	7.67	52.74	51.18	1.47	51.96	3.36
Urban	10,313	11.71	3.94	7.69	52.41	51.94	1.51	51.75	3.07
Rural	3,735	11.18	3.87	7.62	53.66	49.10	1.39	52.53	4.15
Hospital-based urban **	230	9.07	5.26	6.48	46.22	60.88	1.10	46.91	2.27
Freestanding urban **	10,079	11.77	3.91	7.72	52.53	51.73	1.51	51.87	3.09
Hospital-based rural **	142	9.44	4.84	6.88	45.96	52.54	1.06	49.90	4.19
Freestanding rural **	3,548	11.30	3.83	7.67	53.95	48.71	1.40	52.75	4.14
Urban by region									
New England	712	10.70	4.05	7.09	45.49	55.47	1.41	55.98	3.67
Middle Atlantic	1,411	11.66	3.67	7.56	46.02	49.60	1.40	54.80	2.95
South Atlantic	1,827	11.86	4.04	7.85	51.78	52.34	1.53	51.03	3.11
East North Central	1,935	11.88	3.61	7.73	55.28	52.39	1.52	48.33	3.22
East South Central	539	11.77	3.96	8.03	55.87	50.88	1.49	48.20	3.34
West North Central	858	11.27	4.17	7.41	57.92	51.11	1.51	55.12	3.83
West South Central	1,235	12.75	3.73	8.02	59.06	49.27	1.73	52.68	3.21
Mountain	482	10.17	4.17	7.14	56.57	57.32	1.17	54.76	2.98
Pacific	1,310	11.70	4.45	7.84	47.13	52.81	1.53	49.52	1.90
Outlying	4	8.14	4.70	6.52	N/A	64.89	N/A	47.36	0.00
Rural by region									
New England	112	9.98	4.33	6.67	54.86	52.92	1.05	57.56	4.20
Middle Atlantic	195	10.38	3.41	7.16	53.05	47.85	1.14	52.95	3.94
South Atlantic	436	11.43	3.72	7.76	53.00	48.14	1.42	49.32	3.79
East North Central	824	10.90	3.63	7.48	53.03	51.45	1.30	49.40	4.12
East South Central	451	12.06	3.93	8.23	51.93	48.13	1.57	48.54	3.64
West North Central	854	10.77	4.12	7.50	53.54	47.56	1.34	56.37	4.72
West South Central	603	12.40	3.83	8.02	55.74	47.62	1.72	53.46	4.16
Mountain	178	10.02	4.17	7.15	55.81	51.79	1.03	58.21	4.25
Pacific	82	9.32	4.37	6.76	54.33	54.46	0.97	56.23	3.12
Outlying	0								
Ownership									
Government	737	10.84	4.36	7.38	48.97	50.33	1.42	51.79	3.85
Profit	10,119	11.98	3.72	7.90	54.28	50.25	1.52	51.27	3.17
Non-Profit	3,192	10.45	4.45	7.04	48.74	54.35	1.32	54.19	3.85

* The total group category excludes 859 SNFs that failed to meet the proposed four of eight measure minimum policy.
** The group category that includes hospital-based/freestanding by urban/rural excludes 49 swing bed SNFs that satisfied the proposed measure minimum policy.
N/A = Not available because no facilities in this group received a measure result.

TABLE 43—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2028

Characteristic	Number of facilities	Mean health equity bonus points ***	Mean performance score ****	Mean incentive payment multiplier	Percent of total payment
Group					
Total *	14,048	1.3866	33.7117	0.99216	100.00
Urban	10,313	1.3834	33.8699	0.99229	85.72
Rural	3,735	1.3952	33.2749	0.99180	14.28
Hospital-based urban **	230	1.0999	50.6699	1.00718	1.59
Freestanding urban **	10,079	1.3903	33.4786	0.99194	84.13
Hospital-based rural **	142	1.1789	46.3840	1.00274	0.38
Freestanding rural **	3,548	1.4162	32.4459	0.99108	13.80
Urban by region					
New England	712	1.6450	38.8562	0.99580	5.30
Middle Atlantic	1,411	1.4441	34.5592	0.99248	17.19
South Atlantic	1,827	1.2259	33.1678	0.99158	17.04
East North Central	1,935	1.0242	29.8652	0.98953	12.61
East South Central	539	0.9089	30.1968	0.98983	3.48
West North Central	858	0.7433	33.4543	0.99206	4.01

TABLE 43—ESTIMATED SNF VBP PROGRAM IMPACTS FOR FY 2028—Continued

Characteristic	Number of facilities	Mean health equity bonus points ***	Mean performance score ****	Mean incentive payment multiplier	Percent of total payment
West South Central	1,235	1.2998	28.0800	0.98804	7.28
Mountain	482	1.1398	41.1899	0.99784	3.83
Pacific	1,310	2.7134	41.8142	0.99832	14.99
Outlying	4	0.0000	49.0903	1.00665	0.00
Rural by region					
New England	112	2.1095	43.5189	1.00029	0.61
Middle Atlantic	195	1.6914	32.6276	0.99092	0.91
South Atlantic	436	1.6562	30.1287	0.98926	2.10
East North Central	824	1.2515	32.2562	0.99102	3.24
East South Central	451	1.6207	30.7335	0.99007	2.16
West North Central	854	0.7418	35.6622	0.99352	1.85
West South Central	603	1.7832	29.8043	0.98910	2.14
Mountain	178	1.4983	41.1638	0.99796	0.64
Pacific	82	2.2569	45.2986	1.00159	0.62
Outlying	0	.....	.....	.....	0.00
Ownership					
Government	737	1.5601	38.6989	0.99642	3.18
Profit	10,119	1.5762	31.3261	0.99022	75.13
Non-Profit	3,192	0.7454	40.1229	0.99730	21.69

* The total group category excludes 859 SNFs that failed to meet the proposed four out of eight measure minimum policy.
** The group category that includes hospital-based/freestanding by urban/rural excludes 49 swing bed SNFs that satisfied the proposed measure minimum policy.
*** Because performance scores are capped at 100 points, SNFs may not receive all health equity bonus points they earn.
**** The mean total performance score is calculated by adding the proposed Health Equity Adjustment bonus points to the normalized sum of individual measure scores.
N/A = Not available because no facilities in this group received a measure result.

7. Impacts for Civil Money Penalties (CMP): Waiver Process Changes

Current requirements at § 488.436(a) set forth a process for submitting a written waiver of a hearing to appeal deficiencies that lead to the imposition of a CMP which, when properly filed, results in the reduction by CMS or the State of a facility's CMP by 35 percent, as long as the CMP has not also been reduced by 50 percent under § 488.438. We propose to restructure the waiver process by establishing a constructive waiver at § 488.436(a) that would operate by default when CMS has not received a timely request for a hearing. Since a large majority of facilities facing CMPs typically submit the currently required express, written waiver, this proposed change to provide for a constructive waiver (after the 60-day timeframe in which to file an appeal following notice of CMP imposition) would reduce the costs and paperwork burden for most facilities.

In CY 2022, 81 percent of facilities facing CMPs filed an express waiver; whereas only 2 percent of facilities facing CMPs filed an appeal and went through the hearing process. The remaining 17 percent of facilities are those who fail to waive at all or fail to waive timely when they do not appeal. We estimate that moving to a constructive waiver process would eliminate the time and paperwork necessary to complete and send in a written waiver and would thereby result, as detailed below, in a total annual savings of $2,299,716 in administrative costs for LTC facilities facing CMPs as estimated in the following savings estimates ($861,678 plus $1,438,038 = $2,299,716).

We estimate that, at a minimum, facilities would save the routine cost of preparing and filing a letter (estimated at $200 per letter) to waive their hearing rights. In CY 2022, there were 5,319 facilities who were imposed CMPs. Roughly 81 percent (4,308) of these facilities filed an express, written waiver, therefore, we estimate an annual savings of $861,678 (4,308 × $200) since such letters would no longer be required to receive a 35 percent penalty reduction.

In addition, we believe that nationally some 17 percent of facilities fail to submit a waiver even though they had no intention of contesting the penalty and its basis. Under the proposed change to offer a constructive waiver by default, this 17 percent of facilities would now be eligible for the 35 percent CMP amount cost reduction. We note that in CY 2022, CMS imposed a combined total of $190,967,833 in per day and per instance CMPs, with a median total amount due of $4,545. Since CMS imposed CMPs on 5,319 facilities in CY 2022, we estimate a cost savings for 904 facilities (17 percent of 5,319), the typical 17 percent who fail to submit a timely waiver request. We estimate the annual cost savings for these facilities at $1,438,038 ((35 percent × $4,545) × 904 facilities).

Furthermore, we believe that the proposal to offer facilities a constructive waiver process would also ease the administrative burden for the CMS Locations. Based on our knowledge and experience, we estimate that, together, an array of individuals in each CMS Location collectively spend close to one hour (0.80 hours) per cases where a CMP is imposed to track and manage receipt of paperwork from facilities expressly requesting a waiver. Given that in CY 2022, CMS imposed a total of 11,475 CMPs on 5,319 facilities, with an average of 2.16 CMPs per facility, we estimate that CMS Locations spend a total of 9,191 hours each year (0.80 hours per CMP × 5,319 facilities × 2.16 CMPs per facility) to manage the waiver paperwork. As noted previously in this section, in CY 2022 we saw that 81 percent (4,308) of the 5,319 facilities with imposed CMPs submitted written waivers. Because the activities involved

in processing facilities' written waivers requires input from individuals at varying levels within CMS, we base our estimate on the rate of $84.00 per hour on average, assuming a GS–12, step 5 salary rate of $42.00 per hour with a 100 percent benefits and overhead package. Thus, we estimate that CMS would save $772,044 per year ($84.00 per hour × 9,191 hours per year).

Total annual savings from these reforms to facilities and the Federal government together would therefore be $3,071,760 ($2,299,716 plus $772,044).

8. Alternatives Considered

As described in this section, we estimate that the aggregate impact of the provisions in this proposed rule will result in an increase of approximately $1.2 billion (3.7 percent) in Part A payments to SNFs in FY 2024. This reflects a $2 billion (6.1 percent) increase from the proposed update to the payment rates and a $745 million (2.3 percent) decrease as a result of the second phase of the parity adjustment recalibration, using the formula to multiply the percentage change described in section III.A.4. of this proposed rule.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating base payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket update, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY; accordingly, we are not pursuing alternatives for this process.

With regard to the proposal to modify the COVID–19 Vaccination Coverage Among Healthcare Personnel (HCP COVID–19 Vaccine) measure and to adopt the COVID–19 Vaccine: Percent of Patients/Residents Who are Up to Date (Patient/Resident COVID–19 Vaccine) measure to the SNF QRP Program, the COVID–19 pandemic has exposed the importance of implementing infection prevention strategies, including the promotion of COVID–19 vaccination for healthcare personnel (HCP) and patients/residents. We believe these measures would encourage healthcare personnel to be ''up to date'' with the COVID–19 vaccine, in accordance with current recommendations of the Centers for Disease Control and Prevention (CDC), and increase vaccine uptake in residents resulting in fewer cases, less hospitalizations, and lower mortality associated with the virus. However, we were unable to identify any alternative methods for collecting the data. There is still an overwhelming public need to target infection control and related quality improvement activities among SNF providers as well as provide data to patients and caregivers about the rate of COVID–19 vaccination among SNFs' healthcare personnel and residents through transparency of data. Therefore, these proposed measures have the potential to generate actionable data on COVID–19 vaccination rates for SNFs.

While we proposed to remove the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) process measure, we also propose to adopt the Discharge Function Score (DC Function) measure, which has strong scientific acceptability, and satisfies the requirement that there be at least one cross-setting function measure in the Post-Acute Care QRPs that uses standardized functional assessment data elements from standardized patient assessment instruments. We considered the alternative of delaying the proposal of the DC Function measure, but given its strong scientific acceptability, the fact that it provides an opportunity to replace the current cross-setting process measure with an outcome measure, and uses standardized functional assessment data elements that are already collected, we believe further delay is unwarranted. With regard to the proposal to remove the Application of Functional Assessment/Care Plan, the removal of this measure meets measure removal factors one and six set forth in § 413.360(b)(2), and no longer provides meaningful distinctions in improvements in performance.

The proposal to remove the Change in Self-Care Score and Change in Mobility Score measures meets measure removal factor eight set forth in § 413.360(b)(2), and the costs associated with a measure outweigh the benefits of its use in the program. Therefore, no alternatives were considered.

With regard to the proposal to adopt the CoreQ: Short Stay Discharge (CoreQ: SS DC) measure, the proposed measure fills a significant measurement gap in the SNF QRP: resident satisfaction with the quality of care received by SNFs. While the SNF QRP currently includes measures of process and outcomes that provide information on whether structural processes and interventions are working, measuring resident satisfaction would provide SNFs compelling information to use when examining the results of their clinical care, and can help SNFs identify deficiencies that other quality metrics may struggle to identify, such as communication between a resident and the SNF's clinical staff Additionally, the CoreQ survey, the basis of the CoreQ: SS DC measure, is already in use across the country by over 1,500 SNFs, and those SNFs that use the CoreQ survey(s) have reported they like the fact that the questionnaire is short (four questions), and residents report appreciation that their satisfaction (or lack thereof) is being measured. Therefore, given the importance of adding this domain measuring resident satisfaction to the SNF QRP, and the fact that the CoreQ: SS DC measure is a parsimonious survey that is highly reliable, valid and reportable, we believe adoption of the CoreQ: SS DC measure represents an essential addition to the SNF QRP measure set and no comparable alternative exists.

With regard to the proposal to increase the data completion threshold for the Minimum Data Set (MDS) items submitted to meet the SNF QRP reporting requirements, the proposed increased threshold of 90 percent is based on the need for substantially complete records, which allows appropriate analysis of quality measure data for the purposes of updating quality measure specifications. These data are ultimately reported to the public, allowing our beneficiaries to gain a more complete understanding of SNF performance related to these quality metrics, and helping them to make informed healthcare choices. We considered the alternative of not increasing the data completion threshold, but our data suggest that SNFs are already in compliance with or exceeding this proposed threshold, and therefore, there is no additional burden anticipated.

With regard to the proposals for the SNF VBP Program, we discuss alternatives considered within those sections. In section VII.E.5. of this proposed rule, we discuss other approaches to incorporating health equity into the program.

9. Accounting Statement

As required by OMB Circular A–4 (available online at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*), in Tables 44 through 49, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule for FY 2024. Tables 35 and 44 provide our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this proposed rule, based on the data for 15,435 SNFs in our database. Tables 36 and 45 through 47 provide our best estimate of the additional cost to SNFs to submit the data for the SNF QRP as a result of the policies in this proposed rule. Table 48 provides our best estimate of the possible changes in Medicare payments under the SNF VBP as a result of the policies for this program. Table 49 provides our best estimate of the amount saved by LTC facilities and CMS by removing the requirement to submit a written request and establishing a constructive waiver process instead at § 488.436(a) that would operate by default when CMS has not received notice of a facility's intention to submit a timely request for a hearing.

TABLE 44—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2023 SNF PPS FISCAL YEAR TO THE 2024 SNF PPS FISCAL YEAR

Category	Transfers
Annualized Monetized Transfers	$1.2 billion.*
From Whom To Whom?	Federal Government to SNF Medicare Providers.

*The net increase of $1.2 billion in transfer payments reflects a 3.7 percent increase, which is the product of the multiplicative formula described in section XI.A.4 of this rule. It reflects the proposed 6.1 percent SNF payment update increase (approximately $2 billion) from the proposed update to the payment rates, as well as a negative 2.3 percent decrease (approximately $745 million) from the second phase of the parity adjustment recalibration. Due to rounding and the nature of the multiplicative formula, dollar figures are approximations and may not sum.

TABLE 45—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE FY 2025 QRP PROGRAM

Category	Transfers/ costs
Savings to SNFs to Submit Data for QRP	($1,037,261)

TABLE 46—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE FY 2026 SNF QRP PROGRAM

Category	Transfers/ costs
Costs for SNFs to Submit Data for QRP	$61,668,221

TABLE 47—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE FY 2027 SNF QRP PROGRAM

Category	Transfers/ costs
Costs for SNFs to Submit Data for QRP	$63,432,598

TABLE 48—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE FY 2024 SNF VBP PROGRAM

Category	Transfers
Annualized Monetized Transfers	$277.27 million.*
From Whom To Whom?	Federal Government to SNF Medicare Providers.

*This estimate does not include the 2 percent reduction to SNFs' Medicare payments (estimated to be $462.12 million) required by statute.

TABLE 49—ACCOUNTING STATEMENT: CIVIL MONEY PENALTIES: WAIVER OF HEARING, REDUCTION OF PENALTY AMOUNT

Category	Transfers/ costs
Cost Savings of Constructive Waiver	$4,509,798

*The cost savings of $4.5 million is expected to occur in the first full year and be an ongoing savings for LTC Facilities and the Federal Government.

10. Conclusion

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2023 (87 FR 47502). Based on the above, we estimate that the overall payments for SNFs under the SNF PPS in FY 2024 are projected to increase by approximately $1.2 billion, or 3.7 percent, compared with those in FY 2023. We estimate that in FY 2024, SNFs in urban and rural areas would experience, on average, a 3.8 percent increase and 3.0 percent increase, respectively, in estimated payments compared with FY 2023. Providers in the urban Middle Atlantic region would experience the largest estimated increase in payments of approximately 5.1 percent. Providers in the urban Outlying region would experience the smallest estimated increase in payments of 1.4 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by reason of their non-profit status or by having revenues of $30 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm with which they may be affiliated. As a result, for the purposes of the RFA, we estimate that almost all SNFs are small entities as that term is used in the RFA, according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of $30 million or less in any 1 year. (For details, see the Small Business Administration's website at *https://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards*) In addition, approximately 20 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not

included in the definition of a small entity.

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2023 (87 FR 47502). Based on the above, we estimate that the aggregate impact for FY 2024 will be an increase of $1.2 billion in payments to SNFs, resulting from the proposed SNF market basket update to the payment rates, reduced by the second phase of the parity adjustment recalibration discussed in section III.C. of this proposed rule, using the formula described in section XI.A.4. of this rule. While it is projected in Table 34 that all providers would experience a net increase in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2024 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. In their March 2023 Report to Congress (available at *https://www.medpac.gov/wp-content/uploads/2023/03/Ch7_Mar23_MedPAC_Report_To_Congress_SEC.pdf*), MedPAC states that Medicare covers approximately 10 percent of total patient days in freestanding facilities and 16 percent of facility revenue (March 2023 MedPAC Report to Congress, 207). As indicated in Table 34, the effect on facilities is projected to be an aggregate positive impact of 3.7 percent for FY 2024. As the overall impact on the industry as a whole, and thus on small entities specifically, exceeds the 3 to 5 percent threshold discussed previously, the Secretary has determined that this proposed rule will have a significant impact on a substantial number of small entities for FY 2024.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. This proposed rule will affect small rural hospitals that: (1) furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Moreover, as noted in previous SNF PPS final rules (most recently, the one for FY 2023 (87 FR 47502)), the category of small rural hospitals is included within the analysis of the impact of this proposed rule on small entities in general. As indicated in Table 19, the effect on facilities for FY 2024 is projected to be an aggregate positive impact of 3.7 percent. As the overall impact on the industry as a whole exceeds the 3 to 5 percent threshold discussed above, the Secretary has determined that this proposed rule will have a significant impact on a substantial number of small rural hospitals for FY 2024.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. This proposed rule will impose no mandates on State, local, or Tribal governments or on the private sector.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will have no substantial direct effect on State and local governments, preempt State law, or otherwise have federalism implications.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on this year's proposed rule will be the number of reviewers of last year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed this year's proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons, we believe that the number of commenters on this year's proposed rule is a fair estimate of the number of reviewers of this year's proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the national mean hourly wage data from the May 2021 BLS Occupational Employment and Wage Statistics (OEWS) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is $115.22 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes_nat.htm*. Assuming an average reading speed, we estimate that it would take approximately 4 hours for the staff to review half of the proposed rule. For each SNF that reviews the rule, the estimated cost is $460.88 (4 hours × $115.22). Therefore, we estimate that the total cost of reviewing this regulation is $3,129,719.04 ($460.88 × 6,849 reviewers).

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on March 29, 2023.

List of Subjects

42 CFR Part 411

Diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Diseases, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395w–101 through 1395w–152, 1395hh, and 1395nn.

■ 2. Amend § 411.15 by—

■ a. Redesignating paragraphs (p)(2)(vi) through (xviii) as (p)(2)(viii) through (xx); and

■ b. Adding new paragraphs (p)(2)(vi) and (vii).

The additions read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(p) * * *

(2) * * *

(vi) Services performed by a marriage and family therapist, as defined in section 1861(lll)(2) of the Act.

(vii) Services performed by a mental health counselor, as defined in section 1861(lll)(4) of the Act.

* * * * *

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

■ 3. 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), 1395m, 1395x(v), 1395x(kkk), 1395hh, 1395rr, 1395tt, and 1395ww.

■ 4. Amend § 413.338 by—

■ a. Removing the paragraph designations for paragraphs (a)(1) through (17);

■ b. Adding in paragraph (a) definitions in alphabetical order for ''Health equity adjustment bonus points'', ''Measure performance scaler'', ''Top tier performing SNF'', ''Underserved multiplier'', and ''Underserved population'';

■ c. Revising paragraphs (c)(2)(i), (d)(4)(v), and (e)(2) introductory text;

■ d. Adding paragraph (e)(3);

■ e. Revising paragraph (j)(1); and

■ f. Adding paragraphs (j)(2) and (3) and (k).

The additions and revisions read as follows:

§ 413.338 Skilled nursing facility value-based purchasing program.

(a) * * *

Health equity adjustment (HEA) bonus points means the product of the measure performance scaler and the underserved multiplier.

* * * * *

Measure performance scaler means the sum of the points assigned to a SNF for each measure on which the SNF is a top tier performing SNF.

* * * * *

Top tier performing SNF means a SNF whose performance on a measure during the applicable program year meets or exceeds the 66.67th percentile of SNF performance on the measure during the same program year.

Underserved multiplier means, for a SNF, the number representing the SNF's proportion of residents with DES out of its total resident population in the applicable program year, translated using a logistic exchange function.

Underserved population means residents with dual eligibility status (DES).

* * * * *

(c) * * *

(2) * * *

(i) *Total amount available for a fiscal year.* The total amount available for value-based incentive payments for a fiscal year is at least 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS, and will be increased as appropriate for each fiscal year to account for the assignment of a performance score to low-volume SNFs under paragraph (d)(3) of this section. Beginning with the FY 2023 SNF VBP, the total amount available for value-based incentive payments for a fiscal year is 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS. Beginning with the FY 2027 SNF VBP, the total amount available for value-based incentive payments for a fiscal year is at least 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS, and will be increased as appropriate for each fiscal year to account for the application of the Health Equity Adjustment described at paragraph (k) of this section.

* * * * *

(d) * * *

(4) * * *

(v) CMS will calculate a SNF Performance Score for a fiscal year for a SNF for which it has granted an exception request that does not include its performance on a quality measure during the calendar months affected by the extraordinary circumstance.

* * * * *

(e) * * *

(2) *Calculation of the SNF performance score for fiscal year 2026.* The SNF performance score for FY 2026 is calculated as follows:

* * * * *

(3) *Calculation of the SNF performance score beginning with fiscal year 2027.* The SNF performance score for a fiscal year is calculated as follows:

(i) CMS will sum all points awarded to a SNF as described in paragraph (e)(1) of this section for each measure applicable to a fiscal year.

(ii) CMS will normalize the SNF's point total such that the resulting point total is expressed as a number of points earned out of a total of 100.

(iii) CMS will add to the SNF's point total under paragraph (e)(3)(ii) of this section any applicable health equity adjustment bonus points calculated under paragraph (k) of this section such that the resulting point total is the SNF Performance Score for the fiscal year, except that no SNF Performance Score may exceed 100 points.

* * * * *

(j) * * *

(1) Beginning with the FY 2023 Program year, for the SNFRM measure, and beginning with the FY 2026 Program year for all other claims-based measures, the information reported through claims are validated for accuracy by Medicare Administrative Contractors (MACs).

(2) Beginning with the FY 2026 Program year, for all measures that are calculated using Payroll-Based Journal System data, information reported through the Payroll-Based Journal system is validated for accuracy by CMS and its contractors through quarterly audits.

(3) Beginning with the FY 2027 program year, for all measure that are calculated using Minimum Data Set (MDS) information, such information is validated for accuracy by CMS and its contractors through periodic audits not to exceed 1,500 SNFs per calendar year.

(k) *Calculation of the Health Equity Adjustment (HEA) bonus points.* CMS calculates the number of HEA bonus points that are added to a SNF's point total calculated under paragraph (e)(3)(iii) of this section by:

(1) Determining for each measure whether the SNF is a top tier performing SNF and assigning two points to the SNF for each such measure;

(2) Summing the points calculated under paragraph (k)(1) of this section to calculate the measure performance scaler;

(3) Calculating the underserved multiplier for the SNF; and

(4) Multiplying the measure performance scaler calculated under paragraph (k)(2) of this section by the underserved multiplier calculated under paragraph (k)(3) of this section.

■ 5. Amend § 413.360 by—

■ a. Redesignating paragraph (b)(2) as paragraph (b)(3),
■ b. Adding new paragraph (b)(2); and
■ c. Revising paragraphs (f)(1) and (2);

The addition and revisions read as follows:

§ 413.360 Requirements under the Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).

* * * * *

(b) * * *

(2) *Resident satisfaction data.* A SNF must submit to CMS data regarding resident satisfaction after a short-stay discharge in the form and manner, and at a time, specified by CMS.

(i) *Requirements.* A SNF must contract with an independent survey vendor, approved by CMS in accordance with paragraph (b)(2)(ii) of this section, to administer the resident satisfaction questionnaire on its behalf.

(ii) *CMS approval of survey vendor.* CMS approves an application for an entity to administer the resident satisfaction questionnaire on behalf of one or more SNFs when an applicant has met the resident satisfaction survey's Protocols and Guidelines minimum business requirements that can be found on the official resident satisfaction measure website, and agrees to comply with the current survey administration protocols that can be found on the resident satisfaction measure website. An entity must be a CMS-approved survey vendor in order to administer and submit the resident satisfaction survey data to CMS on behalf of one or more SNFs.

(iii) *Compliance with oversight activities.* SNFs and CMS-approved survey vendors must fully comply with resident satisfaction measure oversight activities, including allowing CMS to perform site visits at the survey vendors' company locations.

* * * * *

(f) * * *

(1) SNFs must meet or exceed the following data completeness thresholds with respect to a calendar year:

(i) The threshold set at 100 percent completion of measures data and standardized patient assessment data collected using the Minimum Data Set (MDS) on at least 80 percent of the assessments SNFs submit through the CMS designated data submission system for FY 2018 through FY 2025.

(ii) The threshold set at 100 percent completion of measures data and standardized patient assessment data collected using the MDS on at least 90 percent of the assessments SNFs submit through the CMS designated data submission system beginning with the FY 2026 program year.

(iii) The threshold set at 100 percent for measures data collected and submitted through the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN) for FY 2023 and for all subsequent payment updates.

(iv) The threshold set at 75 percent of the weeks in a reporting year for submission of resident information files and 90 percent completion of the data required in resident information files for the resident satisfaction measure for FY 2026 and for all subsequent payment updates.

(2) These thresholds apply to all measures and standardized patient assessment data requirements adopted into the SNF QRP.

* * * * *

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 6. The authority citation for part 488 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 7. Amend § 488.432 by revising paragraphs (c)(1) and (2) to read as follows:

§ 488.432 Civil money penalties imposed by the State: NF–only.

* * * * *

(c) * * *

(1) If a facility waives its right to a hearing as specified in § 488.436, the State initiates collection of civil money penalty imposed per day of noncompliance after 60 days from the date of the notice imposing the penalty and the State has not received a timely request for a hearing.

(2) If a facility waives its right to a hearing as specified in § 488.436, the State initiates collection of civil money penalty imposed per instance of noncompliance after 60 days from the date of the notice imposing the penalty and the State has not received a timely request for a hearing.

* * * * *

■ 8. Amend § 488.436 by revising paragraph (a) to read as follows:

§ 488.436 Civil money penalties: Waiver of hearing, reduction of penalty amount.

(a) *Constructive waiver of a hearing.* A facility is deemed to have waived its right to a hearing after 60 days from the date of the notice imposing the civil money penalty if CMS has not received a request for a hearing from the facility.

* * * * *

■ 9. Amend § 488.442 by revising paragraph (a)(2) introductory text to read as follows:

§ 488.442 Civil money penalties: Due date for payment of penalty.

(a) * * *

(2) *After the facility waives its right to a hearing in accordance with § 488.436(a).* Except as provided for in § 488.431, a civil money penalty is due 75 days after the notice of the penalty in accordance with § 488.436 and a hearing request was not received when:

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 10. The authority citation for part 489 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, 1395ff, and 1395hh.

■ 11. Amend § 489.20 by—
■ a. Redesignating paragraphs (s)(6) through (18) as paragraphs (s)(8) through (20), respectively; and
■ b. Adding new paragraphs (s)(6) and (7).

The additions read as follows:

§ 489.20 Basis commitments.

* * * * *

(s) * * *

(6) Services performed by a marriage and family therapist, as defined in section 1861(lll)(2) of the Act.

(7) Services performed by a mental health counselor, as defined in section 1861(lll)(4) of the Act.

* * * * *

Dated: March 31, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–07137 Filed 4–4–23; 4:15 pm]

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Part IV

Federal Communications Commission

47 CFR Parts 0, 1, 19, et al.
Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 19, 20, 25, 27, 43, 52, 54, 63, 64, 67, 68, 73, 74, 76, 79, 80, 87, 90, 95, 97, and 101

[MD Docket No. 23–12; FCC 23–1; FR ID 134869]

Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the Commission or FCC) takes action to modernize and streamline its operations by making changes to its International Bureau as well as certain parts of the Consumer and Governmental Affairs Bureau (CGB) and Office of Managing Director (OMD). In addition, we make other non-substantive rule revisions to reflect changes in Commission procedures and to modernize certain references to the Chairperson of the FCC.

DATES: Effective April 10, 2023. The incorporation by reference of material listed in this rule was approved by the Director before February 1, 2017.

FOR FURTHER INFORMATION CONTACT: Daniel Daly, Office of Managing Director at (202) 418–1832.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 23–1, MD Docket No. 23–12, adopted on January 4, 2023 and released on January 9, 2023, which is the subject of this rulemaking. The full text of this document is available for public inspection and copying by downloading the text from the Commission's website at *https://www.fcc.gov/document/fcc-votes-establish-space-bureau-office-international-affairs.*

I. Procedural Matters

A. Final Regulatory Flexibility Analysis

1. No Final Regulatory Flexibility Analysis is required under the Regulatory Flexibility Act, 5 U.S.C. 604, because the amendments adopted herein pertain to agency organization, procedure, and practice, or because there is ''good cause'' to conclude that notice and comment and delayed effectiveness are unnecessary for non-substantive, editorial revisions.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

3. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission has sent a copy of this Order to Congress and the Government Accountability office, pursuant to 5 U.S.C. 801(a)(1)(A).

II. Introduction

4. In this Order, the Federal Communications Commission (the Commission or FCC) takes action to modernize and streamline its operations by making changes to its International Bureau as well as certain parts of the Consumer and Governmental Affairs Bureau (CGB) and Office of Managing Director (OMD). In this Order, we amend the Commission's rules to reflect these new organizational structures and describe the functions being realigned. We find it appropriate to make these organizational changes to strengthen the efficiency and effectiveness of the Commission's activities and operations. In addition, we make other non-substantive rule revisions to reflect changes in Commission procedures and to modernize certain references to the Chairperson of the FCC.

5. First, to better support United States leadership in the emerging space economy, to promote long-term technical capacity within the FCC to address non-federal satellite programs and policies, and to improve coordination with other agencies on issues related to space, we conclude that the proper dispatch of our business and the public interest will be served by reorganizing the International Bureau into: (1) a Space Bureau to handle policy and licensing matters related to satellite communications and other in-space activities under the Commission's jurisdiction; and (2) an Office of International Affairs to handle issues involving foreign and international regulatory authorities as well as international telecommunications and submarine cable licensing. We find these organizational changes will provide the FCC with the updated structure it needs to provide essential international leadership in the ever-evolving global telecommunications marketplace.

6. In addition, to improve the efficiency of the agency's operations, bolster the Commission's records and document management systems, and enhance public access to critical public records, the Commission has concluded that the proper dispatch of its business and the public interest will be served by taking the following actions:

a. Transfer the Reference Information Center (RIC) from CGB to the Office of the Secretary in OMD;

b. Merge the records management program in OMD's Performance Evaluation and Records Management (PERM) group with OMD's Information Technology (IT) group;

c. Rename PERM to be the Performance and Program Management (PPM) group in OMD; and

d. Transfer the Enterprise Acquisition Center (EAC) in the Front Office of OMD to a new stand-alone group in OMD.

III. Discussion

A. Establishment of Space Bureau and Office of International Affairs and Elimination of International Bureau

7. Under this reorganization, the Space Bureau will promote a competitive and innovative global telecommunications marketplace via space services. The Space Bureau will do so by undertaking policy analysis and rulemakings as well as authorizing satellite systems for the purpose of facilitating the deployment of satellite services, streamlining regulatory processes and maximizing flexibility for operators to meet customer needs, and fostering the efficient use of spectrum and orbital resources. The Space Bureau will also serve as a focal point for coordination with other U.S. government agencies on matters of space policy and governance, and will support the Office of International Affairs for meetings with other countries, international organizations and foreign government officials that involve space policy matters.

8. The Office of International Affairs will develop international telecommunications policy to facilitate competition in the provision of international services and further U.S. strategic objectives in global telecommunications policy. The Office of International Affairs will be responsible for policy development and

licensing for international telecommunications facilities and services, submarine cables, and advising and making recommendations to the Commission on foreign ownership issues. The Office of International Affairs will also have responsibility for all intergovernmental leadership, negotiation, and representational functions. The Office of International Affairs will oversee and coordinate the FCC's global participation in international organizations and multilateral conferences, regional organizations, cross-border negotiations, and international standard setting efforts. The Office of International Affairs will also oversee bilateral meetings with other countries and foreign government officials.

9. To further these objectives and functions, the Space Bureau and the Office of International Affairs will utilize professional staff from within the Commission's current International Bureau as well as other parts of the Commission as needed.

10. To accomplish this organizational change, the following actions are taken.

- The Commission will eliminate the International Bureau and generally reallocate the International Bureau's authorities and functions between the Space Bureau and Office of International Affairs.
- The Space Bureau will consist of three divisions: the Satellite Programs and Policy Division, the Satellite Licensing Division, and the Earth Station Licensing Division. These new divisions will have responsibilities and authorities for the analysis and functions currently housed within the Satellite Division of the International Bureau, including its branches, the Policy Branch, the Engineering Branch, and the System Analysis Branch.
- The Office of International Affairs will consist of the Global Strategy and Negotiation Division and the Telecommunications and Analysis Division. The Global Strategy and Negotiation Division will be moved to the Office of International Affairs from the International Bureau as currently organized, including each of its existing Branches and will maintain its current responsibilities and authorities. Similarly, the Telecommunications and Analysis Division will be moved to the Office of International Affairs from the International Bureau as currently organized and will maintain its current responsibilities and authorities.
- The International Bureau's front office staff, including management and administrative staff within the front office, will be reassigned to the Space Bureau or the Office of International Affairs depending upon their roles and responsibilities.

11. Furthermore, to implement these changes, we delegate the authority to the Space Bureau and the Office of International Affairs to make any necessary edits and updates to the Commission's rules and any forms, policies, web addresses, systems, or other documents associated with the International Bureau to ensure all relevant references and procedures are updated consistent with the provisions of this Order, including any changes needed for renaming the International Bureau Filing System (IBFS) to the International Communications Filing System (ICFS). Any previous delegation to the International Bureau also is transferred to the Satellite Bureau and/or the Office of International Affairs, as appropriate.

B. Reorganization of the Consumer and Governmental Affairs Bureau and the Office of Managing Director

12. The key objectives of this reorganization are to strengthen the effectiveness and efficiency of the Commission's operations and management of prominent public-facing functions as well as vital internal information management operations.

1. Transfer the Reference Information Center to the Office of the Secretary

13. The RIC serves as the FCC custodian for designated public records, with functions including intake of records, file maintenance, reference services, retrieval of records, and retirement or archiving of files in accordance with record retention schedules approved by the National Archives and Records Administration (NARA). The RIC is also currently responsible for managing the Commission's Electronic Comment Filing System (ECFS) and scanning and uploading documents filed on paper into ECFS as needed.

14. Section 0.11 of the Commission's Rules instructs OMD to ''direct agency efforts to improve management effectiveness, operational efficiency, employee productivity, and service to the public.'' Pursuant to Section 0.11(b), the Secretary of the Commission is designated the ''official custodian of the Commission's documents.'' The Office of the Secretary in OMD oversees prompt and orderly processing of all matters presented to the Commission and supports the Commission decision-making process to ensure efficient operations. To preserve the integrity of the Commission's records, the Office of the Secretary supervises the receipt and distribution of documents filed by the public through electronic and paper filing systems. In addition, the Office of the Secretary gives effective legal notice of Commission decisions by publishing them in the **Federal Register** and the FCC Record. The Secretary serves as legal custodian of the Commission's official records and publishes official documents to the agency's website.

15. After this reorganization, the Office of the Secretary will be responsible for the management of ECFS in addition to the document custodial functions it performs today. Since the Office of the Secretary currently manages both electronic documents (EDOCS) and the Electronic Commission's Lifecycle Agenda Tracking System (ECLAS), the addition of ECFS to its list of responsibilities will create further efficiencies in the management and planning of these important internal and public facing systems.

16. In addition to giving it responsibility over ECFS, we transfer administration and management of the RIC from CGB to the Office of the Secretary. By taking this action, we locate the Commission's public records reference functions with the internal organization that currently carries out other reference functions, including management of the FCC Library.

17. We also update the Commission's rules to reflect the revised procedures for the public to access the RIC. Due to the updated security protocols associated with the FCC's new headquarters, all visitors to the RIC will be required to have a scheduled appointment in advance of accessing the facility.

2. Transfer of Records Management From PERM to IT

18. In OMD, the PERM group has responsibility for the administration and implementation of the FCC's agency-wide records management program, as opposed to the RIC which oversees an important subset of publicly available FCC records. PERM's records management program develops policies, procedures and processes to facilitate retrieval, selection, retention, and disposition of record and non-record materials and coordinates the records management program throughout the FCC and with NARA. The FCC's Agency Records Officer in PERM is responsible for complying with and updating the records schedules set by NARA.

19. As discussed at the outset of this Order, with our actions today, we merge and relocate the records management program and functions into OMD's IT group. The IT group is currently responsible for providing support and

services for the information technology component of records management. Thus, merging the implementation and information technology components of these programs within the IT group will facilitate internal coordination and create additional efficiencies by eliminating unnecessary redundant oversight and management. Furthermore, integrating records management considerations into the development and implementation of the FCC's information systems will facilitate the records retention and disposal process, and strengthen compliance with records schedules.

20. As a result of this transfer, PERM will be renamed as the Performance and Program Management (PPM) group in OMD. The PPM group will retain all of PERM's previous functions with the exception of records management as described above.

3. Establish a Stand-Alone Enterprise Acquisition Center in OMD

21. To reflect the Commission's focus on strengthening all aspects of its procurement process, we conclude that the proper, efficient and effective dispatch of our business will be served by moving the EAC staff from the OMD Front Office and establishing EAC as a stand-alone group within OMD dedicated to the FCC's procurement activities. By establishing this group as a stand-alone entity, it is the Commission's objective to continue to improve efficiencies, independence, accountability and performance in the management of its acquisition strategy, planning and procurement activities.

C. Other Rule Changes

22. In addition to the changes otherwise identified herein, we update the Commission's rules by replacing the references to the agency's Chairman with references instead to the Chairperson throughout and revise other rules that refer to ''chairman'' to instead specify ''chairperson.''

23. We also make minor modifications to reflect slight changes to procedures related to Privacy Act requests, to update rule 0.460 concerning requests for inspection and copies of records which are routinely available for public inspection to reflect current procedures, and to remove from the Code of Federal Regulations a display of approved information collections that is no longer updated and has become obsolete. We also eliminate certain Notes to rules and instead move the language from the Note into a subsection of the relevant rule to conform to the publishing conventions of the National Archives and Records Administration's Office of the Federal Register.

IV. Ordering Clauses

24. Accordingly, *it is ordered that,* pursuant to sections 4, 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155(b), 155(c), 303(r), this Order *is adopted.*

25. *It is further ordered* that Parts 0, 1, 19, 20, 25, 27, 43, 52, 54, 63, 64, 67, 68, 73, 74, 76, 79, 80, 87, 90, 95, 97, and 101 of the Commission rules *are amended* as set forth in the Appendix.

26. *It is further ordered* that this Order *will become effective* on the date this Order is published in the **Federal Register** following the appropriate clearance in accordance with the Consolidated Appropriations Act, Public Law 117–103, at Division E, Title VI, § 608, 136 Stat. 287 (2022).

27. *It is further ordered,* that pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of this Order to Congress and to the Government Accountability Office.

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies), Organization and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 19

Conflict of interest.

47 CFR Part 20

Administrative practice and procedure, Incorporation by reference.

47 CFR Part 25

Administrative practice and procedure, Incorporation by reference.

47 CFR Part 27

Administrative practice and procedure, Incorporation by reference.

47 CFR Part 43

Communications common carriers.

47 CFR Part 52

Communications common carriers, Incorporation by reference.

47 CFR Part 54

Communications common carriers.

47 CFR Part 63

Communications common carriers.

47 CFR Part 64

Communications common carriers, Incorporation by reference.

47 CFR Part 67

Incorporation by reference.

47 CFR Part 68

Administrative practice and procedure, Incorporation by reference.

47 CFR Part 73

Television.

47 CFR Part 74

Incorporation by reference, Telecommunications.

47 CFR Part 76

Incorporation by reference, Television.

47 CFR Part 79

Incorporation by reference, Telecommunications.

47 CFR Part 80

Incorporation by reference, Telephone.

47 CFR Part 87

Incorporation by reference, Reporting and recordkeeping requirements.

47 CFR Part 90

Administrative practice and procedure, Incorporation by reference.

47 CFR Part 95

Incorporation by reference, Telecommunications.

47 CFR Part 97

Satellites.

47 CFR Part 101

Administrative practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter I as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

■ 2. Amend § 0.3 by revising the section heading and paragraphs (a) introductory txt and (b) to read as follows:

§ 0.3 The Chairperson.

(a) One of the members of the Commission is designated by the President to serve as Chairperson, or

chief executive officer, of the Commission. As Chairperson, he/she has the following duties and responsibilities:

* * * * *

(b) The Commission will, in the case of a vacancy in the Office of the Chairperson of the Commission, or in the absence or inability of the Chairperson to serve, temporarily designate one of its members to act as Chairperson until the cause or circumstance requiring such designation has been eliminated or corrected.

■ 3. Amend section § 0.5 by revising paragraphs (a) introductory text and (a)(11) through (17) and adding paragraph (a)(18) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) *Principal staff units.* The Commission is assisted in the performance of its responsibilities by its staff, which is divided into the following principal units:

* * * * *

(11) Office of International Affairs.

(12) Wireline Competition Bureau.

(13) Wireless Telecommunications Bureau.

(14) Space Bureau.

(15) Media Bureau.

(16) Enforcement Bureau.

(17) Consumer and Governmental Affairs Bureau.

(18) Public Safety and Homeland Security Bureau.

* * * * *

■ 4. Amend § 0.11 by revising paragraphs (a) introductory text, (a)(2) through (4) and (11), and (b) to read as follows:

§ 0.11 Functions of the Office.

(a) The Managing Director is appointed by the Chairperson with the approval of the Commission. Under the supervision and direction of the Chairperson, the Managing Director shall serve as the Commission's chief operating and executive official with the following duties and responsibilities:

* * * * *

(2) Formulate and administer all management and administrative policies, programs, and directives for the Commission consistent with authority delegated by the Commission and the Chairperson and recommend to the Chairperson and the Commission major changes in such policies and programs.

(3) Assist the Chairperson in carrying out the administrative and executive responsibilities delegated to the Chairperson as the administrative head of the agency.

(4) Advise the Chairperson and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest. Assess the management, administrative, and resource implications of any proposed action or decision to be taken by the Commission or by a Bureau or Office under delegated authority; recommend to the Chairperson and Commission program priorities, resource and position allocations, management, and administrative policies.

* * * * *

(11) Advise the Chairperson, Commission, and Commission Bureaus and Offices on matters concerning the development, administration, and management of the Affordable Connectivity Outreach Grant Program.

(b) The Secretary is the official custodian of the Commission's documents. The Office of the Secretary also serves as the official FCC records custodian for designated records, including intake processing, organization and file maintenance, reference services, and retirement and retrieval of records; manages the Electronic Comment Filing System and certifies records for adjudicatory and court proceedings; maintains manual and computerized files that provide for the public inspection of public record materials concerning Broadcast Ownership, AM/FM/TV, TV translators, FM Translators, Cable TV, Wireless, Auction, Common Carrier Tariff matters, International space station files, earth station files, DBS files, and other miscellaneous international files; maintains for public inspection Time Brokerage and Affiliation Agreements, court citation files, and legislative histories concerning telecommunications dockets and provides the public and Commission staff prompt access to manual and computerized records and filing systems.

* * * * *

■ 5. Amend § 0.13 by revising the introductory text and paragraph (d) to read as follows:

§ 0.13 Functions of the Office.

The Office of Inspector General is directly responsible to the Chairperson as head of the agency. However, the Chairperson may not prevent or prohibit the Office of Inspector General from carrying out its duties and responsibilities as mandated by the Inspector General Act Amendments of 1988 (Pub. L. 100–504) and the Inspector General Act of 1978 (5 U.S.C. Appendix 3), as amended.

* * * * *

(d) Keep the Chairperson of the Commission—and through him or her the other Commissioners—and the Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of Commission programs and operations; recommend corrective action and report on the progress made in implementing such corrective action. In addition to providing the Chairperson with the results of completed audits and inspections, the Inspector General shall prepare statutorily required reports, identified as such, to include:

(1) Semiannual reports summarizing activities of the office during the preceding six-month period (due to the Chairperson by April 30 and October 31);

(2) Special reports specifically identifying any serious or flagrant problems, abuses or deficiencies (due to the Chairperson immediately upon discovery of these matters by the Inspector General).

■ 6. Amend § 0.17 by revising paragraph (d) to read as follows:

§ 0.17 Functions of the Office.

* * * * *

(d) Assist the Chairperson and Commissioners in preparation for, and the coordination of their appearances before the Committees of Congress.

* * * * *

■ 7. Add § 0.19 before the undesignated center heading ''Office of Economics and Analytics'' to read as follows:

§ 0.19 Functions of the Office.

The Office of International Affairs has the following duties and responsibilities:

(a) To initiate and direct the development and articulation of international telecommunications policies, consistent with the priorities of the Commission.

(b) To advise the Chairperson and Commissioners on matters of international telecommunications policy, and on the adequacy of the Commission's actions to promote the vital interests of the American public in international commerce, national defense, and foreign policy.

(c) To represent the Commission on international communications matters, including matters involving international, regional, and cross border spectrum allocation and frequency

coordination at both domestic and international conferences and meetings, and to direct and coordinate the Commission's preparation for such conferences and meetings.

(d) To direct and coordinate, in consultation with other Bureaus and Offices as appropriate, negotiation of international agreements to provide for arrangements and procedures for coordination of radio frequency assignments to prevent or resolve international radio interference involving U.S. licensees.

(e) To ensure fulfillment of the Commission's responsibilities under international agreements and treaty obligations, and consistent with Commission policy, in coordination with other Bureaus and Offices as appropriate, to ensure that the Commission's regulations, procedures, and frequency allocations comply with the mandatory requirements of all applicable international and bilateral agreements.

(f) To serve as the single focal point within the Commission for cooperation and consultation on international telecommunications matters with other Federal agencies, international or foreign organizations, and appropriate regulatory bodies and officials of foreign governments.

(g) To develop, recommend, and administer policies, rules, standards, and procedures regarding the authorization and regulation of international telecommunications facilities and services, submarine cables, international broadcast services, and foreign ownership issues.

(h) To develop, recommend, and administer policies, rules, standards, and procedures regarding coordination with Executive Branch agencies on national security, law enforcement, foreign policy, trade policy, or concerns.

(i) To monitor compliance with the terms and conditions of authorizations and licenses and pursue enforcement actions in conjunction with appropriate bureaus and offices.

(j) To develop, coordinate with other Federal agencies, and administer the regulatory assistance and training programs for foreign administrations to promote telecommunications development.

(k) To provide advice and technical assistance to U.S. trade officials in the negotiation and implementation of communications trade agreements, and consult with other bureaus and offices as appropriate with respect thereto.

(l) To conduct economic, legal, technical, statistical, and other appropriate studies, surveys, and analyses in support of international telecommunications policies and programs.

(m) To collect and disseminate within the Commission information and data on international communications policies, regulatory and market developments in other countries, and international organizations.

(n) To work with the Office of Legislative Affairs to coordinate the Commission's activities on significant matters of international policy with appropriate Congressional offices.

(o) To advise the Chairperson on priorities for international travel and develop, coordinate, and administer the international travel plan.

(p) Managing efforts across the Bureaus and Offices to participate in international standards activities and serving as the FCC's senior representative at in-person standards meetings around the world in conjunction with staff from other Bureaus and Offices as needed.

(q) To issue orders revoking a common carrier's operating authority pursuant to section 214 of the Act, and issue orders to cease and desist such operations, in cases where the presiding officer has issued a certification order to the Commission that the carrier has waived its opportunity for hearing under that section.

(r) To exercise the authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Office of International Affairs. Before issuing a subpoena, the Office of International Affairs shall obtain the approval of the Office of General Counsel.

(s) To assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

(t) To coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

■ 8. Amend § 0.31 by revising paragraph (b) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(b) Represent the Commission at various national conferences and meetings (and, in consultation with the Office of International Affairs, at various international conferences and meetings) devoted to the progress of communications and the development of technical and other information and standards, and serve as Commission coordinator for the various national conferences when appropriate.

* * * * *

■ 9. Amend § 0.41 by revising paragraph (h) to read as follows:

§ 0.41 Functions of the Office.

* * * * *

(h) To cooperate with the Space Bureau on all matters pertaining to space policy and satellite communications.

* * * * *

■ 10. Revise § 0.51 to read as follows:

§ 0.51 Functions of the Bureau.

The Space Bureau has the following duties and responsibilities:

(a) To develop, recommend, and administer policies, rules, standards, and procedures for the authorization and regulation of domestic and international satellite systems.

(b) To monitor compliance with the terms and conditions of authorizations and licenses granted by the Bureau, and to pursue enforcement actions in conjunction with appropriate bureaus and offices.

(c) To facilitate the international coordination of U.S. spectrum allocations for space-based services and frequency and orbital assignments so as to minimize cases of international radio interference involving U.S. licensees.

(d) To coordinate, in consultation with other Bureaus and Offices as appropriate, negotiation of arrangements and procedures for coordination of radio frequency assignments for space-based services to prevent or resolve international radio interference involving U.S. space station and/or earth station licensees.

(e) To ensure fulfillment of the Commission's responsibilities under international agreements and treaty obligations in coordination with the Office of International Affairs, and, consistent with Commission policy, to ensure that the Commission's regulations, procedures, and frequency allocations comply with the mandatory requirements of all applicable international and bilateral agreements involving space-based services.

(f) In coordination with the Office of International Affairs, to oversee and, as appropriate, administer activities pertaining to the international consultation, coordination, and notification of U.S. frequency and orbital assignments, including activities required by bilateral agreements, the international Radio Regulations, and other international agreements.

(g) To serve as a focal point for coordination with other U.S. government agencies on matters of space policy, licensing and governance and, to support the Office of International Affairs with other Federal agencies, international or foreign organizations, and appropriate regulatory bodies and officials of foreign governments for meetings that involve space policy matters.

(h) To exercise authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Space Bureau. Before issuing a subpoena, the Space Bureau shall obtain the approval of the Office of General Counsel.

(i) To assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

(j) To coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

■ 11. Amend § 0.81 by revising paragraphs (b)(1) and (9) to read as follows:

§ 0.81 Functions of the Office.

* * * * *

(b) * * *

(1) Through its Director, serves as the principal advisor to the Chairperson and Commission officials on all aspects of workplace diversity, affirmative recruitment, equal employment opportunity, non-discrimination, and civil rights;

* * * * *

(9) Manages the Commission's equal employment opportunity compliance program. Responsibilities in this area include processing complaints alleging discrimination, recommending to the Chairperson final decisions on EEO complaints within the Commission, and providing counseling services to employees and applicants on EEO matters;

* * * * *

■ 12. Amend § 0.111 by:

■ a. Redesignating Note to paragraph (a)(1) as Note 1 to paragraph (a)(1);

■ b. Revising the second sentence of newly redesignated Note 1 to paragraph (a)(1);

■ c. Redesignating the following notes:

■ i. Note to paragraph (a)(2) as Note 2 to paragraph (a)(2);

■ ii. Note to paragraph (a)(4) as Note 3 to paragraph (a)(4);

■ iii. Note to paragraph (a)(6) as Note 4 to paragraph (a)(6);

■ iv. Note to paragraph (a)(8) as Note 5 to paragraph (a)(8);

■ v. Note to paragraph (a)(11) as Note 6 to paragraph (a)(11); and

■ vi. Note to paragraph (a)(13) as Note 7 to paragraph (a)(13); and

■ c. Revising paragraph (c).

The revisions read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

Note 1 to paragraph (a)(1): * * * The Office of International Affairs has primary responsibility for complaints regarding international settlements rules and policies.

* * * * *

(c) In coordination with the Office of International Affairs, participate in international conferences dealing with monitoring and measurement; serve as the point of contact for the U.S. Government in matters of international monitoring, fixed and mobile direction-finding and interference resolution; and oversee coordination of non-routine communications and materials between the Commission and international or regional public organizations or foreign administrations.

* * * * *

■ 13. Amend § 0.131 by revising paragraphs (e) and (k) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(e) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of wireless telecommunications facilities and services, including all facility authorization applications involving domestic terrestrial transmission facilities. Coordinates with and assists the Space Bureau regarding frequency assignment, coordination and interference matters.

* * * * *

(k) Coordinates with and assists the Office of International Affairs with respect to treaty activities and international conferences concerning wireless telecommunications and standards.

* * * * *

■ 14. Amend § 0.141 by revising paragraph (h) to read as follows:

§ 0.141 Functions of the Bureau.

* * * * *

(h) Periodically reviews the status of open docketed proceedings, and following:

(1) Consultation with and concurrence from the relevant bureau or office with responsibility for a particular proceeding,

(2) The issuance of a public notice listing proceedings under consideration for termination, and,

(3) A reasonable period during which interested parties may comment, closes any docket in which no further action is required or contemplated (with termination constituting a final determination in any such proceeding).

* * * * *

■ 15. Amend § 0.181 by revising paragraph (g) to read as follows:

§ 0.181 The Defense Commissioner.

* * * * *

(g) In the event of enemy attack, or the imminent threat thereof, or other disaster resulting in the inability of the Commission to function at its offices in Washington, DC, to assume all of the duties and responsibilities of the Commission and the Chairperson, until relieved or augmented by other Commissioners or members of the staff, as set forth in §§ 0.186 and 0.383.

* * * * *

■ 16. Amend § 0.186 by revising paragraph (b) to read as follows:

§ 0.186 Emergency Relocation Board.

* * * * *

(b) The Board shall comprise such Commissioners as may be present (including Commissioners available through electronic communications or telephone) and able to act. In the absence of the Chairperson, the Commissioner present with the longest seniority in office will serve as acting Chairperson. If no Commissioner is present and able to act, the person designated as next most senior official in the Commission's Continuity of Operations Plan will head the Board.

■ 17. Amend § 0.204 by revising paragraphs (b) and (c)(3) to read as follows:

§ 0.204 The exercise of delegated authority.

* * * * *

(b) *Authority of subordinate officials.* Authority delegated to any official to issue orders or to enter into correspondence under paragraph (a) of this section may be exercised by that official or by appropriate subordinate officials acting for him/her.

(c) * * *

(3) General correspondence by a committee or board is signed by the committee or board chairperson.

* * * * *

■ 18. Amend § 0.211 by revising the section heading, introductory text, and paragraphs (a) through (c) to read as follows:

§ 0.211 Chairperson.

The responsibility for the general administration of internal affairs of the Commission is delegated to the Chairperson of the Commission. The Chairperson will keep the Commission advised concerning his actions taken under this delegation of authority. This authority includes:

(a) Actions of routine character as to which the Chairperson may take final action.

(b) Actions of non-routine character which do not involve policy determinations. The Chairperson may take final action on these matters but shall specifically advise the Commission on these actions.

(c) Actions of an important character or those which involve policy determinations. In these matters the Chairperson will develop proposals for presentation to the Commission.

* * * * *

■ 19. Amend § 0.212 by revising the first sentence of paragraph (a) to read as follows:

§ 0.212 Board of Commissioners.

(a) Whenever the Chairperson or Acting Chairperson of the Commission determines that a quorum of the Commission is not present or able to act, he/she may convene a Board of Commissioners. * * *

* * * * *

■ 20. Amend § 0.231 by revising paragraph (g) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(g) The Managing Director, after consultation with the Chairperson shall establish, renew, and terminate all Federal advisory committees. He/She shall also exercise all management responsibilities under the Federal Advisory Committee Act as amended (Pub. L. No. 92–463, 5 U.S.C. App.).

* * * * *

■ 21. Amend § 0.251 by revising paragraph (e) to read as follows:

§ 0.251 Authority delegated.

* * * * *

(e) The official record of all actions taken by the General Counsel pursuant to paragraphs (c) and (d) of this section is contained in the original docket folder, which is maintained by the Reference Information Center.

* * * * *

■ 22. Revise § 0.261 to read as follows:

§ 0.261 Authority delegated.

(a) Subject to the limitations set forth in paragraph (b) of this section, the Chief, Space Bureau, is hereby delegated the authority to perform the functions and activities described in § 0.51, including without limitation the following:

(1) To recommend rulemakings, studies, and analyses (legal, engineering, social, and economic) of various petitions for policy or rule changes submitted by industry or the public, and to assist the Commission in conducting the same.

(2) To act upon applications for satellite systems and earth stations pursuant to part 25 of this chapter.

(3) In conjunction with the Office of International Affairs, to notify the International Telecommunication Union (ITU) of the United States' terrestrial and satellite assignments for inclusion in the Master International Frequency Register.

(4) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction and not within the jurisdiction of the Enforcement Bureau.

(b) Notwithstanding the authority delegated in paragraph (a) of this section, the Chief, Space Bureau, shall not have authority:

(1) To act on any application, petition, pleading, complaint, enforcement matter, or other request that:

(i) Presents new or novel arguments not previously considered by the Commission;

(ii) Presents facts or arguments which appear to justify a change in Commission policy; or

(iii) Cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or Offices.

(2) To issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from rulemaking or inquiry proceedings;

(3) To act upon any application for review of actions taken by the Chief, Space Bureau, pursuant to delegated authority, except that the Chief of the Space Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter;

(4) To act upon any formal or informal radio application which is in hearing status;

(5) To designate for hearing any applications except:

(i) Mutually exclusive applications for radio facilities filed pursuant to part 25, of this chapter; and

(ii) Applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines; or

(6) To impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $80,000 for common carrier providers and $20,000 for non-common carrier providers.

■ 23. Revise § 0.262 to read as follows:

§ 0.262 Record of actions taken.

The application and authorization files in the appropriate central files of the Space Bureau are designated as the Commission's official records of actions by the Chief, Space Bureau, pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center.

■ 24. Revise § 0.272 to read as follows:

§ 0.272 Record of actions taken.

The application and authorization files and other appropriate files of the Office of Economics and Analytics are designated as the Commission's official records of action of the Chief, Office of Economics and Analytics, pursuant to authority delegated to the Chief. The official records of action are maintained by the Reference Information Center.

■ 25. Revise § 0.285 to read as follows:

§ 0.285 Record of actions taken.

The history card, the station file, and other appropriate files are designated to be the official records of action taken by the Chief of the Media Bureau. The official records of action are maintained by the Reference Information Center.

■ 26. Amend § 0.291 by revising paragraph (e) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(e) *Authority concerning rulemaking and investigatory proceedings.* The Chief, Wireline Competition Bureau, shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing, except that the Chief, Wireline Competition Bureau, shall have authority, in consultation and coordination with the Chief, Office of International Affairs, to issue and revise a manual on the details of the reporting requirements for international carriers referenced in § 43.61(a)(3) of this chapter.

* * * * *

■ 27. Revise § 0.302 to read as follows:

§ 0.302 Record of actions taken.

The application and authorization files are designated as the Commission's official records of action of the Chief, Wireline Competition Bureau pursuant to authority delegated to the Chief. The

official records of action are maintained by the Reference Information Center.

■ 28. Revise § 0.317 to read as follows:

§ 0.317 Record of action taken.

The application, authorization, and other appropriate files of the Enforcement Bureau are designated as the Commission's official records of action taken pursuant to authority delegated under §§ 0.311 and 0.314, and shall constitute the official Commission minutes entry of such actions. The official records of action are maintained by the Reference Information Center.

■ 29. Add § 0.351 before the undesignated center heading ''Consumer and Governmental Affairs Bureau'' to read as follows:

§ 0.351 Authority delegated.

(a) The Chief, Office of International Affairs, is hereby delegated the authority to perform the functions and activities described in § 0.19, including without limitation the following:

(1) To assume the principal representational role on behalf of the Commission in international conferences, meetings, and negotiations, and direct Commission preparation for such conferences, meetings, and negotiations with other Bureaus and Offices, as appropriate.

(2) To administer Commission participation in the International Telecommunication Union (ITU) Fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute.

(3) In consultation with the affected Bureaus and Offices, to recommend revision of Commission rules and procedures as appropriate to conform to the outcomes of international conferences, agreements, or treaties.

(4) To recommend rulemakings, studies, and analyses (legal, engineering, social, and economic) of various petitions for policy or rule changes submitted by industry or the public, and to assist the Commission in conducting the same.

(5) To administer and enforce the policies and rules on international settlements under part 64 of this chapter.

(6) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction and not within the jurisdiction of the Enforcement Bureau.

(7) To conduct studies and compile such data relating to international telecommunications as may be necessary for the Commission to develop and maintain an adequate regulatory program.

(8) To act upon applications for international telecommunications and services pursuant to relevant portions of part 63 of this chapter, and coordinate with the Wireline Competition Bureau as appropriate.

(9) To act upon applications for cable landing licenses pursuant to § 1.767 of this chapter.

(10) To act upon applications relating to international broadcast station operations, or for permission to deliver programming to foreign stations, under part 73 of this chapter.

(11) To administer and make available on a public website, a standardized set of national security and law enforcement questions for the categories of information set forth in part 1, subpart CC, of this chapter.

(12) To act upon requests for designation of Recognized Private Operating Agency (RPOA) status under part 63 of this chapter.

(13) Overseeing a team of staff from the FCC's Bureaus and Offices for the purposes of developing Commission positions related to international standard setting issues; collaborating on behalf of the FCC with other Federal agencies on international standard setting issues; and serving as the Chairperson's primary point of contact to develop goals and facilitate strategic decisions about FCC engagement in international standard setting efforts.

(14) To administer portions of part 2 of this chapter dealing with international treaties and call sign provisions, and to make call sign assignments, individually and in blocks, to U.S. government agencies and FCC operating bureaus.

(15) To make technical and ministerial edits to the rules adopted in the 2016 Report and Order in the review of foreign ownership policies for broadcast, common carrier, and aeronautical radio licensees to ensure that the Commission's rules continue to refer to the correct Securities and Exchange Commission rules and forms. 31 FCC Rcd 11272.

(b) Notwithstanding the authority delegated in paragraph (a) of this section, the Chief, Office of International Affairs, shall not have authority:

(1) To act on any application, petition, pleading, complaint, enforcement matter, or other request that:

(i) Presents new or novel arguments not previously considered by the Commission;

(ii) Presents facts or arguments which appear to justify a change in Commission policy; or

(iii) Cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or Offices.

(2) To issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from rulemaking or inquiry proceedings;

(3) To act upon any application for review of actions taken by the Chief, Office of International Affairs, pursuant to delegated authority, except that the Chief of the Office of International Affairs may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter;

(4) To act upon any formal or informal radio application or section 214 application for common carrier services which is in hearing status;

(5) To designate for hearing any applications except applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines; or

(6) To impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $80,000 for common carrier providers and $20,000 for non-common carrier providers.

■ 30. Add § 0.352 to read as follows:

§ 0.352 Record of actions taken.

The application and authorization files and other appropriate files of the Office of International Affairs are designated as the Commission's official records of action of the Chief, Office of International Affairs, pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center.

■ 31. Amend § 0.391 by revising paragraph (a) to read as follows:

§ 0.391 Authority delegated.

* * * * *

(a) Manage the Commission's internal EEO compliance program pursuant to Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act, and other applicable laws, rules, regulations, and Executive Orders, with authority that includes appointing EEO counselors, investigators, and mediators; investigating complaints of employment discrimination, and recommending to the Chairperson final agency decisions on EEO complaints;

* * * * *

■ 32. Revise § 0.408 to read as follows:

§ 0.408 OMB Control Numbers and expiration dates assigned pursuant to the Paperwork Reduction Act of 1995.

OMB control numbers and expiration dates for the Commission information collection requirements assigned by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 can be found at *https://www.reginfo.gov/public/do/PRAMain.* The Commission intends that this posting comply with the requirement that agencies ''display'' current OMB control numbers and expiration dates assigned by the Director, OMB, for each approved information collection requirement. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number. Questions concerning the OMB control numbers and expiration dates should be directed to the Secretary, Office of the Secretary, Office of Managing Director, Federal Communications Commission, Washington, DC 20554 by sending an email to *PRA@fcc.gov.*

■ 33. Revise § 0.434 to read as follows:

§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.

Periodically the FCC makes available copies of its data bases and lists containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the TV and FM Table of Allotments. The data bases, and the lists prepared from the data bases, contain frequencies, station locations, and other particulars. The lists are available for public inspection at the FCC's main office, located at the address indicated in § 0.401(a). Many of the databases may be viewed at the Commission's website at *www.fcc.gov* and *ftp.fcc.gov* under mass media services. Copies of these lists are maintained by the Reference Information Center. These lists are derived from the data bases and can be used as an alternative research source to the Broadcast Application Processing System (BAPS).

■ 34. Amend § 0.441 by revising paragraphs (a)(5) and (d) to read as follows:

§ 0.441 General.

(a) * * *

(5) Visiting the Reference Information Center located at the address indicated in § 0.401(a).

* * * * *

(d) The General Counsel shall, subject to the authority of the Chairperson, exercise the responsibilities of the Chief FOIA Officer specified in 5 U.S.C. 552(j).

■ 35. Amend § 0.445 by revising the second sentence of paragraph (c) to read as follows:

§ 0.445 Publication, availability, and use of opinions, orders, policy statements, interpretations, administrative manuals, staff instructions, and frequently requested records.

* * * * *

(c) * * * The complete text of the Commission decision also is released by the Commission and is available for inspection through the Reference Information Center, via the Electronic Document Management System (EDOCS), or as otherwise specified in the rulemaking document published in the **Federal Register**.

* * * * *

■ 36. Amend § 0.453 by revising the second sentence of the introductory text and the first sentence of paragraph (a) to read as follows:

§ 0.453 Public reference rooms.

* * * The Commission also maintains the FCC Reference Information Center at its offices in Washington, DC.

(a) The Reference Information Center provides access to files containing the record of all docketed cases, petitions for rulemaking and related papers.

* * *

* * * * *

■ 37. Amend § 0.457 by revising the first sentence of paragraph (d)(1)(v) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S.-international traffic, including the method for allocating return traffic, except as otherwise specified by the Commission by order or by the Office of International Affairs under delegated authority. * * *

* * * * *

■ 38. Revise § 0.460 to read as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Section 0.453 specifies those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section, a person who wants to inspect such records must submit a request to the Reference Information Center. Many records also are available on the Commission's website, *https://www.fcc.gov* and the Commission's electronic reading room, *https://www.fcc.gov/general/freedom-information-act-electronic-reading-room.* Commission documents are generally published in the FCC Record, and many of these documents or summaries thereof are also published in the **Federal Register**.

(b) Arrangements to review records must be made in advance, by telephone or by correspondence, by contacting the Reference Information Center.

(c) The records in question must be reasonably described by the person requesting them to permit their location by staff personnel. The information needed to locate the records will vary, depending on the records requested. Advice concerning the kind of information needed to locate particular records will be furnished in advance upon request. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

(d) If it appears that there will be an appreciable delay in locating or producing the records (as where a large number of documents is the subject of a single request or where an extended search for a document appears to be necessary), the requester may be directed to submit or confirm the request in writing.

(e)(1) Written requests for records routinely available for public inspection under § 0.453 shall be directed to the Commission's Reference Information Center pursuant to the procedures set forth in § 0.465. Requests shall set out all information known to the person making the request which would be helpful in identifying and locating the document, including the date range of the records sought, if applicable. Upon request by Commission staff, the requester shall provide his or her street address, phone number (if any), and email address (if any). Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (*see* § 0.467).

(2) Written requests shall be delivered or mailed directly to the Commission's Reference Information Center (*see* § 0.465(a)).

(f) When a written request is received by the Reference Information Center, it will be date-stamped.

(g) All requests limited to records listed in § 0.453 will be granted, subject to paragraph (j) of this section.

(h) The records will be produced for inspection at the earliest possible time.

(i) If the requester is provided access to a physical copy, records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

(j) In addition to the other requirements of this section, the following provisions apply to the reports filed with the Commission pursuant to 5 CFR parts 2634 and 3902.

(1) Such reports shall not be obtained or used:

(i) For any unlawful purpose;

(ii) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(iii) For determining or establishing the credit rating of any individual; or

(iv) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) Such reports may not be made available to any person nor may any copy thereof be provided to any person except upon a written application by such person stating:

(i) That person's name, occupation and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copying is requested; and

(iii) That such person is aware of the prohibitions on the obtaining or use of the report. Further, any such application for inspection shall be made available to the public throughout the period during which the report itself is made available to the public.

■ 39. Amend § 0.461 by revising paragraph (d)(1)(i) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(d)(1) * * *

(i) Filed electronically through the internet at *https://www.foiaonline.gov/foiaonline/action/public/home;* or

* * * * *

■ 40. Amend § 0.504 by revising the first sentence of paragraph (d) to read as follows:

§ 0.504 Processing requests for declassification.

* * * * *

(d) The Commission's Classification Review Committee, consisting of the Managing Director (Chairperson), the General Counsel or his/her designee, and the Chief, Internal Review and Security Division, shall have authority to act, within 30 days, upon all appeals regarding denials of requests for mandatory declassification of Commission-originated classifications. * * *

* * * * *

■ 41. Amend § 0.557 by revising the third sentence of paragraph (b) to read as follows:

§ 0.557 Administrative review of an initial decision not to amend a record.

* * * * *

(b) * * * Final administrative review shall be completed not later than 30 days (excluding Saturdays, Sundays and legal public holidays) from the date on which the individual requests such review unless the Chairperson determines that a fair and equitable review cannot be made within the 30-day period. * * *

* * * * *

■ 42. Revise § 0.558 to read as follows:

§ 0.558 Advice and assistance.

(a) Individuals who have questions regarding the procedures contained in this subpart for gaining access to a particular system of records or for contesting the contents of a record, either administratively or judicially, should contact the Privacy Analyst at *Privacy@fcc.gov* or at the address indicated in § 0.401(a), Attn: Office of General Counsel.

(b) Individuals who request clarification of the Notice described in § 0.552 or who have questions concerning the characterization of specific systems of records as set forth therein, should contact the Privacy Analyst at *Privacy@fcc.gov* or at the address indicated in § 0.401(a), Attn: Office of the Managing Director.

■ 43. Amend § 0.701 by revising the third sentence of paragraph (a), the third sentence of paragraph (b), the second sentence of paragraph (c), the third sentence of paragraph (d) and the first sentence of paragraph (e) to read as follows:

§ 0.701 Intergovernmental Advisory Committee.

* * * * *

(a) * * * At his/her discretion, the Chairperson of the Federal Communications Commission may extend the IAC's term of operations for an additional two years, for which new members will be appointed as set forth in paragraph (b) of this section. * * *

(b) * * * The Chairperson of the Commission will appoint members through an application process initiated by a Public Notice, and will select a Chairperson and a Vice Chairperson to lead the IAC. The Chairperson of the Commission will also appoint members to fill any vacancies and may replace an IAC member, at his or her discretion, using the appointment process. * * *

(c) * * * Members must attend a minimum of fifty percent of the IAC's yearly meetings and may be removed by the Chairperson of the IAC for failure to comply with this requirement.

(d) * * * Members unable to attend an IAC meeting should notify the IAC Chairperson a reasonable time in advance of the meeting and provide the name of the employee designated on their behalf. * * *

(e) * * * The Chairperson of the Commission, or Commissioner designated by the Chairperson for such purpose, will serve as a liaison between the IAC and the Commission and provide general oversight for its activities. * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 45. Amend § 1.57 by revising paragraph (a) to read as follows:

§ 1.57 Circulation and voting of petitions for forbearance.

(a) If a petition for forbearance includes novel questions of fact, law or policy which cannot be resolved under outstanding precedents and decisions, the Chairperson will circulate a draft order no later than 28 days prior to the statutory deadline, unless all Commissioners agree to a shorter period.

* * * * *

■ 46. Amend § 1.403 by revising the second sentence to read as follows:

§ 1.403 Notice and availability.

* * * Petitions for rulemaking are available through the Commission's Reference Information Center at the FCC's main office, and may also be available electronically at *https://www.fcc.gov/.*

■ 47. Amend § 1.767 by:

■ a. Removing the note to paragraph (g)(5):

■ b. Adding paragraph (g)(5)(iii); and

■ c. Revising paragraph (n)(1).

The addition and revision read as follows:

§ 1.767 Cable landing licenses.

* * * * *

(g) * * *

(5) * * *

(iii) Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the Office of International Affairs' website at: *https://www.fcc.gov/international-affairs.*

* * * * *

(n)(1) With the exception of submarine cable outage reports, and subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see subpart Y of this part, and the ICFS homepage at *https://www.fcc.gov/icfs.* See also §§ 63.20 and 63.53 of this chapter.

* * * * *

■ 48. Amend § 1.768 by revising paragraph (j) to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

* * * * *

(j) Subject to the availability of electronic forms, all notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 and the ICFS homepage at *https://www.fcc.gov/icfs.* See also §§ 63.20 and 63.53 of this chapter.

* * * * *

■ 49. Revise § 1.1202 to read as follows:

§ 1.1202 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Presentation.* A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation. A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

(b) *Ex parte presentation.* Any presentation which:

(1) If written (including electronic submissions transmitted in the form of texts, such as for internet electronic mail), is not served on the parties to the proceeding; or

(2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

(c) *Decision-making personnel.* Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decision-maker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing. Commission staff serving as the case manager in a hearing proceeding in which the Commission is the presiding officer shall be considered decision-making personnel with respect to that hearing proceeding.

(d) *Party.* Unless otherwise ordered by the Commission, the following persons are parties:

(1)(i) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of Congress or their staffs or branches of the Federal Government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

(ii) Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such applicants may make presentations to the Commission about their own applications provided that no one has become a party with respect to their application by other means, *e.g.,* by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(iii) Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal

complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and either § 6.21 or § 7.21 of this chapter, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and either § 6.21 or § 7.21 of this chapter;

(3) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(4) In a proceeding designated for hearing, any person who has been given formal party status; and

(5) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a)(1) or (2).

(6) To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairperson or individual Commissioners will not confer party status.

(7) The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also determine in particular instances that persons who qualify as ''parties'' under this paragraph (d) should nevertheless not be deemed parties for purposes of this subpart.

(8) A member of Congress or his or her staff, or other agencies or branches of the federal government or their staffs will not become a party by service of a written submission regarding a pending proceeding that has not been designated for hearing unless the submission affirmatively seeks and warrants grant of party status.

(e) *Matter designated for hearing.* Any matter that has been designated for hearing before a presiding officer.

■ 50. Amend § 1.1901 by revising paragraph (c) to read as follows:

§ 1.1901 Definitions and construction.

* * * * *

(c) The term *agency head* means the Chairperson of the Federal Communications Commission.

* * * * *

■ 51. Amend § 1.4000 by revising paragraph (h) to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

* * * * *

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Copies of the petitions and related pleadings will be available for public inspection through the Reference Information Center.

■ 52. Amend § 1.5000 by revising the first two sentences of paragraph (b) to read as follows:

§ 1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

* * * * *

(b) Except for petitions involving broadcast stations only, the petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically through the International Communications Filing System (ICFS) or any successor system thereto. For information on filing a petition through ICFS, see subpart Y of this part and the ICFS homepage at *https://www.fcc.gov/icfs.* * * *

* * * * *

■ 53. Amend § 1.5004 by revising the first and third sentences of paragraph (c)(2) introductory text and the first and third sentences of paragraph (d)(2) to read as follows:

§ 1.5004 Routine terms and conditions.

* * * * *

(c) * * *

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (c)(1) of this section, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign-organized entity. * * * The letter must also reference the licensee's foreign ownership ruling(s) by ICFS File No. and FCC Record citation, if available. * * *

* * * * *

(d) * * *

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (d)(1) of this section, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign-organized entity; or in the case of a broadcast licensee, the licensee shall file a letter to the attention of the Chief, Media Bureau, within 30 days after the insertion of the new, foreign-organized entity. * * * The letter must also reference the licensee's foreign ownership ruling(s) by ICFS File No. and FCC Record citation, if available; or, if a broadcast licensee, the letter must reference the licensee's foreign ownership ruling(s) by CDBS File No., Docket No., call sign(s), facility identification number(s), and FCC Record citation, if available. * * *

* * * * *

■ 54. Amend § 1.7001 by revising paragraph (d)(4) introductory text to read as follows:

§ 1.7001 Scope and content of filed reports.

* * * * *

(d) * * *

(4) The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chiefs of the Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, or Office of Economics and Analytics may release provider-specific information to:

* * * * *

■ 55. Revise § 1.7003 to read as follows:

§ 1.7003 Authority to update FCC Form 477.

The Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics may update the specific content of data to be submitted on FCC Form 477 as necessary to reflect changes over time in transmission technologies, spectrum usage, Geographical Information Systems (GIS) and other data storage and processing functionalities, and other related matters; and may implement any technical improvements

or other clarifications to the filing mechanism and forms.

■ 56. Revise § 1.7010 to read as follows:

§ 1.7010 Authority to update the Digital Opportunity Data Collection.

The Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics may update the specific format of data to be submitted pursuant to the Digital Opportunity Data Collection to reflect changes over time in Geographical Information Systems (GIS) and other data storage and processing functionalities and may implement any technical improvements or other clarifications to the filing mechanism and forms.

■ 57. Revise the heading for subpart Y to read as follows:

Subpart Y—International Communications Filing System

* * * * *

■ 58. Amend § 1.10000 by revising the section heading and paragraph (b) to read as follows:

§ 1.10000 What is the purpose of the requirements related to the International Communications Filing System?

* * * * *

(b) This subpart describes procedures for electronic filing of International and Satellite Services applications using the International Communications Filing System.

* * * * *

■ 59. Revise § 1.10001 to read as follows:

§ 1.10001 Definitions.

All other applications. We consider all other applications officially filed once you file the application in the International Communications Filing System (ICFS) and applicable filing fees are received and approved by the FCC, unless the application is determined to be fee-exempt. We determine your official filing date based on one of the following situations:

(1)(i) You file your Satellite Space Station Application or your Application for Earth Stations to Access a Non-U.S. Satellite Not Currently Authorized to provide the Proposed Service in the Proposed Frequencies in the United States in ICFS.

(ii) Your official filing date is the date and time (to the millisecond) you file your application and receive a confirmation of filing and submission ID.

(2) You file all other applications in ICFS and then do one of the following:

(i)(A) Pay by online Automatic Clearing House (ACH) payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission (through ICFS)

(B) Your official filing date is the date your online payment is approved. (Note: You will receive a remittance ID and an authorization number if your transaction is successful).

(ii)(A) Determine your application type is fee-exempt or your application qualifies for exemption to charges as provided in this part

(B) Your official filing date is the date you file in ICFS and receive a confirmation of filing and submission ID.

Application. A request for an earth or space station radio station license, an international cable landing license, or an international service authorization, or a request to amend a pending application or to modify or renew licenses or authorizations. The term also includes the other requests that may be filed in ICFS such as transfers of control and assignments of license applications, earth station registrations, and foreign carrier affiliation notifications.

Authorizations. Generally, a written document or oral statement issued by us giving authority to operate or provide service.

International Communications Filing System. The International Communications Filing System (ICFS) is a database, application filing system, and processing system for all International and Satellite services. ICFS supports electronic filing of many applications and related documents in the Space Bureau and Office of International Affairs, and provides public access to this information.

International services. All international services authorized under this part and parts 63 and 64 of this chapter.

Satellite services. All satellite services authorized under part 25 of this chapter.

Satellite Space Station Applications (other than DBS and DARS) and Applications for Earth Stations to Access a Non-U.S. Satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States. We consider a Satellite Space Station application (other than DBS and DARS) and an Application for an Earth Station to Access a Non-U.S. Satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States officially filed the moment you file them through ICFS. The system tracks the date and time of filing (to the millisecond). For purposes of the queue discussed in § 25.158 of this chapter, we will base the order of the applications in the queue on the date and time the applications are filed, rather than the ''Official Filing Date'' as defined here.

Submission ID. The Submission ID is the confirmation number you receive from ICFS once you have successfully filed your application. It is also the number we use to match your filing to your payment.

Us. In this subpart, ''us'' refers to the Commission.

We. In this subpart, ''we'' refers to the Commission.

You. In this subpart, ''you'' refers to applicants, licensees, your representatives, or other entities authorized to provide services.

■ 60. Revise § 1.10005 to read as follows:

§ 1.10005 What is ICFS?

(a) The International Communications Filing System (ICFS) is a database, application filing system, and processing system for all International and Satellite Services. ICFS supports electronic filing of many applications and related documents in the Space Bureau and Office of International Affairs, and provides public access to this information.

(b) We maintain applications, notifications, correspondence, and other materials filed electronically with the Space Bureau and Office of International Affairs in IICFS.

■ 61. Revise § 1.10006 to read as follows:

§ 1.10006 Is electronic filing mandatory?

Electronic filing is mandatory for all applications for international and satellite services for which an International Communications Filing System (ICFS) form is available. Applications for which an electronic form is not available must be filed through the Electronic Comment Filing System (ECFS) in PDF format until new forms are introduced. *See* §§ 63.20 and 63.53 of this chapter. As each new ICFS form becomes available for electronic filing, the Commission will issue a public notice announcing the availability of the new form and the effective date of mandatory filing for this particular type of filing. As each new form becomes effective, manual filings will not be accepted by the Commission and the filings will be returned to the applicant without processing. Mandatory electronic filing requirements for applications for

international and satellite services are set forth in this part and parts 25, 63, and 64 of this chapter. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 and the ICFS homepage at *https://licensing.fcc.gov/icfs.*

■ 62. Amend § 1.10007 by revising paragraph (a) to read as follows:

§ 1.10007 What applications can I file electronically?

(a) For a complete list of applications or notifications that must be filed electronically, log in to the ICFS website at *http://licensing.fcc.gov/icfs.*

* * * * *

■ 63. Amend § 1.10008 by revising the section heading to read as follows:

§ 1.10008 What are ICFS file numbers?

* * * * *

■ 64. Amend § 1.10009 by revising paragraphs (a)(2), (a)(3)(v), and (a)(4), the paragraph (b) heading, paragraphs (b)(1) and (2) and (4) and (5), (c) introductory text, (c)(2)(i), (d), (e)(1)(iii), (e)(2), (e)(3)(i), and (e)(4) and (5) to read as follows:

§ 1.10009 What are the steps for electronic filing?

* * * * *

(a) * * *

(2) In order to process your electronic application, you must have an FRN. You may obtain an FRN either directly from the Commission Registration System (CORES) at *https://www.fcc.gov/licensing-databases/online-filing,* or through ICFS as part of your filing process. If you need to know more about who needs an FRN, visit CORES at *https://www.fcc.gov/licensing-databases/online-filing.*

* * * * *

(3) * * *

(v) Payer, you are required to have and use an FRN when filing applications and/or paying fees through ICFS.

(4) We use your FRN to give you secured access to ICFS and to pre-fill the application you file.

(b) *Step 2: Register with ICFS.* (1) If you are already registered with ICFS, go to Step 3.

(2) In order to complete and file your electronic application, you must register in ICFS, located at *https://www.fcc.gov/icfs.*

* * * * *

(4) ICFS will issue you an account number as part of the registration process. You will create your own password.

(5) If you forget your password, send an email to the ICFS helpline at *icfsinfo@fcc.gov* or contact the helpline at (202) 418–2222 for assistance.

(c) Step 3: Log into ICFS, select the application you want to file, provide the required FRN(s) and password(s) and fill out your application. You must completely fill out forms and provide all requested information as provided in parts 1, 25, 63, and 64 of this chapter.

* * * * *

(2) * * *

(i) The referenced information is filed in ICFS.

* * * * *

(d) Step 4: File your application. If you file your application successfully through ICFS, a confirmation screen will appear showing you the date and time of your filing and your submission ID. Print this verification for your records as proof of online filing.

(e) * * *

(1) * * *

(iii) You can run a draft electronic submission of payment online form through ICFS, in association with a filed application, and the system will automatically enter your required fee on the form.

(2)(i) A complete FCC electronic submission of payment online form must accompany all fee payments. You must provide the FRN for both the applicant and the payer. You also must include your submission ID number on the electronic submission of payment online form in the box labeled ''FCC Code 2.'' In addition, for applications for transfer of control or assignment of license, call signs involved in the transaction must be entered into the ''FCC Code 1'' box on the FCC electronic submission of payment online form. (This may require the use of multiple rows on the electronic submission of payment online form for a single application where more than one call sign is involved.)

(ii) You can generate a pre-filled FCC electronic submission of payment online form from ICFS using your IB submission ID. For specific instructions on using ICFS to generate your FCC electronic submission of payment online form, go to the ICFS website (*http://licensing.fcc.gov/icfs*) and click on the ''Getting Started'' button.

(3) * * *

(i) Pay by credit card (through ICFS);

* * * * *

(4) You must electronically submit payment o within fourteen (14) calendar days of the date that you file your application in ICFS. If not, we will dismiss your application.

(5) For more information on fee payments, refer to Payment Instructions found on the ICFS internet site at *http://licensing.fcc.gov/icfs,* under the Using ICFS link.

■ 65. Revise § 1.10010 to read as follows:

§ 1.10010 Do I need to send paper copies with my electronic applications?

When you file electronically through ICFS, the electronic record is the official record. You do not need to submit paper copies of your application.

■ 66. Amend § 1.10011 by revising paragraph (a) to read as follows:

§ 1.10011 Who may sign applications?

(a) The Commission only accepts electronic applications. An electronic application is ''signed'' when there is an electronic signature. An electronic signature is the typed name of the person ''signing'' the application, which is then electronically transmitted via ICFS.

* * * * *

■ 67. Revise § 1.10012 to read as follows:

§ 1.10012 When can I file on ICFS?

ICFS is available 24 hours a day, seven (7) days a week for filing.

■ 68. Revise § 1.10013 to read as follows:

§ 1.10013 How do I check the status of my application after I file it?

You can check the status of your application through the ''Search Tools'' on the ICFS homepage. The ICFS homepage is located at *https://www.fcc.gov/icfs.*

■ 69. Amend § 1.10014 by:

■ a. Revising paragraph (a), the second sentence of paragraph (e), the second sentence of paragraph (g), and the second sentence of paragraph (h) introductory text; and

■ b. In the table in paragraph (h):

■ i. Under the heading ''International Telecommunications—Section 214'', revising entry 1; and

■ ii. Under the heading ''Submarine Cable Landing License Application'', revising entry 1.

The revisions read as follows:

§ 1.10014 What happens after officially filing my application?

(a) We give you an ICFS file number.

* * * * *

(e) * * * Grants, denials and any other necessary actions are noted in the ICFS database. * * *

* * * * *

(g) * * * In all cases, the action dates are available online through the ICFS system.

(h) * * * Not all applications handled through ICFS and granted by

the Commission result in the issuance of a paper license or authorization. * * *

Type of application	Type of license/authorization issued
* * * *	* * *
International Telecommunications—Section 214:	
1. Streamlined (New, Transfer of Control, Assignment)	1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at IBFS (*http://www.fcc.gov/icfs*) and the Electronic Document Management System (EDOCS) (*http://www.fcc.gov/edocs*).
* * * *	* * *
Submarine Cable Landing License Application:	
1. Streamlined (New, Transfer of Control, Assignment)	1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at IBFS, which can be found at *http://www.fcc.gov/icfs,* and the Electronic Document Management System (EDOCS), which can be found at *http://www.fcc.gov/edocs.*
* * * *	* * *

■ 70. Amend § 1.10016 by revising paragraph (a) to read as follows:

§ 1.10016 How do I apply for special temporary authority?

(a) Requests for Special Temporary Authority (STA) may be filed via ICFS for most services. We encourage you to file STA applications through ICFS as it will ensure faster receipt of your request.

* * * * *

■ 71. Revise § 1.10017 to read as follows:

§ 1.10017 How can I submit additional information?

In response to an official request for information from the Space Bureau and Office of International Affairs, you can submit additional information electronically directly to the requestor, or by mail to the Office of the Secretary, Attention: Space Bureau, or Office of International Affairs, as appropriate.

■ 72. Amend § 1.10018 by revising paragraph (b) to read as follows:

§ 1.10018 May I amend my application?

* * * * *

(b) If an electronic version of an amendment application is available in ICFS, you may file your amendment electronically through ICFS.

■ 73. Amend appendix A to part 1:

■ a. Under the section entitled ''procedure governing joint hearings,'' by:

■ i. Designating the text of paragraph (d) as paragraph (d)(1) and the undesignated paragraph that follows as paragraph (d)(2); and

■ ii. Revising newly designated paragraph (d)(2) and the first sentence in paragraph (e);

■ b. Under the section entitled ''tenure of cooperators'', by revising paragraph (d); and

■ c. By revising the last sentence in the section entitled ''construction hereof in certain respects expressly provided''.

The revisions read as follows:

Appendix A to Part 1—A Plan of Cooperative Procedure in Matters and Cases Under the Provisions of Section 410 of the Communications Act of 1934.

* * * * *

Procedure Governing Joint Hearings

* * * * *

(d) * * *

(2) The president of the association shall have the authority to accept or to decline said invitation for the association, and to determine the number of commissioners who shall be named on the cooperating committee, provided that his action shall be concurred in by the chairperson of the association's executive committee. In the event of any failure of the president of the association and chairperson of its executive committee to agree, the second vice president of the association (or the chairperson of its committee on cooperation between State and Federal commissions, if there shall be no second vice president) shall be consulted, and the majority opinion of the three shall prevail. Consultations and expressions of opinion may be by mail or telegraph.

(e) If any proceeding, involving more than eight States, is pending before the Federal Commission, in which cooperation has not been invited by that Commission, which the association's president and the first and second vice presidents, or any two of them, consider should be made a cooperating proceeding, they may instruct the general solicitor to suggest to the Federal Commission that the proceeding be made a cooperative proceeding; and any State commission considering that said proceeding should be made cooperative may request the president of the association or the chairperson of its executive committee to make such suggestion after consideration with the executive officers above named.

* * *

* * * * *

Tenure of Cooperators

* * * * *

(d) Should a vacancy occur upon any cooperating committee, in a proceeding involving more than eight States, by reason of the death of any cooperating commissioner, or of his ceasing to be a State commissioner, or of other inability to serve, it shall be the duty of the president of the association to fill the vacancy by appointment, if, after communication with the chairperson of the cooperating committee, it be deemed necessary to fill such vacancy.

* * * * *

Construction Hereof in Certain Respect Expressly Provided

* * * With respect to any such State or States, all negotiations herein specified to be carried on between the Federal Commission and any officer of such association shall be conducted by the Federal Commission directly with the chairperson of the commission of such State or States.

PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

■ 74. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 7301; 47 U.S.C. 154 (b), (i), (j), and 303(r), unless otherwise noted.

■ 75. Amend § 19.735–104 by revising paragraphs (a), (b)(2)((i)(B), (b)(2)(ii), (c)(2)(i)(B), and (c)(2)(ii) to read as follows:

§ 19.735–104 Delegations.

(a) The Commission has delegated to the Chairperson responsibility for the detection and prevention of acts, short of criminal violations, which could

bring discredit upon the Commission and the Federal service.

(b) * * *

(2)(i) * * *

(B) In the case of Heads of Offices and Bureaus, to the Chairperson; and

* * * * *

(ii) An official (other than the Chairperson or another Commissioner) to whom a request for approval under 18 U.S.C. 205(e) is submitted shall forward it to the Designated Agency Ethics Official with the official's recommendation as to whether the request should be granted.

* * * * *

(c) * * *

(2)(i) * * *

(B) In the case of Heads of Offices and Bureaus, to the Chairperson; and

* * * * *

(ii) An official (other than the Chairperson or another Commissioner) to whom a waiver request is submitted shall forward it to the Designated Agency Ethics Official with the official's recommendation as to whether the waiver should be granted.

* * * * *

■ 76. Amend § 19.735–107 by revising paragraph (b), the fifth sentence of paragraph (c), the second sentence of paragraph (d) introductory text, paragraph (d)(3)(i), the first sentence of paragraph (d)(3)(iii), and paragraphs (d)(3)(iv) and (d)(3)(v)(A) introductory text to read as follows:

§ 19.735–107 Disciplinary and other remedial action.

* * * * *

(b) The Chairperson will designate an officer or employee of the Commission who will promptly investigate all incidents or situations in which it appears that employees may have engaged in improper conduct. Such investigation will be initiated in all cases where complaints are brought to the attention of the Chairperson, including: Adverse comment appearing in publications; complaints from members of Congress, private citizens, organizations, other government employees or agencies; and formal complaints referred to the Chairperson by the Designated Agency Ethics Official.

(c) * * * Should the Inspector General choose to conduct the investigation, he will promptly notify the Chairperson. * * *

(d) * * * When, after consideration of the employee's explanation, the Chairperson decides that remedial action is required, he or she shall take remedial action. * * *

(3) * * *

(i) When investigation reveals that the charges are groundless, the person designated by the Chairperson to assist in administration of the program may give a letter of clearance to the employee concerned, and the case will not be recorded in his or her Official Personnel Folder;

* * * * *

(iii) If the case administrator considers the problem to be of sufficient importance, he or she may call it to the attention of the Chairperson, who in turn may notify the employee of the seriousness of his or her act and warn him of the consequences of a repetition.

* * *

(iv) The Chairperson may, when in his or her opinion circumstances warrant, establish a special review board to investigate the facts in a case and to make a full report thereon, including recommended action; or

(v)(A) If the Chairperson decides that formal disciplinary action should be taken, he or she may prepare for Commission consideration a statement of facts and recommend one of the following:

* * * * *

■ 77. Amend § 19.735–203 by revising paragraphs (a) introductory text and (b) to read as follows:

§ 19.735–203 Nonpublic information.

(a) Except as authorized in writing by the Chairperson pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission. Such information includes, but is not limited to, the following:

* * * * *

(b) An employee engaged in outside teaching, lecturing, or writing shall not use nonpublic information obtained as a result of his or her government employment in connection with such teaching, lecturing, or writing except when the Chairperson gives written authorization for the use of that nonpublic information on the basis that its use is in the public interest.

* * * * *

PART 20—COMMERCIAL MOBILE SERVICES

■ 78. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 155, 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, and 615c, unless otherwise noted.

■ 79. Amend § 20.19 by revising paragraph (l) introductory text to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(l) *Incorporation by reference.* The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Federal Communications Commission (FCC) and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from the following sources in this paragraph (l):

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 80. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 81. Amend § 25.108 by revising paragraph (a) and adding paragraphs (c)(10) and (d) to read as follows:

§ 25.108 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov* or go to. The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(c) * * *

(10) Recommendation ITU–R M.1186 ''Technical Considerations for the Coordination Between Mobile Satellite Service (MSS) Networks Utilizing Code

Division Multiple Access (CDMA) and Other Spread Spectrum Techniques in the 1–3 GHz Band'' (1995). Incorporation by reference approved for § 25.254(c).

(d) Radio Technical Commission for Maritime Services (RTCM). 1611 N. Kent St., Suite 605, Arlington, VA 22209; email: *info@rtcm.org*; website: *www.rtcm.org*.

(1) RTCM 12800.0, ''Satellite Emergency Notification Devices (SENDs),'' dated August 1, 2011. Incorporation by reference approved for § 25.301.

(2) [Reserved]

■ 82. Amend § 25.110 by revising paragraphs (a) and (d) to read as follows:

§ 25.110 Filing of applications, fees, and number of copies.

(a) *Filing.* Applications may be filed by going online at *https://www.fcc.gov/icfs* and submitting the application through the International Communications Filing System (ICFS).

* * * * *

(d) *Copies.* Applications must be filed electronically though ICFS. The Commission will not accept any paper version of any application.

* * * * *

■ 83. Amend § 25.111 by revising the second sentence of paragraph (d) to read as follows:

§ 25.111 Additional information, ITU filings, and ITU cost recovery.

* * * * *

(d) * * * Applicants and licensees must file the declaration electronically in the application file in the International Communications Filing System (ICFS). * * *

* * * * *

■ 84. Amend § 25.113 by revising the fifth sentence of paragraph (b) to read as follows:

§ 25.113 Station construction, deployment approval, and operation of spare satellites.

* * * * *

(b) * * * This notification must be filed electronically in the appropriate file in the International Communications Filing System database. * * *

* * * * *

■ 85. Amend § 25.115 by revising the last sentence of paragraph (b) introductory text to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(b) * * * Such applications must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y, of this chapter.

* * * * *

■ 86. Amend § 25.116 by revising the first sentence of paragraph (e) to read as follows:

§ 25.116 Amendments to applications.

* * * * *

(e) Any amendment to an application shall be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. * * *

■ 87. Amend § 25.117 by revising paragraph (b) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(b) Both earth station and space station modification applications must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y, of this chapter.

* * * * *

■ 88. Amend § 25.118 by revising the second sentence of paragraph (a) introductory text, the second sentence of paragraph (e) introductory text, and the first sentence of paragraph (f) introductory text to read as follows:

§ 25.118 Modifications not requiring prior authorization.

* * * * *

(a) * * * The notification must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

* * * * *

(e) * * * The notification must be filed electronically on FCC Form 312 through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter:

* * * * *

(f) * * * A licensee may reposition NGSO space stations within an authorized orbital plane without prior Commission approval, provided the licensee notifies the Commission of the repositioning 10 days in advance by electronic filing on Form 312 in the International Communications Filing System. * * *

* * * * *

■ 89. Amend § 25.119 by revising the second sentence of paragraph (c) and the second sentence of paragraph (d) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

* * * * *

(c) * * * You must file these forms electronically through ICFS.

(d) * * * You must file these forms electronically through ICFS. * * *

* * * * *

■ 90. Amend § 25.136 by revising the last sentence of paragraph (h) to read as follows:

§ 25.136 Earth Stations in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz, 47.2–48.2, GHz and 50.4–51.4 GHz bands.

* * * * *

(h) * * * A re-coordination notice must be filed in ICFS before commencement of earth station operations.

■ 91. Amend § 25.137 by revising the first sentence of paragraph (b) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(b) Any request pursuant to paragraph (a) of this section must be filed electronically through the International Communications Filing System and must include an exhibit providing legal and technical information for the non-U.S.-licensed space station of the kind that § 25.114, § 25.122, or § 25.123 would require in a license application for that space station, including but not limited to, information required to complete Schedule S. * * *

* * * * *

■ 92. Amend § 25.138 by revising paragraphs (b) and (c)(2) to read as follows:

§ 25.138 Earth Stations in the 3.7–4.2 GHz band.

* * * * *

(b) Applications for new earth station licenses or registrations within CONUS in the 4.0–4.2 GHz portion of the band will not be accepted until the transition is completed and upon announcement by the Space Bureau via Public Notice that applications may be filed.

(c) * * *

(2) Were licensed or registered (or had a pending application for license or registration) in the ICFS database on November 7, 2018; and

* * * * *

■ 93. Amend § 25.154 by revising paragraphs (a)(3), (c), (d), and the second sentence of paragraph (e) to read as follows:

§ 25.154 Opposition to applications and other pleadings.

* * * * *

(a) * * *

(3) Filed in accordance with the pleading limitations, periods and other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such petitions must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y, of this chapter;

* * * * *

(c) Except for opposition to petitions to deny an application filed pursuant to § 25.220, oppositions to petitions to deny an application or responses to comments and informal objections regarding an application may be filed within 10 days after the petition, comment, or objection is filed and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such oppositions must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y, of this chapter.

(d) Reply comments by a party that filed a petition to deny may be filed in response to pleadings filed pursuant to paragraph (c) or (e) of this section within 5 days after expiration of the time for filing oppositions unless the Commission extends the filing deadline and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such reply comments must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y, of this chapter.

(e) * * * This statement and any conjoined opposition must be in accordance with the provisions of §§ 1.41 through 1.52 of this chapter applicable to oppositions to petitions to deny, except that such reply comments must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y, of this chapter.

■ 94. Amend § 25.171 by revising paragraph (c) to read as follows:

§ 25.171 Space station point of contact reporting requirements.

* * * * *

(c) *Electronic filing.* Filings under paragraph (a) or (b) of this section must be made electronically in the Commission's International Communications Filing System (ICFS) in the ''Other Filings'' tab of the station's current authorization file.

■ 95. Amend § 25.172 by revising the first sentence of paragraph (b) to read as follows:

§ 25.172 Requirements for reporting space station control arrangements.

* * * * *

(b) The information required by paragraph (a) of this section must be filed electronically in the Commission's International Communications Filing System (ICFS), in the ''Other Filings'' tab of the space station's current authorization file. * * *

■ 96. Amend § 25.228 by revising the second sentence of paragraph (h)(5), the second through seventh sentences of paragraph (j)(1), the third and fourth sentences of paragraph (j)(3) introductory text, and the first four sentences of paragraph (j)(4) to read as follows:

§ 25.228 Operating and coordination requirements for earth stations in motion (ESIMs).

* * * * *

(h) * * *

(5) * * * The coordination method and the interference criteria objective will be determined by the frequency coordinator. The details of the coordination must be maintained and available at the frequency coordinator, and must be filed with the Commission electronically via the International Communications Filing System (*http://licensing.fcc.gov/icfs/*) to be placed on public notice. * * *

* * * * *

(j) * * *

(1) * * * Licensees must notify the Space Bureau once they have completed coordination. Upon receipt of such notification from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. When NTIA seeks to provide similar protection to future TDRSS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's Space Bureau that the site is nearing operational status. Upon public notice from the Space Bureau, all Ku-band ESIM licensees must cease operations in the 14.0–14.2 GHz band within 125 km (for ESVs and VMESs) or within radio line of sight (for ESAAs) of the new TDRSS site until the licensees complete coordination with NTIA/IRAC for the new TDRSS facility. Licensees must notify the Space Bureau once they have completed coordination for the new TDRSS site. Upon receipt of such notification from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. * * *

* * * * *

(3) * * * Licensees must notify the Space Bureau once they have completed coordination. Upon receipt of the coordination agreement from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. * * *

(4) When NTIA seeks to provide similar protection to future RAS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's Space Bureau that the site is nearing operational status. Upon public notice from the Space Bureau, all Ku-band ESIMs licensees must cease operations in the 14.47–14.5 GHz band within the relevant geographic zone (160 kms for single-dish radio observatories and Very Large Array antenna systems and 50 kms for Very Long Baseline Array antenna systems for ESVs and VMESs, radio line of sight for ESAAs) of the new RAS site until the licensees complete coordination for the new RAS facility. Licensees must notify the Space Bureau once they have completed coordination for the new RAS site and must submit the coordination agreement to the Commission. Upon receipt of such notification from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party opposed the operations. * * *

* * * * *

■ 97. Amend § 25.254 by revising paragraph (c) to read as follows:

§ 25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483.5–2500 MHz bands.

* * * * *

(c) Applicants for an ancillary terrestrial component to be used in conjunction with a Mobile-Satellite Service system using CDMA technology shall coordinate the use of the 1.6/2.4 GHz Mobile-Satellite Service spectrum designated for CDMA systems using the framework established by the ITU in Recommendation ITU–R M.1186 (incorporated by reference, see § 25.108).

* * * * *

■ 98. Amend § 25.263 by revising the fourth sentence of paragraph (e) to read as follows:

§ 25.263 Information sharing requirements for SDARS terrestrial repeater operators.

* * * * *

(e) * * * If the licensees are unable to do so, the Space Bureau, in consultation with the Office of Engineering and Technology and the Wireless Telecommunications Bureau, will consider the actions taken by the parties to mitigate the risk of and remedy any alleged interference. * * *

■ 99. Amend § 25.271 by revising the second sentence of paragraph (f) to read as follows:

§ 25.271 Control of transmitting stations.

* * * * *

(f) * * * The updated information must be filed electronically in the ''Other Filings'' tab of the station's current authorization file in the International Communications Filing System.

* * * * *

■ 100. Revise § 25.301 to read as follows:

§ 25.301 Satellite Emergency Notification Devices (SENDs).

No device described by the marketer or seller using the terms ''SEND'' or ''Satellite Emergency Notification Device'' may be marketed or sold in the United States unless it complies with the requirements of RTCM 12800.0 (incorporated by reference, see § 25.108).

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 102. Amend § 27.6 by revising paragraph (c)(3) introductory text to read as follows:

§ 27.6 Service areas.

* * * * *

(c) * * *

(3) Service areas for Block D in the 716–722 MHz band are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. See 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. See also paragraphs (a)(1) and (2) of this section and 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the **Federal Register** Notice that established the 172 Economic Areas (EAs) are available for public inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC website at *https://www.fcc.gov/oet/info/maps/areas/*.

* * * * *

■ 103. Amend § 27.72 by revising the fifth sentence of paragraph (e) to read as follows:

§ 27.72 Information sharing requirements.

* * * * *

(e) * * * If the licensees are unable to do so, the Wireless Telecommunications Bureau, in consultation with the Office of Engineering and Technology and the Space Bureau, will consider the actions taken by the parties to mitigate the risk of and remedy any alleged interference. * * *

■ 104. Amend § 27.73 by revising the last four sentences of paragraph (a) to read as follows:

§ 27.73 WCS, AMT, and Goldstone coordination requirements.

* * * * *

(a) * * * ITU–R M.1459 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from ITU, Place des Nations, 1211 Geneva 20, Switzerland; website: *www.itu.int/en/publications/Pages/default.aspx*.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES

■ 105. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 35–39, 154, 211, 219, 220; sec. 402(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 129.

■ 106. Amend § 43.82 by revising the first sentence of paragraph (c) to read as follows:

§ 43.82 Circuit capacity reports.

* * * * *

(c) * * * Authority is delegated to the Chief of the Office of International Affairs to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. * * *

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 303, 332, unless otherwise noted.

■ 108. Amend § 52.26 by:

■ a. In paragraph (a), removing the text '', which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51''; and

■ b. Revising paragraph (c).

The revision reads as follows:

§ 52.26 NANC Recommendations on Local Number Portability Administration.

* * * * *

(c) The NANC Working Group Report is incorporated by reference into this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for public inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material is available at *https://docs.fcc.gov/public/attachments/DOC-341177A1.pdf*.

PART 54—UNIVERSAL SERVICE

■ 109. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 110. Amend § 54.704 by revising the second sentence of paragraph (b)(1) and revising paragraphs (b)(2) and (3) to read as follows:

§ 54.704 The Administrator's Chief Executive Officer.

* * * * *

(b) * * *

(1) * * * The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairperson of the Federal Communications Commission.

(2) The Chairperson of the Federal Communications Commission shall

review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairperson's approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairperson of the Federal Communications Commission shall select a Chief Executive Officer.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

■ 112. Amend § 63.10 by revising paragraph (d) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(d) A carrier classified as dominant under this section shall file electronically each report required by paragraphs (c)(2) through (4) of this section in the International Communications Filing System (ICFS). Each report filed in ICFS shall clearly identify the report as responsive to paragraph of (c) of this section.

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide switched facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. See FCC 97–280 (rel. Aug. 18, 1997) (available at the FCC's Reference Information Center located at the address indicated in § 0.401(a) and on the FCC's website at *https://www.fcc.gov*).

■ 113. Amend § 63.11 by revising paragraph (j) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

* * * * *

(j) Subject to the availability of electronic forms, notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. See also §§ 63.20 and 63.53.

■ 114. Amend § 63.14 by revising paragraph (a) to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited, except as provided in paragraph (c) of this section, from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future. Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the prohibitions contained in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the Office of International Affairs' website at *https://www.fcc.gov/international-affairs*.

* * * * *

■ 115. Amend § 63.17 by designating the note to paragraph (b) as note 1 and revising it to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) * * *

Note 1 to paragraph (b): The Commission's list of international routes exempted from the international settlements policy is available on the Office of International Affairs website at *https://www.fcc.gov/international-affairs*.

* * * * *

■ 116. Amend § 63.18 by revising paragraph (r) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(r) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. See also §§ 63.20 and 63.53.

■ 117. Amend § 63.19 by revising the second sentence of paragraph (a)(2) and revising paragraph (d) to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

* * * * *

(a) * * *

(2) * * * The filing may be made by letter (sending an original and five copies to the Office of the Secretary, and a copy to the Chief, Office of International Affairs) and shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service.

* * * * *

(d) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. See also §§ 63.20 and 63.53.

■ 118. Amend § 63.20 by revising the first three sentences of paragraph (a) to read as follows:

§ 63.20 Electronic filing, copies required; fees; and filing periods for international service providers.

(a) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. * * *

* * * * *

■ 119. Amend § 63.21 by revising paragraph (j) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(j) Subject to the availability of electronic forms, all notifications and other filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. See also §§ 63.20 and 63.53.

■ 120. Amend § 63.22 by:

■ a. Revising the last sentence of paragraph (b);

■ b. Revising paragraph (g);

■ c. Revising the last sentence of paragraph (h);

■ d. Adding paragraph (j); and

■ e. Removing notes 1 and 2 to § 63.22.

The revisions and addition read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(b) * * * The exclusion list is available from the Office of International Affairs' website at *https://www.fcc.gov/international-affairs*.

* * * * *

(g) A carrier or other party may request Commission intervention on any U.S. international route for which competitive problems are alleged by filing with the Office of International Affairs a petition, pursuant to this section, demonstrating anticompetitive behavior by foreign carriers that is harmful to U.S. customers. The Commission may also act on its own motion. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The Office of International Affairs will review complaints on a case-by-case basis and take appropriate action on delegated authority pursuant to § 0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through post facto remedies, the Office of International Affairs may impose temporary requirements on carriers authorized pursuant to § 63.18 without prejudice to its findings on such petitions.

(h) * * * The list shall be filed electronically in accordance with instructions from the Office of International Affairs.

* * * * *

(j) For purposes of this section, *foreign carrier* is defined in § 63.09. For purposes of this section, a *foreign carrier* shall be considered to possess market power if it appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available on the Office of International Affairs' website at *https://www.fcc.gov/international-affairs*. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

■ 121. Amend § 63.23 by designating the note immediately following paragraph (d)(2) as note 2 to paragraph (d) and revising it to read as follows:

§ 63.23 Resale-based international common carriers.

* * * * *

(d) * * *

Note 2 to paragraph (d): The Commission's list of international routes exempted from the international settlements policy, and the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points are available on the Office of International Affairs' website at *https://www.fcc.gov/international-affairs*.

* * * * *

■ 122. Amend § 63.24 by revising paragraph (h) to read as follows:

§ 63.24 Assignments and transfers of control.

* * * * *

(h) *Electronic filing.* Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. See also §§ 63.20 and 63.53.

■ 123. Amend § 63.25 by revising paragraph (e) to read as follows:

§ 63.25 Special provisions relating to temporary or emergency service by international carriers.

* * * * *

(e) Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs*. See also §§ 63.20 and 63.53.

* * * * *

■ 124. Amend § 63.51 by revising the second sentence of paragraph (c) to read as follows:

§ 63.51 Additional information.

* * * * *

(c) * * * For information on filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs,* and § 63.20.

■ 125. Amend § 63.53 by revising the second, third, and fourth sentences of paragraph (a) to read as follows:

§ 63.53 Form.

(a) * * * Subject to the availability of electronic forms, all applications and other filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing

requirements, see §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs.*
* * *
* * * * *

■ 126. Amend § 63.701 by revising paragraph (j) to read as follows:

§ 63.701 Contents of application.
* * * * *

(j) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at *https://www.fcc.gov/icfs.* See also §§ 63.20 and 63.53.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Public Law 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 128. Amend § 64.604 by revising paragraph (c)(5)(iii)(C)(*2*)(*ii*) to read as follows.

§ 64.604 Mandatory minimum standards.
* * * * *
(c) * * *
(5) * * *
(iii) * * *
(C) * * *
(*2*) * * *

(*ii*) The names and business addresses of the provider's chief executive officer, chairperson, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the provider;
* * * * *

■ 129. Amend § 64.621 by revising paragraph (c) introductory text to read as follows:

§ 64.621 Interoperability and portability.
* * * * *

(c) *Incorporation by reference.* The material listed in this paragraph (c) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources in this paragraph (c):
* * * * *

■ 130. Amend § 64.1195 by revising paragraph (b)(2) to read as follows:

§ 64.1195 Registration requirement.
* * * * *
(b) * * *

(2) The names and business addresses of the carrier's chief executive officer, chairperson, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;
* * * * *

PART 67—REAL–TIME TEXT

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

Authority: 47 U.S.C. 151–154, 225, 251, 255, 301, 303, 307, 309, 316, 615c, 616, 617, unless otherwise noted.

■ 132. Amend § 67.3 by revising paragraph (a) to read as follows:

§ 67.3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the source in the following paragraph of this section.
* * * * *

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 133. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 610, unless otherwise noted.

■ 134. Amend § 68.160 by revising paragraph (d)(1) to read as follows:

§ 68.160 Designation of Telecommunication Certification Bodies (TCBs).
* * * * *
(d) * * *

(1) The material listed in this paragraph (d) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the source in paragraph (d)(2) of this section.
* * * * *

■ 135. Amend § 68.162 by revising paragraph (i) introductory text to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.
* * * * *

(i) *Incorporation by reference.* The material listed in this paragraph (i) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source in this paragraph (i):
* * * * *

■ 136. Amend § 68.317 by revising paragraph (i) introductory text to read as follows:

§ 68.317 Hearing aid compatibility volume control: technical standards.

* * * * *

(i) *Incorporation by reference.* The material listed in this paragraph (i) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source in this paragraph (i):

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 138. Amend § 73.622 by revising the fifth sentence of paragraph (c)(1) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(c)(1) * * * Copies of the Memorandum Opinion and Order are available for public inspection through the Federal Communications Commission's Reference Information Center. This document is also available on the FCC homepage at *https://www.fcc.gov.* * * *

* * * * *

■ 139. Amend § 73.683 by revising the last sentence of paragraph (d) to read as follows:

§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.

* * * * *

(d) * * * OET Bulletin No. 72 and OET Bulletin No. 73 are available through the Federal Communications Commission's Reference Information Center, or at the FCC's Office of Engineering and Technology (OET) website: *https://www.fcc.gov/oet/info/documents/bulletins/.*

* * * * *

■ 140. Amend § 73.702 by:

■ a. Revising the second sentence of paragraph (a), the second sentence of paragraph (b), and the first and third sentences of paragraph (c);

■ b. Revising paragraph (d); and

■ c. Removing the first sentence of paragraph (e) and the third sentence of paragraph (h)(2); and

■ d. Revising paragraphs (i) and (j) and the third sentence of paragraph (m) introductory text.

The revisions read as follows:

§ 73.702 Assignment and use of frequencies.

(a) * * * Six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission electronically in the International Communications Filing System (ICFS), indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. * * *

(b) * * * After receipt of such notification, the licensee or permittee shall, in writing, not later than two months before the start of the season in question, electronically inform the Commission in ICFS either that it plans to operate in accordance with the authorization which the Commission intends to issue, or that it plans to operate in another manner. * * *

(c) If after submitting the request required under the provisions of paragraph (a) of this section, but before receipt of the Commission's notification referred to in paragraph (b) of this section, the licensee or permittee submits a request for changes of its original request electronically in ICFS such requests will be accepted for consideration only if accompanied by statements showing good cause therefor and will be honored only if conditions permit. * * * If after the licensee or permittee submits the information required under the provisions of paragraph (b) of this section, but before the start of the season in question, the licensee or permittee submits electronically in ICFS a request for changes in its manner of operation for the season in question, the request will be accepted for consideration only if accompanied by statements showing good cause therefor and will be honored only if conditions permit. * * *

(d) The provisions of paragraphs (a), (b), and (c) of the section shall apply to licensees, to permittees operating under program test authority, and to permittees who anticipate applying for and receiving program test authority for operation during the specified season. Permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission electronically in ICFS not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies. No equipment testing shall occur until the Commission has authorized frequencies and hours for such testing. Such authorizations shall be only for one season, and if it is desired to continue equipment testing in a following season, new requests for frequencies and hours must be submitted at least 30 days before it is desired to begin testing in the following season.

(e) Within 14 days after the end of each season, a report shall be filed with the Commission electronically in ICFS by each licensee or permittee operating under program test authority who has been issued a seasonal schedule for that season. * * *

* * * * *

(h) * * *

(2) * * * Stations desiring to operate in this band must submit sufficient antenna performance information electronically in ICFS to ensure compliance with these restrictions. * * *

* * * * *

(i) Frequencies requested for assignment must be as near as practicable to the optimum working frequency (unless otherwise justified) for the zone or area of reception for the period and path of transmission, and should be chosen so that a given frequency will provide the largest period of reliable transmission to the selected zone or area of reception. Moreover, at the zone or area of reception frequencies shall provide protection to the transmissions of other broadcasting stations which, in the opinion of the Commission, have priority of assignment.

(1) Requests for frequency-hours shall be accompanied by all pertinent technical data with reference to the frequencies and hours of operation, including calculated field strengths delivered to the zones or areas of reception.

(2) It is preferable that calculated field strengths delivered to zones or areas of reception be equal to or greater than those required by I.F.R.B. Technical Standards, Series A (and supplements thereto), in order for the I.F.R.B. to afford the notified assignment protection from interference.

Nevertheless, calculated field strengths less than those required by the I.F.R.B. standards for protection will be acceptable to the Commission. However, licensees should note that if such lesser field strengths are submitted no protection from interference will be provided by the I.F.R.B. if their technical examination of such notifications show incompatibilities with other notified assignments fully complying with I.F.R.B. technical standards.

(3) Licensees are permitted to engage in multiple operation as defined in § 73.701(d).

(4) Seasonal requests for frequency-hours will be only for transmissions to zones or areas of reception specified in the basic instrument of authorization. Changes in such zones or areas will be made only on separate application for modification of such instruments made electronically in ICFS.

(j) Not more than one frequency will be assigned for use at any one time for any one program transmission except in instances where a program is intended for reception in more than one zone or area of reception and the intended zones or areas cannot be served by a single frequency: Provided, however, That on a showing of good cause made electronically in ICFS a licensee may be authorized to operate on more than one frequency at any one time to transmit any one program to a single zone or area of reception.

* * * * *

(m) * * * If for a forthcoming season the total of the requests for daily frequency-hours of all licensees exceeds 100, all licensees will be notified and each licensee that makes an adequate showing electronically in ICFS that good cause exists for not having its requested number of frequency-hours reduced and that operation of its station without such reduction would be consistent with the public interest may be authorized the frequency-hours requested.

* * * * *

■ 141. Amend § 73.713 by revising the second sentence of paragraph (a) to read as follows:

§ 73.713 Program tests.

* * * * *

(a) * * * Such request shall be electronically filed with the FCC in the International Communications Filing System (ICFS) at least 10 days prior to the date on which it is desired to begin such operation. * * *

* * * * *

■ 142. Revise § 73.732 to read as follows:

§ 73.732 Authorizations.

Authorizations issued to international broadcasting stations by the Commission will be authorizations to permit the construction or use of a particular transmitting equipment combination and related antenna systems for international broadcasting, and to permit broadcasting to zones or areas of reception specified on the instrument of authorization. The authorizations will not specify the frequencies to be used or the hours of use. Requests for frequencies and hours of use will be made by electronic filing in the International Communications Filing System (ICFS) as provided in § 73.702. Seasonal schedules, when issued pursuant to the provisions of § 73.702, will become attachments to and part of the instrument of authorization, replacing any such prior attachments.

■ 143. Amend § 73.759 by revising the last sentence of paragraph (c)(2) to read as follows:

§ 73.759 Auxiliary transmitters.

* * * * *

(c) * * *

(2) * * * Where such operation is required for periods in excess of 5 days, request therefor shall be made electronically in the International Communications Filing System (ICFS) in accordance with § 73.3542).

* * * * *

■ 144. Amend § 73.761 by revising the introductory text and paragraph (g) to read as follows:

§ 73.761 Modification of transmission systems.

Specific authority, upon electronic filing of a formal application (FCC Form 309) therefor in the International Communications Filing System (ICFS), is required for any of the following changes:

* * * * *

(g) Other changes, not specified above in this section, may be made at any time without the authority of the Commission: Provided, That the Commission shall be immediately notified electronically in ICFS thereof and such changes shall be shown in the next application for renewal of license.

■ 145. Amend § 73.762 by revising the second sentence of paragraph (b) and the first two sentences of paragraph (c) to read as follows:

§ 73.762 Time of operation.

* * * * *

(b) * * * However, in such cases, the FCC shall be immediately notified by electronic filing in the International Communications Filing System (ICFS) of such limitation or discontinuance of operation and shall subsequently be notified by electronic filing in ICFS when the station resumes regular operation.

(c) In the event that causes beyond a licensee's control make it impossible to adhere to the seasonal schedule or to continue operating for a temporary period of more than 10 days, the station may not limit or discontinue operation until it requests and receives specific authority to do so from the FCC by electronic filing in ICFS. When the station subsequently resumes regular operation after such limited operation or discontinuance of operation, it shall notify the FCC in Washington, DC by electronic filing in ICFS. * * *

■ 146. Amend § 73.1212 by revising the second and fifth sentences of paragraph (k) to read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

* * * * *

(k) * * * A section 325(c) permit holder shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Communications public filing System (ICFS) under the relevant ICFS section 325(c) permit file. * * * Where an aural announcement was made, its contents must be reduced to writing and placed in the ICFS in the same manner.

■ 147. Amend § 73.1650 by designating the undesignated paragraph following paragraph (b)(6) as paragraph (b)(7) and revising it to read as follows:

§ 73.1650 International agreements.

* * * * *

(b) * * *

(7) The documents listed in this paragraph (b) are available for inspection in the office of the Chief, Office of International Affairs, FCC, Washington, DC.

■ 148. Amend § 73.3533 by revising the second sentence of paragraph (a)(2) to read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

* * * * *

(a) * * *

(2) * * * For International Broadcast Stations, applications shall be filed electronically in the International Communications Filing System (ICFS).

* * * * *

■ 149. Amend § 73.3539 by revising the last sentence of paragraph (a) to read as follows:

§ 73.3539 Application for renewal of license.

(a) * * * For International Broadcast Stations, applications shall be filed electronically in the International Communications Filing System (ICFS).

* * * * *

■ 150. Amend § 73.3540 by revising the second sentence of paragraph (c) and the second sentence of paragraph (d) to read as follows:

§ 73.3540 Application for voluntary assignment or transfer of control.

* * * * *

(c) * * * For International Broadcast Stations, the application shall be filed electronically in the International Communications Filing System (ICFS).

(d) * * * For International Broadcast Stations, applications shall be filed electronically in ICFS.

* * * * *

■ 151. Amend § 73.3545 by revising the last sentence to read as follows:

§ 73.3545 Application for permit to deliver programs to foreign stations.

* * * All applications must be filed electronically in the International Communications Filing System (ICFS).

■ 152. Amend § 73.3580 by revising paragraph (b)(2)(i) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(b) * * *

(2) * * *

(i) *Content.* The online notice shall be in the following form:

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

An applicant for a proposed but not authorized station shall post the following online notice:

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE TO BE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post the following online notice:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. [DESCRIPTION OF THE PROGRAMS TO BE TRANSMITTED OVER THE STATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 153. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554, unless otherwise noted.

■ 154. Amend § 74.703 by revising the fourth and fifth sentences of paragraph (a) to read as follows:

§ 74.703 Interference.

(a) * * * Copies of OET Bulletin No. 69 are available for inspection through the Federal Communications Commission's Reference Information Center. This document is also available on the FCC homepage at *https://www.fcc.gov/oet/info/documents/bulletins/#69.*

* * * * *

■ 155. Amend § 74.861 by revising paragraph (i) introductory text to read as follows:

§ 74.861 Technical requirements.

* * * * *

(i) *Incorporation by reference.* The material listed in this paragraph (i) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source in this paragraph (i):

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 156. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573, unless otherwise noted.

■ 157. Amend § 76.602 by revising paragraph (a) to read as follows:

§ 76.602 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at

the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the sources in the following paragraphs of this section.
* * * * *

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

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

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617, unless otherwise noted.

■ 159. Amend § 79.100 by revising paragraph (a) to read as follows:

§ 79.100 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the sources in the following paragraphs of this section.
* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 160. The authority citation for part 80 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

■ 161. Amend § 80.7 by revising paragraph (a) to read as follows:

§ 80.7 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the sources in the following paragraphs of this section.
* * * * *

■ 162. Amend § 80.371 by revising the fifth sentence of paragraph (c)(1)(ii) introductory text to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(1) * * *

(ii) * * * Maps of the EAs and VPCSAs are available for public inspection through the Federal Communications Commission's Reference Information Center, Tel: 1–888–225–5322. * * *
* * * * *

■ 163. Amend § 80.385 by revising the sixth sentence of paragraph (a)(3) introductory text to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(3) * * * Maps of the EAs and AMTSAs are available for public inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC website at *www.fcc.gov/oet/info/maps/areas/.* * * *
* * * * *

PART 87—AVIATION SERVICES

■ 164. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 165. Amend § 87.199 by revising paragraph (a) to read as follows:

§ 87.199 Special requirements for 406.0–406.1 MHz ELTs.

(a) 406.0–406.1 MHz ELTs use G1D emission. Except for the spurious emission limits specified in § 87.139(h), 406.0–406.1 MHz ELTs must meet all the technical and performance standards contained in the Radio Technical Commission for Aeronautics document titled ''Minimum Operational Performance Standards 406 MHz Emergency Locator Transmitters (ELT)'' Document No. RTCA/DO–204 dated September 29, 1989. Document No. RTCA/DO–204 is incorporated by reference into this the section with the approval of the Director of the Federal Register in accordance with 5 U.S.C 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the Radio Technical Commission for Aeronautics (RTCA), Inc., 1150 18th Street NW, Suite 910, Washington, DC 20036; phone: (202) 833–9339; email: *info@rtca.org;* website: *www.rtca.org.*
* * * * *

■ 166. Revise § 87.285 to read as follows:

§ 87.285 Scope of service.

(a) *Frequencies.* The frequencies indicated in § 87.287 may be used to test aircraft data link systems on a secondary basis to other licensed stations. Equipment must be designed so that it will engage in data link exchange only with the aircraft whose identification has been programmed into the device, and must comply with the applicable specifications for VDL Mode 2 operation set forth in the ICAO ''Manual on VHF Digital Link (VDL) Mode 2'' and RTCA DO–281A.

(b) *Incorporation by reference.* The material listed in this paragraph (b) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material

may be obtained from the following sources in this paragraph (b):

(1) ICAO, Customer Services Unit, 999 University Street, Montréal, Quebec H3C 5H7, Canada; email: *icaohq@icao.int;* website: *www.ICAO.int.*

(i) ICAO ''Manual on VHF Digital Link (VDL) Mode 2'' First Edition-2001.

(ii) [Reserved]

(2) Radio Technical Commission for Aeronautics (RTCA), Inc., 1150 18th Street NW, Suite 910, Washington, DC 20036; phone: (202) 833–9339; email: *info@rtca.org;* website: *www.rtca.org.*

(i) RTCA DO–281A, ''Minimum Operational Performance Standards for Aircraft VDL Mode 2 Physical, Link and Network Layer'', November 8, 2005.

(ii) [Reserved]

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 167. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

* * * * *

■ 168. Amend § 90.7 by revising paragraph (2) of the definition of ''900 MHz SMR MTA-based license or MTA license'' and revising the definitions of ''EA–based or EA license'' and ''MTA-based license or MTA license'' to read as follows:

§ 90.7 Definitions.

* * * * *

900 MHz SMR MTA-based license or MTA license * * *

(2) The MTA map is available for public inspection through the Federal Communications Commission's Reference Information Center.

* * * * *

EA–based or EA license. A license authorizing the right to use a specified block of SMR or LMS spectrum within one of the 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection through the Federal Communications Commission's Reference Information Center.

* * * * *

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas (''MTAs''), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the ''MTA Map''). The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection through the Reference Information Center.

* * * * *

■ 169. Amend § 90.20 by revising the fifth sentence of paragraph (g)(1) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(g) * * *

(1) * * * Maps of the EAs and VPCSAs are available for inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC website at *https://www.fcc.gov/oet/info/maps/areas/.*

* * *

* * * * *

■ 170. Amend § 90.265 by revising paragraph (f) introductory text to read as follows:

§ 90.265 Assignment and use of frequencies in the bands allocated for Federal use.

* * * * *

(f) *Incorporation by reference.* The material listed in this paragraph (f) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FCC must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source in this paragraph (f):

* * * * *

■ 171. Amend § 90.548 by revising paragraph (b) introductory text to read as follows:

§ 90.548 Interoperability Technical Standards.

* * * * *

(b) *Incorporation by reference.* The material listed in this paragraph (b) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source in this paragraph (b):

* * * * *

■ 172. Amend § 90.553 by revising paragraphs (b) and (c) to read as follows:

§ 90.553 Encryption.

* * * * *

(b) If encryption is employed, then transmitters manufactured after August 11, 2014 must use the Advanced Encryption Standard (AES) specified in ANSI/TIA–102.AAAD–A. Until 2030, manufacturers may also include the Digital Encryption Standard (DES) or Triple Data Encryption Algorithm (TDEA), in addition to but not in place of AES, for compatibility with legacy radios that lack AES capability.

(c) *ANSI/TIA–102.AAAD–A:* Project 25 Digital Land Mobile Radio-Block Encryption Protocol, approved August 20, 2009 is incorporated by reference into this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(1) Telecommunications Industry Association (TIA), 2500 Wilson Boulevard, Arlington, VA 22201; website: *https://tiaonline.org.*

(2) S&P Global Standards Store, 15 Inverness Way East, Englewood, CO 80112; website: *https://global.ihs.com.*

(3) American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, NY 10036; website: *www.ansi.org.*

PART 95—PERSONAL RADIO SERVICES

■ 173. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, unless otherwise noted.

■ 174. Amend § 95.2989 by revising paragraph (b) introductory text to read as follows:

§ 95.2989 PLB and MSLD technical standards.

* * * * *

(b) *Incorporation by reference.* The material listed in this paragraph (b) is incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and the National Archives and Records Administration (NARA). Contact the FCC through the Federal Communications Commission's Reference Information Center, phone: (202) 418–0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source in this paragraph (b):

* * * * *

PART 97—AMATEUR RADIO SERVICE

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

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 176. Amend § 97.207 by revising paragraphs (g) introductory text and (g)(1)(viii) to read as follows:

§ 97.207 Space station.

* * * * *

(g) The license grantee of each space station must make the following written notifications to the Space Bureau, FCC, Washington, DC 20554.

(1) * * *

(viii) If any material item described in this notification changes before launch, a replacement pre-space notification shall be filed with the Space Bureau no later than 90 days before integration of the space station into the launch vehicle.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 177. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 178. Amend § 101.21 by revising the last sentence of paragraph (f) to read as follows:

§ 101.21 Technical content of applications.

* * * * *

(f) * * * (Technical characteristics of the Earth stations on file and coordination contour maps for those Earth stations will be kept on file for public inspection in the offices of the Commission's Space Bureau in Washington, DC.)

* * * * *

■ 179. Amend § 101.523 by revising the third sentence of paragraph (a)(4) to read as follows:

§ 101.523 Service areas.

* * * * *

(a) * * *

(4) * * * Maps of the EAs and the **Federal Register** Notice that established the 172 Economic Areas (EAs) are available for public inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC website at *www.fcc.gov/oet/info/maps/areas/.*

* * * * *

[FR Doc. 2023–07066 Filed 4–7–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 68 April 10, 2023

Part V

The President

Federal Register
Vol. 88, No. 68
Monday, April 10, 2023

Presidential Documents

Title 3—

The President

Notice of April 7, 2023

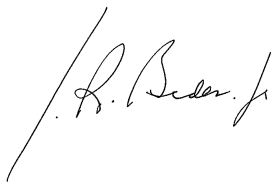
Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, 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 deterioration of the security situation and the persistence of violence in Somalia; acts of piracy and armed robbery at sea off the coast of Somalia, which have been the subject of United Nations Security Council resolutions; and violations of the arms embargo imposed by the United Nations Security Council.

On July 20, 2012, the President issued Executive Order 13620 to take additional steps to deal with the national emergency declared in Executive Order 13536 in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia.

The situation with respect to Somalia 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 April 12, 2010, and the measures adopted on that date and on July 20, 2012, to deal with that threat, must continue in effect beyond April 12, 2023. 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 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
April 7, 2023.

[FR Doc. 2023–07692
Filed 4–07–23; 1:30 pm]
Billing code 3395–F3–P

Presidential Documents

Notice of April 7, 2023

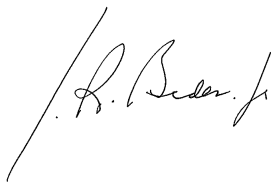
Continuation of the National Emergency With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

On April 15, 2021, by Executive Order 14024, I 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, foreign policy, and economy of the United States constituted by specified harmful foreign activities of the Government of the Russian Federation. On March 8, 2022, I issued Executive Order 14066 to expand the scope of the national emergency declared in Executive Order 14024. On August 20, 2021, March 11, 2022, and April 6, 2022, I issued Executive Orders 14039, 14068, and 14071, respectively, to take additional steps with respect to the national emergency declared in Executive Order 14024.

Specified harmful foreign activities of the Government of the Russian Federation—in particular, efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies and partners; to engage in and facilitate malicious cyber-enabled activities against the United States and its allies and partners; to foster and use transnational corruption to influence foreign governments; to pursue extraterritorial activities targeting dissidents or journalists; to undermine security in countries and regions important to United States national security; and to violate well-established principles of international law, including respect for the territorial integrity of states—continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 14024, which was expanded in scope by Executive Order 14066, and with respect to which additional steps were taken in Executive Orders 14039, 14068, and 14071, must continue in effect beyond April 15, 2023.

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 14024.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
April 7, 2023.

[FR Doc. 2023–07702
Filed 4–7–23; 1:30 pm]
Billing code 3395–F3–P

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Federal Register

Vol. 88, No. 68

Monday, April 10, 2023

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FEDERAL REGISTER PAGES AND DATE, APRIL

CFR PARTS AFFECTED DURING APRIL

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.

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LIST OF PUBLIC LAWS

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