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

Rules and Regulations

Federal Register
Vol. 89, No. 151
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2024–0041]

RIN 3150–AL08

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 16

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of September 9, 2024, for the direct final rule that was published in the **Federal Register** on June 25, 2024. This direct final rule amended its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 16 to Certificate of Compliance No. 1014.

DATES: *Effective date:* The effective date of September 9, 2024, for the direct final rule published June 25, 2024 (89 FR 52999), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2024–0041 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0041. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: *Helen.Chang@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The renewed Amendment No. 16 of Certificate of Compliance No. 1014 and associated changes to the technical specifications, and safety evaluation report can also be viewed in ADAMS under Package Accession No. ML24178A430.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexandra Terres, Office of Nuclear Materials Safety and Safeguards, telephone: 301–415–7000, email: *Alexandra.Terres@nrc.gov* and Yen-Ju Chen, Office of Nuclear Materials Safety and Safeguards, telephone: 301–415–1018 email: *Yen-Ju.Chen@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On June 25, 2024 (89 FR 52999), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to include Renewed Amendment No. 16 to Certificate of Compliance No. 1014. Renewed Amendment No. 16 updates the HI–STORM 100 Cask System to add a new overpack, include the ability to use computational fluid dynamics analysis to evaluate site-specific accident scenarios, modify the cask design, modify operational and testing requirements, and make changes to the final safety analysis report.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on September 9, 2024. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: August 1, 2024.

For the Nuclear Regulatory Commission.

Krupskaya T. Castellon,

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

[FR Doc. 2024–17324 Filed 8–5–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2395; Project Identifier AD–2023–00767–T; Amendment 39–22773; AD 2024–12–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to all The Boeing Company Model 757 airplanes. As published, the AD number referenced throughout the final rule is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective August 22, 2024. The effective date of AD 2024–12–09 remains August 22, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 22, 2024 (89 FR 58257, July 18, 2024).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2395; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket

Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For Boeing material 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.*

• You may view this material 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* under Docket No. FAA–2023–2395.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5238; email *wayne.ha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

AD 2024–12–09, Amendment 39–22773 (89 FR 58257, July 18, 2024), requires an inspection or records check of the wing upper skin at the drag fitting attachment holes for any existing repair; repetitive inspections for loose fasteners, skin cracking, and shim migration at the upper link drag fittings, and for cracking in the diagonal brace and diagonal brace fittings; repetitive inspections for cracking of the fastener holes and loose bolt holes; and applicable on-condition actions for all The Boeing Company Model 757 airplanes.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023. This material specifies procedures for a general visual inspection or records check of the wing upper skin at the drag fitting attachment holes for any existing repair; repetitive general visual and detailed inspections for loose fasteners, skin cracking, and shim migration at the upper link drag fittings, and for cracking in the diagonal brace and diagonal brace fittings; repetitive open-hole high frequency eddy current (HFEC) inspections for cracking of the fastener holes and loose bolt holes; and applicable on-condition actions. On-condition actions include performing an ultrasonic inspection for cracks at any repaired upper wing skin location; installing the upper link and upper link pins; replacing drag fittings; installing bolts, washers, and nuts; performing a torque check of fasteners on the affected shims; trimming affected shims and applying chemical conversion coating on the shims, fillet seal, and drag fittings; and repairing cracks, migrated shims, mistorqued bolts, and loose fasteners. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Need for Correction

As published, the AD number referenced throughout the final rule is incorrect. The final rule incorrectly references ''AD 2023–12–09.'' The correct AD number is ''AD 2024–12–09.''

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains August 22, 2024.

Since this action only corrects an incorrect AD number, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 [Corrected]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–08–12, Amendment 39–22015 (87 FR 26964, May 6, 2022); and

■ b. Adding the following new AD:

2024–12–09 The Boeing Company: Amendment 39–22773; Docket No. FAA–2023–2395; Project Identifier AD–2023–00767–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 22, 2024.

(b) Affected ADs

This AD replaces AD 2022–08–12, Amendment 39–22015 (87 FR 26964, May 6, 2022) (AD 2022–08–12).

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of bolt rotation in the engine drag fitting joint and fastener heads and cracks found in the skin of the fastener holes, a determination that certain drag fittings may be made of alternate materials, which could result in reduced structural integrity of the engine strut, and a determination that additional inspections and revised compliance times are needed. The FAA is issuing this AD to address cracking in the wing upper skin and forward drag fittings, which could lead to a compromised upper link and reduced structural integrity of the engine strut, and possible separation of a strut and engine from the airplane during flight.

(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 757–57A0073 RB, Revision 3, dated May 5, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–57A0073, Revision 3, dated May 5, 2023, which is referred to in Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase ''the Original Issue date of Requirements Bulletin 757–57A0073 RB,'' this AD requires using ''September 10, 2018 (the effective date of AD 2018–16–05, Amendment 39–19345 (83 FR 38250, August 6, 2018))'' (AD 2018–16–05).

(2) Where the Compliance Time columns and notes of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated

May 5, 2023, use the phrase ''the Revision 1 date of Requirements Bulletin 757–57A0073 RB,'' this AD requires using ''January 14, 2021 (the effective date of AD 2020–21–17, Amendment 39–21290 (85 FR 79418, December 10, 2020))'' (AD 2020–21–17).

(3) Where the Compliance Time columns and notes of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase ''the Revision 2 date of Requirements Bulletin 757–57A0073 RB,'' this AD requires using ''June 10, 2022 (the effective date of AD 2022–08–12).''

(4) Where the Compliance Time columns and notes of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, use the phrase ''the Revision 3 date of Requirements Bulletin 757–57A0073 RB,'' this AD requires using the effective date of this AD.

(5) Where Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, except for the open-hole high frequency eddy current inspections at fastener locations 11–18, if those actions were performed before January 14, 2021 (the effective date of AD 2020–21–17) using Boeing Alert Requirements Bulletin 757–57A0073 RB, dated July 14, 2017.

(2) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before June 10, 2022 (the effective date of AD 2022–08–12) using Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 1, dated August 1, 2019.

(3) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety 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 (k)(1) of this AD. Information may be emailed to: *AMOC@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, AIR–520, Continued Operational Safety 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.

(k) Related Information

(1) For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5238; email *wayne.ha@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on August 22, 2024 (89 FR 58257, July 18, 2024).

(i) Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 3, dated May 5, 2023.

(ii) [Reserved]

(4) For Boeing material 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.*

(5) You may view this material 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.

(6) You may view this material at the National Archives and Records Administration (NARA). 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.*

Issued on August 1, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–17338 Filed 8–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0628]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Osprey, FL

AGENCY: Coast Guard, DHS.

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

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Blackburn Point Bridge across the Gulf Intracoastal Waterway (GICW), mile 63.1, at Osprey, FL. The Casey Key Association has requested the Coast Guard changing the operating schedule allowing the drawbridge scheduled openings. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding this deviation.

DATES: This deviation is effective from 7 a.m. on August 12, 2024, through 7 p.m. on January 31, 2025.

Comments and related material must reach the Coast Guard on or before September 20, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0628 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 571–607–5951, email *Jennifer.N.Zercher@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

Blackburn Point Bridge across the Gulf Intracoastal Waterway (GICW), mile 63.1, at Osprey, FL, is a swing bridge with a 9-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.5.

The Coast Guard received a request from the Casey Key Association to consider changing the operating schedule for the Blackburn Point Bridge

by allowing the drawbridge scheduled openings instead of on demand openings. This request was made to assist with vehicle congestion during the weekday daylight hours. This temporary deviation will test a change to the drawbridge operation schedule to determine if the reasonable needs of navigation are maintained and whether a permanent change to the schedule is needed.

Under this temporary deviation, the Blackburn Point Bridge shall open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the draw need only open on the hour, twenty minutes after the hour, and forty minutes after the hour. Public vessels of the United States and tugs with tows, upon proper signal, will be passed through any time. Vessels able to pass without an opening may do so at any time.

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

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

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0628 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

View material in the docket. To view documents mentioned in this deviation as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of this deviation. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

Dated: July 31, 2024.

Randall D. Overton,

Director, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 2024–17223 Filed 8–5–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0652]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Marker 229.2 Baton Rouge to Mile Marker 92.7 New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the procession of boats participating in the marine event, Fete Dieu Du Mississippi, on the Lower Mississippi River in New Orleans, LA. The safety zone is necessary to protect persons and vessels from the potential hazards associated with a moving flotilla of vessels and the potential for marine traffic congestion on the Lower Mississippi River. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans or a designated representative, or the pilot of the M/V KNIGHT HAWK.

DATES: This rule is effective from 10 a.m. on August 14, 2024 through 5:30 p.m. on August 15, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0652 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Commander Xiaobin Tuo, Sector New Orleans, U.S. Coast Guard; 504–365–2246, email *Xiaobin.Tuo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
DHS Department of Homeland Security
FR Federal Register
LMR Lower Mississippi River
MM Mile Marker
MSIB Marine Safety Information Bulletin
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Prompt action is necessary to protect persons and vessels from the potential safety hazards associated with a moving flotilla of vessels and the potential for marine traffic congestion on the Lower Mississippi River. It is impracticable to publish an NPRM because we must establish this safety zone by August 14, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety hazards associated with a moving flotilla and the potential for marine traffic congestion on the Lower Mississippi River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector New Orleans (COTP) has determined that a temporary moving safety zone is necessary to provide for the safety of persons, vessels, and the marine environment during the Fete Dieu Du Mississippi procession from Baton Rouge, LA to New Orleans, LA. Potential hazards include risk of injury if normal vessel traffic or spectators were to interfere with the flotilla's movement. The transit is scheduled to take place from 10 a.m. to 5:30 p.m. on August 14, 2024 and 10 a.m. to 5:30 p.m. on August 15, 2024, on the navigable waters of the Lower Mississippi River. This rule is needed to protect persons, vessels, and the marine environment from hazards associated with a flotilla on the navigable waters within the safety zone while vessels transit.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone that will be enforced from 10 a.m. to 5:30 p.m., daily, on August 14, 2024 and August 15, 2024. The safety zone will cover all navigable waters around the Fete Dieu Du Mississippi Flotilla as it transits the Lower Mississippi River between Baton Rouge, LA MM 229.2 and New Orleans, LA MM 92.7. The M/V KNIGHT HAWK will serve as the vessel in charge of the flotilla. The moving safety zone will encompass all navigable waters within a two-mile radius around the M/V KNIGHT HAWK. This safety measure is necessary to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River and the movement of the flotilla. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP, a designated representative, or the pilot onboard the M/V KNIGHT HAWK.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on minimal impacts on routine navigation expected. The temporary moving safety zone will not interfere with a vessel's ability to make passing and overtaking arrangements. Routine navigation around and near the proposed safety zone will not be impacted. The temporary moving safety zone is intended to provide additional time and opportunity to negotiate navigational meeting and overtaking arrangements and to maneuver without causing delay for both the flotilla and other vessels operating in the area.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. This rule involves establishing a temporary moving safety zone on the navigable waters within a two-mile radius around the M/V KNIGHT HAWK on the LMR, lasting two days. It is categorically excluded from further review under paragraph L63(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0652 to read as follows:

§ 165.T08–0652 Safety Zone; Lower Mississippi River, Mile Marker 229.2 Baton Rouge to Mile Marker 92.7 New Orleans, LA

(a) *Location.* The following area is a safety zone: all navigable waters within the Lower Mississippi River, around the flotilla transiting between Baton Rouge MM 229.2 at approximate position 30°26′200″ N, 91°11′800″ W [NAD 83] and approximate MM 92.7 in New Orleans, Louisiana on the Lower Mississippi River. The temporary moving safety zone will consist of a two-mile radius around the M/V KNIGHT HAWK. The zone remains in effect during the entire transit of the flotilla from Baton Rouge, LA to Convent, LA on day one, then from Convent, LA to New Orleans, LA on day two.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New Orleans (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative, except as provided for in paragraph (c)(2) and (3) of this section.

(2) For this section the pilot onboard the M/V KNIGHT HAWK has the authority to allow other vessels to enter the safety zone when necessary.

(3) All vessels are prohibited from entering this safety zone unless authorized as follows:

(i) Vessels that have made suitable passing or overtaking arrangements with the pilot onboard the M/V KNIGHT HAWK, may enter this safety zone in accordance with those agreed upon arrangements.

(ii) Moored vessels or vessels anchored in a designated anchorage area may remain in their current moored or anchored position while the flotilla transits the area.

(iii) Barge Fleets or vessels working a fleet may continue their current operations while the flotilla transits the area.

(d) *Enforcement period.* This section will be enforced from 10 a.m. to 5:30 p.m., daily, on August 14, 2024 and August 15, 2024.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: July 31, 2024.

G.A. Callaghan,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2024–17289 Filed 8–5–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2024–0225; FRL–12122–02–R8]

Air Plan Approval; Colorado; Interim Final Determination To Stay and Defer Sanctions in the Denver Metro/North Front Range 2008 Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: In the Proposed Rules section of this **Federal Register**, EPA is proposing approval and conditional approval of portions of a State Implementation Plan (SIP) submission from the State of Colorado dated May 3, 2024. The submission relates to Colorado Air Quality Control Commission Regulation Number 7 (Reg. 7) and Regulation Number 21 (Reg. 21), and addresses Colorado's SIP obligation to require sources to meet reasonably available control technology (RACT) requirements for nonattainment areas for the 2008 ozone National Ambient Air Quality Standard (NAAQS), which includes requiring adequate reporting by sources. In this action, EPA is making an interim final determination based on that proposed approval and conditional approval. The effect of this interim final determination is that the imposition of sanctions that were triggered by EPA's May 9, 2023 limited disapproval are now deferred. Although this action is effective upon publication, EPA will take comment on this interim final determination.

DATES: This interim final determination is effective August 6, 2024. However, comments will be accepted until September 5, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2024–0225, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points

you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.* Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6563, email address: *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On May 9, 2023, EPA took final action approving portions of the 2008 8-hour ozone Serious area attainment plan for the Denver Metro/North Front Range (DMNFR) Area submitted by the State of Colorado on March 22, 2021, and portions of additional state implementation plan (SIP) submissions made by the State related to those requirements on May 8, 2019; May 13, 2020; March 22, 2021; May 18, 2021; and May 20, 2022.[1] The State made these SIP submissions to meet Serious ozone nonattainment plan requirements for the DMNFR Area, to address reasonably available control technology (RACT) requirements for certain source categories in the DMNFR Area, and to adopt volatile organic compounds (VOC) standards for consumer products and architectural and industrial maintenance coatings. In the May 9, 2023 action, EPA also finalized a limited approval and limited disapproval of parts of the SIP submissions made on May 14, 2018; May 13, 2020; March 22, 2021; May 18, 2021; and May 20, 2022, with respect to certain RACT categories and VOC controls,[2] and finalized a limited conditional approval and limited disapproval of specific provisions intended to meet RACT requirements and control VOC emissions.[3] The limited disapproval portions of the May 9, 2023 final rule resulted from the Agency's determination that although the rules met RACT requirements with respect to stringency, they lacked adequate periodic reporting requirements as required under the Clean Air Act (CAA) and EPA regulations.

On July 10, 2023, the State submitted a Petition for Reconsideration asking EPA to reconsider the limited disapproval portions of the May 9, 2023 final rule. EPA responded to the Petition for Reconsideration in a letter dated August 31, 2023, informing the State that EPA was granting the petition as to the limited disapproval portions of the May 9, 2023 final rule.[4] Since granting the petition for reconsideration, EPA has offered Colorado the opportunity to explain more fully how the State's regulations provide for adequate reporting, to inform EPA of various actions taken by the Colorado Air Pollution Control Division to enhance access to public records and information, and to consider what changes to existing regulations would improve reporting requirements to address deficiencies. As a result of these discussions, Colorado resubmitted Reg. 7 and Reg. 21 with additional explanations to support proposed approval of some provisions and a commitment to make changes to support proposed conditional approval of others.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP submission based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. On May 3, 2024, the State of Colorado resubmitted portions of the prior SIP submissions that were the subject of the limited disapproval and also submitted a letter committing to undertake additional steps to improve public access to regulatory compliance information and clarify existing SIP reporting requirements (''Commitment Letter'').[5] In its Commitment Letter, the State committed to submit the necessary SIP revisions to EPA by May 31, 2025.[6]

In the Proposed Rules section of this **Federal Register**, EPA has proposed to conditionally approve portions of Colorado's May 3, 2024 submittal, pending timely submittal of the specified rule revisions by May 31, 2025. The underlying SIP provisions that we are proposing to conditionally approve are already part of the SIP due to our May 9, 2023 limited approval and thus are federally enforceable by the State and EPA, notwithstanding our conclusion that the current reporting requirements may limit potential enforceability by others under CAA section 304 citizen suit authority.

II. What action is EPA taking?

We are making an interim final determination to defer application of CAA section 179 sanctions associated with the May 9, 2023 limited disapproval. Under 40 CFR 52.31(d)(2)(i), if the State has submitted a revised plan to correct the deficiencies identified in the May 9, 2023 limited disapproval, and EPA proposes to fully or conditionally approve the plan and issues an interim final determination that the revised plan corrects the identified deficiencies, application of the new source offset and highway sanctions shall be deferred. If not deferred, the offset sanction would apply on December 8, 2024, and the highway sanction would apply on June 8, 2025, in the DMNFR Area.

Based on the proposed approval and conditional approval of portions of Colorado's May 3, 2024 submittal set forth in this document, it is more likely than not that Colorado has met the requirement to establish that these provisions have reporting requirements for certain source categories, or has committed to make revisions for other source categories that will include reporting requirements, adequate to comply with the relevant CAA requirements under section 110 and EPA regulations at 40 CFR 51.211(a), as well as to make the provisions legally and practicably enforceable by citizens as authorized under CAA section 304. Therefore, EPA is making this interim final determination based on our

[1] 88 FR 29827, table 1, 29829–29830 (May 9, 2023).

[2] *Id.* at 29830–29831, table 2 (listing portions subject to limited approval and limited disapproval), table 3 (RACT categories).

[3] *Id.* at 29830–29831, table 3.

[4] See letter from EPA Regional Administrator KC Becker to Colorado Attorney General Phil Weiser (Aug. 31, 2023), in the docket for this action.

[5] ''Resubmittal of SIP revisions following Reconsideration. II. EPA Docket ID Nos.: EPA–R08–OAR–2022–0632; EPA–R08–OAR–2022–0857; and FRL–10362–02–R8'' commitment letter. Available in the docket for this action.

[6] ''Resubmittal of SIP revisions following Reconsideration. EPA Docket ID Nos.: EPA–R08–OAR–2022–0632; EPA–R08–OAR–2022–0857; and FRL–10362–02–R8'' commitment letter. Available in the docket for this action.

concurrent proposal to approve and conditionally approve Colorado's May 3, 2024 SIP submission that corrects and commits to correct the deficiencies identified in our May 9, 2023 limited disapproval with respect to the adequacy of reporting requirements of the identified provisions.[7]

This interim final determination is consistent with the requirements of the Administrative Procedure Act (APA)[8] for federal agency rulemaking. Generally, under the APA, agency rulemaking affecting the rights of individuals must comply with certain minimum procedural requirements, including publishing a notice of proposed rulemaking in the **Federal Register** and providing an opportunity for the public to submit written comments on the proposal before the rulemaking can have final effect.[9] While in this matter EPA is not providing an opportunity for public comment before the deferral of CAA section 179 sanctions is effective, EPA is providing an opportunity, after the fact, for the public to comment on the interim final determination. EPA will consider any comments received in determining whether to reverse the interim final determination. Additionally, EPA is providing an opportunity to comment on the proposed approval and conditional approval, within a separate action, that are the basis for this interim final determination, so the public has an opportunity to comment on that action before any sanctions clock could be permanently terminated.

The basis for allowing such an interim final action stems from the APA, which provides that the notice and opportunity for comment requirements do not apply when the Agency ''for good cause finds'' that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''[10] EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's SIP submission and the additional information that the State has provided, and for the reasons explained further in its proposed action EPA believes that it is more likely than not that the State's submission (1) provides for adequate reporting requirements and (2) commits to correct the other deficiencies that were the basis for the limited disapproval that started the sanctions clocks. Accordingly, CAA sanctions would not serve their intended purpose of encouraging the state to develop a better SIP. EPA also believes that the risk of an inappropriate deferral is comparatively small, given the limited scope and duration of a deferral has and given that sanctions would become effective pursuant to 40 CFR 52.31(d)(2)(i) in the event EPA reverses its determination that the State has corrected the deficiencies. Consequently, EPA finds that the ''good cause'' exception to the APA notice and comment requirement applies, and that notice and comment procedures are not required before the deferral and stay of sanctions become effective.

EPA is also invoking the ''good cause'' exception to the 30-day publication requirement of the APA. Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.''[11] The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.''[12] However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Because this rule relieves a restriction, in that it defers imposition of sanctions upon the state, EPA finds that there is good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

As explained above, EPA is making this interim final determination based on our concurrent proposal to approve and conditionally approve Colorado's May 3, 2024 SIP submission that corrects and commits to correct the deficiencies identified in our May 9, 2023 limited disapproval with respect to the adequacy of reporting requirements of certain provisions. If the conditional approval converts to a disapproval due to the State's failure to meet its commitment, then the offset sanction under CAA section 179(b)(2) would apply in the affected area on the later of the date: (1) when the approval becomes a disapproval or EPA issues such a proposed or final disapproval, whichever is applicable; or (2) 18 months following the finding that started the original sanctions clock.[13] Subsequently, the highway sanction under CAA section 179(b)(1) would apply in the affected area six months after the date the offset sanction applies.[14]

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements.

- This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).
- This action is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).
- This action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).
- This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).
- This rule does not have tribal implications, as specified in Executive Order 13175 because it will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.
- This action is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action.
- This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.
- This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

[7] 88 FR 29827.

[8] 5 U.S.C. 551 *et seq.*

[9] *See* 5 U.S.C. 553(b)–(d).

[10] 5 U.S.C. 553(b)(B).

[11] 5 U.S.C. 553(d).

[12] *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history).

[13] *See* 40 CFR 52.31(d)(2)(i). In this case, the finding that started the original sanctions clock was the May 9, 2023 limited disapproval.

[14] *See id.*

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

• This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons thereof, and established an effective date of August 6, 2024. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 29, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–17087 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0104; FRL–12129–01–OCSPP]

Ethanol, 2,2′,2″-nitrilotris, Compd. With α-Hydro-hydroxypoly (Oxy-1,2-ethanediyl) Ether With N-[4-[[4-[Bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium Inner Salt (1:4:1); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of ethanol, 2,2′,2''-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) when used as an inert ingredient in a pesticide chemical formulation. Spring Regulatory Sciences, on behalf of Heubach Colorants USA LLC., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective August 6, 2024. Objections and requests for hearings must be received on or before October 7, 2024 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–2024–0104, 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. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, 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:

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. 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–2024–0104 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 October 7, 2024. Addresses for mail and

hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

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–2024–0104, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of March 22, 2024 (89 FR 20410) (FRL–11682–02–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11842) filed by Spring Regulatory Sciences, 6620 Cypresswood Dr., Suite 250, Spring, TX 77379 on behalf of Heubach Colorants USA LLC., 5500 77 Center Drive, Suite 120/140, Charlotte, NC 28217–0160. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1), (CAS# 1147101–80–1) with a minimum number average molecular weight (in amu) of 1400. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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 exemption 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 use 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 an exemption from the requirement of 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 . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks 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(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) is not readily biodegradable (MRID 52132802).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF_3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The polymer's number average MW of 1,460 Daltons is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 (0.5%) and less than 25% oligomeric material below MW 1,000 (14.5%), and the polymer has a combined (total) reactive group equivalent weight greater than or equal to 1,000 for the reactive functional groups listed in 40 CFR 723.250(e)(1)(ii)(B).

Thus, ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) with a minimum number average molecular weight (in amu) of 1400, meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) is 1,400 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since ethanol, 2,2',2''-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. 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 ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) to share a common mechanism of toxicity with any other substances, and ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) 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.*

VI. Additional Safety Factor for the Protection of Infants and Children

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. Due to the expected low toxicity of ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1).

VIII. Other Considerations

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.

IX. Conclusion

Accordingly, EPA finds that exempting residues of ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance exemption 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 exemption 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).

XI. 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: July 29, 2024.

Charles Smith,

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 § 180.960, amend table 1 to § 180.960 by adding, in alphabetical order, the polymer ''Ethanol, 2,2″,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1), minimum number average molecular weight (in amu) of 1,400'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro-hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1), minimum number average molecular weight (in amu) of 1,400	1147101–80–1
* * * * * * *	

[FR Doc. 2024–17188 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, 423, and 460

[CMS–4201–F4 and CMS–4205–F3]

RIN 0938–AV24 and 0938–AU96

Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024—Remaining Provisions and Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly (PACE); Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the April 23, 2024 **Federal Register** titled ''Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024—Remaining Provisions and Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly (PACE).'' The effective date of the final rule was June 3, 2024.

DATES: This correcting amendment is effective August 6, 2024.

FOR FURTHER INFORMATION CONTACT:

Carly Medosch, (410) 786–8633—General Questions.

Naseem Tarmohamed, (410) 786–0814—Part C and Cost Plan Issues.

Lucia Patrone, (410) 786–8621—Part D Issues.

Kristy Nishimoto, (206) 615–2367—Beneficiary Enrollment and Appeal Issues.

Kelley Ordonio, (410) 786–3453—Parts C and D Payment Issues.

Hunter Coohill, (720) 853–2804—Enforcement Issues.

Lauren Brandow, (410) 786–9765—PACE Issues.

Sara Klotz, (410) 786–1984—D–SNP Issues.

Joe Strazzire, (410) 786–2775—RADV Audit Appeals Issues.

PartCandDStarRatings@cms.hhs.gov—Parts C and D Star Ratings Issues.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. FR 2024–07105 of April 23, 2024 (89 FR 30448), the final rule titled ''Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024—Remaining Provisions and Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly (PACE)'', there were several typographical and technical errors that are identified and corrected in this correcting amendment.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 30448, we inadvertently omitted the applicability date specific to the Programs of All-inclusive Care for the Elderly (PACE) Past Performance (§§ 460.18 and 460.19) provisions.

On page 30524, we erroneously included language regarding a proposed provision that was not being finalized.

On page 30626, in Table FC–2, we made a technical error in a value presented in Table FC–2.

On page 30712, we are correcting an inadvertent error in a reference.

On page 30766, we inadvertently omitted language regarding the changes being finalized in § 460.120(g).

On page 30797 and 30798, we made a few typographical errors in Table J9.

B. Summary of Errors in the Regulations Text

On pages 30816, 30818, 30819, 30829, 30831, and 30832, we are correcting typographical and technical errors in the amendatory instructions by setting forth amendatory instructions, regulations text or both for §§ 422.74(d)(4)(i), 422.102(f)(4), 422.116(f)(1), 422.2274(c)(13),[1] 423.44(d)(2)(iii) through (viii), and 423.100.

On page 30818, we are also correcting a typographical error in the paragraph reference in § 422.102(f)(4)(iii)(B).

On page 30828, we are correcting typographical and technical errors in the regulations text of § 422.2267(e)(34).

On pages 30837 and 30839, we are correcting typographical errors in the numbering of paragraphs in §§ 423.501 and 423.522, respectively.

On page 30841, we are correcting typographical errors in the regulations text of § 423.584.

On page 30843, we are correcting the inadvertent omission of § 460.12(b)(3) in the regulations text.

On page 30848, in the regulations text for § 460.120(h)(4), we are correcting a technical error in referencing other applicable requirements.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment on a proposed rule. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (the Act) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act, also provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act. Section

[1] CMS acknowledges that certain changes to its agent-broker compensation regulations, which were finalized as part of the April 2024 final rule, are the subject of pending litigation. On July 3, 2024, the U.S. District Court for the Northern District of Texas issued nationwide preliminary injunctions in *Americans for Beneficiary Choice* v. *HHS,* No. 4:24–cv–00439, and *Council for Medicare Choice* v. *HHS,* No. 4:24–cv–00446, which enjoined the implementation of the changes to §§ 422.2274(a), (c), (d), and (e) and 423.2274(a), (c), (d), (e). For additional guidance, please see the July 18, 2024 HPMS memorandum, ''Updated: Contract Year 2025 Agent and Broker Compensation Rates, Submissions, and Training and Testing Requirements,'' available at *https://www.cms.gov/about-cms/information-systems/hpms/hpms-memos-archive-weekly/hpms-memos-wk-3-july-15-19.*

553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting amendment does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting amendment corrects typographical and technical errors in the preamble and regulatory text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the information in the final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the regulatory text correction in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized.

This final rule correcting amendment is intended solely to ensure that the final rule and the Code of Federal Regulations (CFR) accurately reflect policies and regulatory changes that have been adopted through rulemaking. Furthermore, such notice and comment procedures would be contrary to the public interest because it is in the public's interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. FR 2024–07105 of April 23, 2024 (89 FR 30448), make the following corrections:

A. Corrections to the Preamble

1. On page 30448, second column, first full paragraph (continuation of the Applicability Dates), last line, the paragraph is corrected by adding the following sentence:

''The PACE Past Performance provisions at §§ 460.18 and 460.19 are applicable to PACE applications submitted beginning January 1, 2025.''.

2. On page 30524, second column, first full paragraph, lines 21–25, the phrase ''electronic health record. See section III.L.5. of this final rule for a discussion of our proposals to enable more widespread access to RTBTs through the adoption of a standard.'' is corrected to read ''electronic health record.''.

3. On page 30626, lower half of the page, in the table titled ''TABLE FC–2: EXAMPLE AGENT BROKER COMPENSATION UPDATES CY 2024–2026,'' third column, last row, the figure ''$313'' is corrected to read ''$363''.

4. On page 30712, third column, first partial paragraph, line 15, the reference ''May 2020 final rule'' is corrected to read ''June 2020 final rule''.

5. On page 30766, first column, the fourth full paragraph, last line, the phrase ''without modification.'' is corrected to read ''without modification to the requirement. Additionally, we reorganized some introductory language at § 460.120(g), (g)(1), and (g)(2) to reduce repetitive language that did not affect the substance of the requirements.''.

6. On page 30797, in the table titled ''TABLE J9: SUMMARY OF ANNUAL INFORMATION COLLECTION REQUIREMENTS AND BURDEN *'', fourth column, last row, the ''-'' is corrected to read ''1,000,000 Enrollees''.

7. On page 30798, in the table titled ''TABLE J9: SUMMARY OF ANNUAL INFORMATION COLLECTION REQUIREMENTS AND BURDEN *'', fourth column, last row, the figure ''3474836'' is corrected to read ''4,474,836''.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health Insurance, Health maintenance organizations (HMO), Loan programs—health Medicare, and Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Citizenship and naturalization, Civil rights, Health, Health care, Health records, Individuals with disabilities, Medicaid, Medicare, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below.

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w–21 through 1395w–28, and 1395hh.

■ 2. Section 422.74 is amended by revising paragraph (d)(4)(i) to read as follows:

§ 422.74 Disenrollment by the MA organization.

* * * * *

(d) * * *

(4) * * *

(i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the MA organization must disenroll an individual, and must document the basis for such action, if the MA organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS, that the individual has permanently moved—

(A) Out of the MA plan's service area or is incarcerated as specified in paragraph (d)(4)(v) of this section.

(B) From the residence in which the individual resided at the time of enrollment in the MA plan to an area outside the MA plan's service area, for those individuals who enrolled in the MA plan under the eligibility requirements at § 422.50(a)(3)(ii) or (a)(4).

* * * * *

■ 3. Section 422.102 is amended by adding paragraph (f)(4) to read as follows:

§ 422.102 Supplemental benefits.

* * * * *

(f) * * *

(4) *Plan responsibilities.* An MA plan offering SSBCI must do all of the following:

(i) Have written policies for determining enrollee eligibility and must document its determination that an enrollee is a chronically ill enrollee based on the definition in paragraph (f)(1)(i) of this section.

(ii) Make information and documentation related to determining enrollee eligibility available to CMS upon request.

(iii)(A) Have and apply written policies based on objective criteria for determining a chronically ill enrollee's eligibility to receive a particular SSBCI; and

(B) Document the written policies specified in paragraph (f)(4)(iii)(A) of this section and the objective criteria on which the written policies are based.

(iv) Document each eligibility determination for an enrollee, whether eligible or ineligible, to receive a specific SSBCI and make this information available to CMS upon request.

(v) Maintain without modification, as it relates to an SSBCI, evidentiary standards for a specific enrollee to be determined eligible for a particular SSBCI, or the specific objective criteria used by a plan as part of SSBCI eligibility determinations for the full coverage year.

* * * * *

■ 4. Section 422.116 is amended by revising paragraph (f)(1) to read as follows:

§ 422.116 Network adequacy.

* * * * *

(f) * * *

(1) An MA plan may request an exception to network adequacy criteria in paragraphs (b) through (e) of this section when either paragraph (f)(1)(i) or (ii) of this section is met:

(i)(A) Certain providers or facilities are not available for the MA plan to meet the network adequacy criteria as shown in the Provider Supply file for the year for a given county and specialty type; and

(B) The MA plan has contracted with other providers and facilities that may be located beyond the limits in the time and distance criteria, but are currently available and accessible to most enrollees, consistent with the local pattern of care.

(ii)(A) A facility-based Institutional-Special Needs Plan (I–SNP) is unable to contract with certain specialty types required under § 422.116(b) because of the way enrollees in facility-based I–SNPs receive care; or

(B) A facility-based I–SNP provides sufficient and adequate access to basic benefits through additional telehealth benefits (in compliance with § 422.135) when using telehealth providers of the specialties listed in paragraph (d)(5) of this section in place of in-person providers to fulfill network adequacy standards in paragraphs (b) through (e) of this section.

* * * * *

■ 5. Section 422.2267 is amended by revising paragraph (e)(34) to read as follows:

§ 422.2267 Required materials and content.

* * * * *

(e) * * *

(34) *SSBCI disclaimer.* This is model content and must be used by MA organizations that offer CMS-approved SSBCI as specified in § 422.102(f). In the SSBCI disclaimer, MA organizations must include the information required in paragraphs (i) through (iii) of this section. MA organizations must do all of the following:

(i) Convey the benefits mentioned are a part of special supplemental benefits.

(ii) List the chronic condition(s) the enrollee must have to be eligible for the SSBCI offered by the applicable MA plan(s), in accordance with the following requirements.

(A) The following applies when only one type of SSBCI is mentioned:

(*1*) If the number of condition(s) is five or fewer, then list all condition(s).

(*2*) If the number of conditions is more than five, then list the top five conditions, as determined by the MA organization, and convey that there are other eligible conditions not listed.

(B) The following applies when multiple types of SSBCI are mentioned:

(*1*) If the number of condition(s) is five or fewer, then list all condition(s), and if relevant, state that these conditions may not apply to all types of SSBCI mentioned.

(*2*) If the number of conditions is more than five, then list the top five conditions, as determined by the MA organization, for which one or more listed SSBCI is available, and convey that there are other eligible conditions not listed.

(iii) Convey that even if the enrollee has a listed chronic condition, the enrollee will not necessarily receive the benefit because coverage of the item or service depends on the enrollee being a ''chronically ill enrollee'' as defined in § 422.102(f)(1)(i)(A) and on the applicable MA plan's coverage criteria for a specific SSBCI required by § 422.102(f)(4).

(iv) Meet the following requirements for the SSBCI disclaimer in ads:

(A) For television, online, social media, radio, or other voice-based ads, either read the disclaimer at the same pace as, or display the disclaimer in the same font size as, the advertised phone number or other contact information.

(B) For outdoor advertising (as defined in § 422.2260), display the disclaimer in the same font size as the advertised phone number or other contact information.

(v) Include the SSBCI disclaimer in all marketing and communications materials that mention SSBCI.

* * * * *

■ 6. Section 422.2274 is amended by adding paragraph (c)(13) to read as follows:

§ 422.2274 Agent, broker, and other third-party requirements.

* * * * *

(c) * * *

(13) Beginning with contract year 2025, ensure that no provision of a contract with an agent, broker, or other TPMO has a direct or indirect effect of creating an incentive that would reasonably be expected to inhibit an agent or broker's ability to objectively assess and recommend which plan best fits the health care needs of a beneficiary.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 7. The authority citation for part 423 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.

■ 8. Section 423.44 is amended by revising paragraphs (d)(2)(iii) through (viii) to read as follows:

§ 423.44 Involuntary disenrollment from Part D coverage.

* * * * *

(d) * * *

(2) * * *

(iii) *Effort to resolve the problem.* The PDP sponsor must make a serious effort to resolve the problems presented by the individual, including providing reasonable accommodations, as determined by CMS, for individuals with mental or cognitive conditions, including mental illness, Alzheimer's disease, and developmental disabilities. In addition, the PDP sponsor must inform the individual of the right to use the PDP's grievance procedures, through the notices described in paragraph (d)(2)(viii) of this section. The individual has a right to submit any

information or explanation that he or she may wish to the PDP.

(iv) *Documentation.* The PDP sponsor—

(A) Must document the enrollee's behavior, its own efforts to resolve any problems, as described in paragraph (d)(2)(iii) of this section, and any extenuating circumstances;

(B) May request from CMS the ability to decline future enrollment by the individual; and

(C) Must submit the following:

(*1*) The information specified in paragraph (d)(2)(iv)(A) of this section.

(*2*) Any documentation received by the individual to CMS.

(*3*) Dated copies of the notices required in paragraph (d)(2)(viii) of this section.

(v) *CMS review of the proposed disenrollment.* CMS reviews the information submitted by the PDP sponsor and any information submitted by the individual (which the PDP sponsor has submitted to CMS) to determine if the PDP sponsor has fulfilled the requirements to request disenrollment for disruptive behavior. If the PDP sponsor has fulfilled the necessary requirements, CMS reviews the information and make a decision to approve or deny the request for disenrollment, including conditions on future enrollment, within 20 working days. During the review, CMS ensures that staff with appropriate clinical or medical expertise reviews the case before making a final decision. The PDP sponsor is required to provide a reasonable accommodation, as determined by CMS, for the individual in exceptional circumstances that CMS deems necessary. CMS notifies the PDP sponsor within 5 working days after making its decision.

(vi) *Exception for fallback prescription drug plans.* CMS reserves the right to deny a request from a fallback prescription drug plan as defined in *§ 423.855* to disenroll an individual for disruptive behavior.

(vii) *Effective date of disenrollment.* If CMS permits a PDP to disenroll an individual for disruptive behavior, the termination is effective the first day of the calendar month after the month in which the PDP gives the individual written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(viii) *Required notices.* The PDP sponsor must provide the individual two notices prior to submitting the request for disenrollment to CMS.

(A) The first notice, the advance notice, informs the member that continued disruptive behavior could lead to involuntary disenrollment and provides the individual an opportunity to cease the behavior in order to avoid the disenrollment action.

(*1*) If the disruptive behavior ceases after the member receives the advance notice and then later resumes, the sponsor must begin the process again.

(*2*) The sponsor must wait at least 30 days after sending the advance notice before sending the second notice, during which 30-day period the individual has the opportunity to cease their behavior.

(B) The second notice, the notice of intent to request CMS permission to disenroll the member, notifies the member that the PDP sponsor requests CMS permission to involuntarily disenroll the member.

(*1*) This notice must be provided prior to submission of the request to CMS.

(*2*) These notices are in addition to the disenrollment submission notice required under § 423.44(c).

* * * * *

■ 9. Section 423.100 is amended by revising the definition of ''Affected enrollee'' to read as follows:

§ 423.100 Definitions.

* * * * *

Affected enrollee, as used in this subpart, means a Part D enrollee who is currently taking a covered Part D drug that is subject to a negative formulary change that affects the Part D enrollee's access to the drug during the current plan year.

* * * * *

§ 423.501 [Amended]

■ 10. Section 423.501 is amended in the definition of ''Final settlement process'' by—

■ a. Removing paragraph (4);

■ b. Redesignating paragraph (5) as (paragraph (4);

■ c. In newly redesignated paragraph (4), removing the phrase ''Takes final actions'' and adding in its place the phrase ''Takes action''.

§ 423.522 [Amended]

■ 11. Section 423.522 is amended by—

■ a. Removing paragraphs (c) and (d); and

■ b. Redesignating paragraphs (e) and (f) as paragraphs (c) and (d).

§ 423.584 [Amended]

■ 12. Section 423.584 is amended by—

■ a. In paragraph (b) introductory text, removing the phrase ''request for redetermination'' and adding in its place the phrase ''request for a redetermination''.

■ b. In paragraph (b)(4), removing the phrase ''specified the Part D'' and adding in its place the phrase ''specified in the Part D''.

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

■ 13. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395, 1395eee(f), and 1396u–4(f).

■ 14. Section 460.12 is amended by adding paragraph (b)(3) to read as follows:

§ 460.12 Application requirements.

* * * * *

(b) * * *

(3) Any PACE application that does not include a signed and dated State assurances document that includes accurate service area information and the physical address of the PACE center, as applicable, is considered incomplete and invalid and will not be evaluated by CMS.

* * * * *

§ 460.120 [Amended]

■ 15. Section 460.120 is amended in paragraph (h)(4) by removing the phrase ''for paragraphs (h)(1) through (3) of this section.'' and adding in its place the phrase ''for complying with all other requirements of this section.''

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2024–17024 Filed 8–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI–2023–0027;DS65100000 DWSN00000.000000 24XD4523WS DP.65102]

RIN 1090–AB28

Privacy Act Regulations; Exemption for the Law Enforcement Records Management System

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (DOI) is issuing a final rule to amend its regulations to exempt certain records in the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS), system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

DATES: The final rule is effective August 6, 2024.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

Background

DOI published a system of records notice (SORN) in the **Federal Register** at 89 FR 1594 (January 10, 2024) to update the title of the modified system of records to INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS), propose new and modified routine uses, and reflect the expanded scope of the Department-wide law enforcement system of records. A notice of proposed rulemaking (NPRM) was also published in the **Federal Register** at 89 FR 1505 (January 10, 2024) to propose amendments to DOI's Privacy Act exemptions at 43 CFR 2.254 to update subsections (a) and (c) to reflect the new title of the system and to add new paragraphs under subsections (b), (d), (e), and (f) to claim additional exemptions pursuant to 5 U.S.C. 552a(k)(1), (k)(3), (k)(5), and (k)(6). The Department proposed these changes because this system of records contains material that support law enforcement activities and investigations. Comments were invited on both the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS) SORN and NPRM. DOI received no comments on the SORN and NPRM; therefore, the NPRM will be implemented as proposed.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866, 14094 and 13563)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121)). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule will not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A federalism assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the Federal judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

12. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act

of 2010 (Pub. L. 111–274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior is amending 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461, the Social Security Number Fraud Prevention Act of 2017, Pub. L. 115–59, September 15, 2017.

■ 2. Amend § 2.254 by:
■ a. Revising paragraph (a)(5);
■ b. Adding paragraph (b)(4);
■ c. Revising paragraph (c)(15); and
■ d. Adding paragraphs (d)(4), (e)(9), and (f)(2).

The additions and revisions read as follows:

§ 2.254 Exemptions.

* * * * *

(a) * * *

(5) INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS).

(b) * * *

(4) INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS).

(c) * * *

(15) INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS).

(d) * * *

(4) INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS).

(e) * * *

(9) INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS).

(f) * * *

(2) INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LE RMS).

* * * * *

Teri Barnett.

Departmental Privacy Officer, U.S. Department of the Interior.

[FR Doc. 2024–17240 Filed 8–5–24; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 10

[Docket No. USCG–2021–0288]

RIN 1625–AC83

Exemption for Active-Duty Uniformed Service Members From Merchant Mariner Credentialing Fees

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is exempting certain members of the uniformed services from Merchant Mariner Credential (MMC) fees for the evaluation of an MMC application, the administration of an examination required for an MMC endorsement, and the issuance of an MMC. This final rule is in response to Executive Order 13860—Supporting the Transition of Active Duty Service Members and Military Veterans Into the Merchant Marine, and the National Defense Authorization Act for Fiscal Year 2020.

DATES: This final rule is effective November 4, 2024.

ADDRESSES: To view documents mentioned in this final rule as being available in the docket, go to *www.regulations.gov,* type USCG–2021–0288 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. James Cavo, U.S. Coast Guard Office of Merchant Mariner Credentialing; telephone 202–372–1205, email *james.d.cavo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

CATEX Categorical exclusion
CFR Code of Federal Regulations
CG–MMC Coast Guard Office of Merchant Mariner Credentialing
CPI Consumer Price Index
DHS Department of Homeland Security
GS General Schedule
MMC Merchant Mariner Credential
NDAA 2020 National Defense Authorization Act for Fiscal Year 2020
NOAA National Oceanic and Atmospheric Administration
NMC National Maritime Center
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
RA Regulatory analysis
§ Section
STCW International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
USPHS U.S. Public Health Service
U.S.C. United States Code

II. Background

As mandated by Title 46 of the United States Code (U.S.C.), section 2110, and in accordance with 31 U.S.C. 9701, the Coast Guard has established fees associated with Merchant Mariner Credential (MMC) applications, which are codified in table 1 to § 10.219(a) of Title 46 of the Code of Federal Regulations (CFR). There are three types of credentialing fees: an evaluation fee, an examination fee, and an issuance fee. The amount of the fee varies based on the individual credential transaction an applicant seeks.

Evaluation fees for MMCs range from $50 to $100, and the applicant must pay the fee at the time an application is submitted to the Coast Guard. Examination fees range from $45 to $140, depending on the endorsement sought, and must be paid before the professional examination for an endorsement is taken.[1] If an applicant applies for an MMC with both a rating and an officer endorsement, the higher evaluation fee is charged. Issuance fees

[1] An *endorsement* is a ''statement of a mariner's qualifications.'' 46 CFR 10.107(b). The particular endorsement(s) on each mariner's MMC indicate what capacities they may serve in, such as a ''Barge Supervisor'' or a ''Lifeboatman.'' *See id.;* 46 CFR 10.109(a) through (b).

are $45 and must be paid before an MMC is issued.[2]

The original issuance of an MMC, as well as any subsequent credential transactions, such as increasing the scope or raising the grade of authority, or renewing an MMC, all require a fee.[3] MMCs are valid for a period of 5 years and may be renewed at any time during the validity period of the credential and for 1 year after expiration.

Mariners typically seek additional endorsements after accruing the required sea service and completing required training. There are no fees associated with issuing mariner medical certificates or endorsements for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

The Coast Guard does not require a fee for MMC transactions if one of the following three conditions is met:

(1) The application is for a Document of Continuity, as specified in 46 CFR 10.219(e)(3).

(2) The credential is a duplicate of a credential lost in a shipwreck or other casualty under 46 CFR 10.229(c) and reflected in table 1 to § 10.219(a).

(3) The applicant qualifies for a ''no-fee'' MMC under 46 CFR 10.219(h).

Currently, an applicant only qualifies for a ''no-fee'' MMC if they are a volunteer for, or an employee of, an organization that is youth-oriented, not-for-profit, and charitable, 46 CFR 10.219(h). The holder of a ''no-fee'' MMC is restricted to using vessels owned or operated by the sponsoring organization, 46 CFR 10.219(k).

In March 2019, Executive Order 13860 (Supporting the Transition of Active Duty Service Members and Military Veterans Into the Merchant Marine) directed the Coast Guard to waive the fees associated with MMC applications ''for active duty service members, if a waiver is authorized and appropriate.'' [4] That Executive Order applied only to members of the armed forces.

Subsequently, in December 2019, Congress enacted the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020).[5] Building upon Executive Order 13860, section 3511(c)(1) of the NDAA 2020 directed the Coast Guard to waive evaluation, examination, and issuance fees associated with MMCs if a waiver is authorized and appropriate, not just for the armed forces (Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard), but for all ''members of the uniformed services on active duty.'' The uniformed services include the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the U.S. Public Health Service (USPHS) in addition to the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.[6]

In accordance with Executive Order 13860 and section 3511 of the NDAA 2020, on May 26, 2020, the U.S. Coast Guard's Office of Merchant Mariner Credentialing (CG–MMC) issued Policy Letter 02–20, ''Waiver of Fees Associated with MMC Applications for Active Duty Members of the Uniformed Services.'' [7] CG–MMC Policy Letter 02–20 provided guidance for waiving MMC fees for active duty members of the uniformed services. The policy also provided a waiver of fees for mariners who provided documentation evidencing their eligibility for the fee waiver. This documentation could include active duty orders or a letter from their command or personnel office on official letterhead that stated the applicant was a current member of the uniformed services on active duty or a member of the Selected Reserve of the Ready Reserve of any of the armed forces or the Ready Reserve Corps of the USPHS.

On October 3, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Exemption for Active Duty Uniformed Service Members from Merchant Mariner Credentialing Fees'' (88 FR 68042). Having considered comments submitted in response to that NPRM, we are issuing this final rule to exempt certain members of the uniformed services from MMC fees for the evaluation of an MMC application, the administration of an examination required for an MMC endorsement, and the issuance of an MMC.

III. Discussion of Comments and Changes

We received two comments on the NPRM published on October 3, 2023. These written submissions are available in the public docket for this rulemaking, where indicated under **ADDRESSES** or use the direct link *https://www.regulations.gov/docket/USCG-2021-0288.*

One commenter expressed that the Coast Guard should research and collect data concerning the Endangered Species Act of 1973. This comment is not within the scope of this rulemaking. For this reason, we have made no changes from the proposed rule in response to this comment.

The second commenter expressed support for this final rule and inquired whether an exemption received on one MMC application applied to future applications. As proposed in the NPRM, a mariner must submit documentation of their eligibility for the exemption at the time they submit an application. A mariner who received an exemption in the past may not be eligible for an exemption on a subsequent application if their active duty or reserve status has changed. So, the applicant must demonstrate their eligibility for an exemption each time they apply for an original, renewal, or raise of grade of an MMC. For these reasons, we have made no changes from the proposed rule in response to this comment.

IV. Legal Authority

Section 3511(c)(1) of the NDAA 2020 directed the Coast Guard to waive evaluation, examination, and issuance fees associated with MMCs for members of the uniformed services on active duty, if a waiver is authorized and appropriate. The Coast Guard has found that such a waiver is authorized and appropriate. Under 46 U.S.C. 2110(g), the Secretary of the Department of Homeland Security (DHS) may exempt a person from paying such a fee if the Secretary determines that it is in the public interest to do so. The Secretary has delegated this authority to the Coast Guard through article II, paragraph 92, subparagraph (a) of DHS Delegation No. 00170.1, Revision No. 01.4.

The Coast Guard concludes it is in the public interest to exempt members of the uniformed services (Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, Commissioned Corps of the NOAA, and Commissioned Corps of USPHS) on active duty; members of the Selected Reserve of the Ready Reserve of any of the armed forces (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve); and the Ready Reserve Corps of the USPHS from fees associated with obtaining an MMC.

[2] A *rating endorsement* is an annotation on an MMC that allows a mariner to serve in those capacities set out in 46 CFR 10.109(b). 46 CFR 10.107(b). *Officer endorsement* means an annotation on an MMC that allows a mariner to serve in the capacities listed in 46 CFR 10.109. *Id.*

[3] ''Increase in scope'' and ''raise of grade'' are defined at 46 CFR 10.107.

[4] Executive Order 13860, section 3, paragraph (a)(ii) (84 FR 8407, March 7, 2019).

[5] Public Law 116–92, Dec. 20, 2019.

[6] Section 3511 of the NDAA 2020 is codified as a note to 46 U.S.C. 7302; ''Uniformed services'' defined at 10 U.S.C. 101(a)(5).

[7] CG–MMC Policy Letter 02–20 is available at *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/MMC/CG-MMC-2%20Policies/CG-MMC-Policy-Letter-02-20.pdf* (last visited 4/9/2024).

As discussed in Executive Order 13860, it is the policy of the United States to establish and maintain an effective merchant marine and to provide sufficient support and resources to active duty and separating service members who pursue or possess MMCs. The goals of not requiring these fees are to: (1) help attract active duty service members with the appropriate skills and expertise to obtain an MMC for employment in the maritime industry; (2) support U.S. national security requirements; and (3) provide meaningful, well-paying jobs to U.S. veterans.[8]

V. Discussion of the Rule

The Coast Guard is amending 46 CFR 10.219 to codify this MMC fee waiver in the regulations. Specifically, the Coast Guard is exempting members of the uniformed services on active duty, members of the Selected Reserve of the Ready Reserve of any of the armed forces (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), and the Ready Reserve Corps of the USPHS from paying evaluation, examination, or issuance fees for an MMC.

For purposes of this final rule, ''uniformed services'' has the same meaning as defined in 10 U.S.C. 101(a)(5): the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, as well as members of the NOAA and USPHS Commissioned Corps. Members of the Selected Reserve of the Ready Reserve of a reserve component named in 10 U.S.C. 10101 and members of the Ready Reserve Corps of the USPHS are also eligible for the exemption.[9]

For members of the armed forces, ''active duty'' has the same meaning as under 10 U.S.C. 101(d)(1). For members of the NOAA commissioned corps, ''active duty'' has the same meaning as under 33 U.S.C. 3002(b)(1). For members of the USPHS Commissioned Corps, ''active duty'' has the same meaning as defined in 42 CFR 21.72(f). ''Selected Reserve'' has the same meaning as under 10 U.S.C. 10143(a). This fee exemption will be located in a new paragraph (m) in 46 CFR 10.219.

VI. Regulatory Analyses

We developed this final rule after considering numerous statutes and Executive orders related to the final rule. Below we summarize our analyses based on these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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.

The Office of Management and Budget (OMB) has not designated this final rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, OMB has not reviewed this rule. A regulatory analysis (RA) follows.

Changes From the Notice of Proposed Rulemaking

For the reasons discussed in section III of this preamble, Discussion of Comments, we have made no substantive changes to the regulatory text from the proposed rule in response to the two comments received during the NPRM comment period. However, we have made two non-substantive editorial changes to the regulatory text in 46 CFR 10.219(m) of this final rule. First, we referenced ''section'' instead of ''subsection''. Second, we inserted the term ''paragraph'' before ''(b)(2)'' for clarity. The comments received also do not necessitate a change to either the methodology or type of data used in the RA from the NPRM. The only change to the regulatory analysis from the NPRM to this final rule is to update costs from 2021 to 2023 to utilize the most current available information.

Summary of Regulatory Analysis

The Coast Guard issues this final rule in response to two items. The first is section 3, paragraph (a)(ii) of Executive Order 13860 (Supporting the Transition of Active Duty Service Members and Military Veterans Into the Merchant Marine) signed March 4, 2019.[10] The second item is section 3511(c)(1) of the NDAA 2020.[11]

For purposes of the analysis, this RA is presented in two parts. Part I examines the impacts of CG–MMC Policy Letter 02–20, which was issued on May 26, 2020.[12] Part II examines the impacts of this final rule after the issuance of the CG–MMC Policy Letter 02–20. The policy letter and this final rule cover different populations. The difference between the two populations arises from which components of the reserves were eligible for a waiver of fees under the policy letter and which are eligible for an exemption under this final rule. The policy letter covered all current members of the reserves of the uniformed services and members of the National Guard, who were previously on active duty. This final rule, however, covers only those reservists who are currently members of the Selected Reserve, as described in 10 U.S.C. 10143(a), a reserve component named in 10 U.S.C. 10101, or the Ready Reserve of the USPHS. The population of this final rule is a subset of that of the policy letter.

The Coast Guard does not have data on the reserve and active duty status of applicants who were granted fee waivers under the policy letter. Due to this lack of data, it is not possible to estimate the differences in the affected populations between the policy letter and this final rule.[13] Therefore, the Coast Guard is treating the estimated difference as an unquantified impact of this final rule, though the Coast Guard explores potential cost savings effects in its analysis. Further discussion follows.

Since the policy letter and this final rule are implemented at different time periods (the policy letter was implemented in 2020, and this final rule will be implemented in 2024), two different baselines are examined. The first baseline is associated with the pre-policy baseline (covering 2020 through 2033), and the second is associated with the final rule baseline (covering 2024 through 2033).

[8] Executive Order 13860, section 1.

[9] The NOAA Commissioned Corps does not have a reserve component.

[10] 84 FR 8407 March 7, 2019 (''With respect to NMC license evaluation, issuance, and examination, [the Coast Guard shall] take all necessary and appropriate actions to provide for the waiver of fees for active duty service members.'').

[11] Public Law 116–92, Dec. 20, 2019.

[12] Section 5e of the policy letter. A copy of the policy letter can be found in the docket.

[13] Although the NMC has data on the aggregate number of applicants for the fee waiver, it does not have data on the applicants broken out by subcategories such as what service they are in (or were in) or their active or reserve status. Executive Order 13860 does not require the Coast Guard to collect this data. As a result, the Coast Guard does not collect it. In addition, the Department of Defense did not publish data on the number of Selected Reservists or Ready Reservists who are currently on active duty or who were in the recent past at the time this final rule was written.

The pre-policy baseline analyzes the effects of Policy Letter 02–20, published in 2020, which allowed certain eligible applicants to receive a waiver of MMC fees. The pre-policy baseline estimates the costs and savings that applicants and the Coast Guard received as a result of the policy letter, as well as the costs and savings from this rulemaking.

The final rule baseline estimates the costs and savings that will occur as the result of this final rule. However, since we are unable to determine the change in population, there are no additional costs or savings that can be attributed to the final rule baseline.

Tables 1a and 1b provide a summary of all impacts from Policy Letter 02–20 and this final rule on a per-applicant basis. Table 1a discusses the impact of the policy letter, and table 1b discusses the impact of this final rule. The dollar figures are presented in both undiscounted and discounted terms (7 percent on an annualized basis) for a 14-year period. All dollar figures presented in this final rule are in 2023 dollar terms unless otherwise stated.

TABLE 1a—SUMMARY OF THE IMPACTS OF POLICY LETTER 02–20 PRE-POLICY BASELINE

[All figures in 2023 dollars]

Category	Impacts
Applicability	46 U.S.C. 2110, Executive Order 13860, and NDAA 2020.
Affected Population	Members of the uniformed services (Army, Navy, Air Force, Space Force, Marine Corps, Coast Guard, Commissioned Corps of NOAA, Commissioned Corps of USPHS), including reservists and members of the National Guard, who are on active duty at the time of application, or are current members of the reserve forces and were previously on active duty.
Estimated Fee Waivers (annually)	The estimated number of fee waivers in the future is 622 (annually).
Labor costs for applicants to provide documentation of eligibility for an MMC fee waiver.	$10.23 per application. The 14-year documentation costs for the 622 yearly applicants are: • $89,105 (in total undiscounted dollars). • $73,948. $6,365 (annualized, discounted at 7%).
Labor costs to the Coast Guard to evaluate applicant's eligibility for MMC fee waiver.	$8.50 per application. The 14-year costs to the Coast Guard are: • $74,018 (in total undiscounted dollars). • $60,608 (total, discounted at 7%). $5,287 (annualized, discounted at 7%).
Transfer payments (eliminated applicant's MMC fees paid to the Federal Government).	The mean estimated transfer is $159 per MMC. Over the 14-year period, the transfers are estimated at: • $1,384,572 (in total undiscounted dollars). • $1,133,720 (total, discounted at 7%). $98,898 (annualized, discounted at 7%).
Unquantified benefits	May provide uniformed services members greater flexibility with respect to pursuing careers after leaving the uniformed services.

TABLE 1b—SUMMARY OF THE IMPACTS OF FINAL RULE

[All figures are in 2023 dollars]

Category	Impacts
Applicability	46 U.S.C. 2110, Executive Order 13860, and NDAA 2020.
Affected Population	This final rule covers only uniformed service members and reservists on active duty, members of the Selected Reserve, and members of the Ready Reserve Corps of the USPHS. This final rule involves a narrower population because Policy Letter 02–20 covers all reservists currently on active duty as well as those who were on active duty in the past.
Estimated Fee Exemptions (annually)	The number of fee exemptions in the future is estimated, for purposes of our analysis, at 622 (annually). However, because the only change from Policy Letter 02–20 involves a potential decrease in the reservist population, the actual number may be smaller. Due to a lack of data, it is not possible to quantify this number.
Labor costs for applicants to provide documentation of eligibility for an MMC fee exemption.	$10.23 per application. There are no additional labor costs to the applicants to provide documentation as this rulemaking codifies the already-existing Policy Letter 02–20.
Labor costs to the Coast Guard to evaluate applicant's eligibility for MMC fee exemption.	$8.50 per application. There are no additional labor costs expected from the implementation of this rulemaking as it codifies the already-existing Policy Letter 02–20.
Transfer payments (eliminated applicant's MMC fees paid to the Federal Government).	Codifies MMC Fee Waiver. The mean estimated transfer is $159 per MMC. There are no additional transfer payments expected from the implementation of this final rule as it codifies the already existing Policy Letter 02–20.
Unquantified benefits	May reduce the burden on the affected population by increasing efficiency and transparency, as opposed to remaining a standalone policy letter.

Note: Aggregate total numbers in the table have been rounded to the closest whole dollar.

Part I. CG–MMC Policy Letter 02–20 (Pre-Policy Baseline)

A policy letter was published to immediately implement Executive Order 13860 and section 3511(c)(1) of the NDAA 2020. Implementing the policy letter had three impacts. The first impact was the time that applicants were required to provide documentation to show eligibility for the MMC fee waiver.[14] The second impact involved the labor costs for the Coast Guard to evaluate documentation for eligibility of the fee waiver. Before the policy letter was implemented, the Coast Guard did not have to evaluate such documentation, so there was no cost to the Government. The third impact of the policy letter was in the form of transfer payments, which are monetary payments from one group to another that do not affect the total resources available to society. Before the Coast Guard implemented the policy letter, the affected population was required to pay the MMC fees. Following publication of the policy letter, the Federal Government incurred the cost of those fees. These three factors comprise the effects of the of Policy Letter 02–20.

Affected Population for Policy Letter 02–20

In accordance with Executive Order 13860, section 3511 of the NDAA 2020, and the authority under 46 U.S.C. 2110(g), the Coast Guard waived MMC fees for members of the uniformed services (Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, and the Commissioned Corps of NOAA and the USPHS), including reservists and members of the National Guard, if they were on active duty at the time of application, or a member of the reserve forces and were previously on active duty.[15] The fee waiver was implemented through Policy Letter 02–20. This policy letter took effect on May 26, 2020. Data is available for all these categories of personnel except the Ready Reserve Corps of the USPHS. The Ready Reserve Corps of the USPHS was authorized and funded by the Coronavirus Aid, Relief and Economic Security Act and signed into law on March 27, 2020. It only began to accept applications in the fall of 2020.[16]

With respect to the other groups mentioned, the maximum potentially affected population was 2,145,035. That was the total number of personnel who may have been eligible for an MMC fee waiver. A detailed breakdown of this population can be found below in table 2.

TABLE 2—MAXIMUM TOTAL POTENTIALLY AFFECTED POPULATION BY POLICY LETTER 02–20

Service branch	Number	Source	Notes
Members of Uniformed Services			
Army	466,172	Defense Manpower Data Center DMDC website, *https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports* (last visited 4/9/2024).	This data is as of the quarter ending March 2022.[1]
Navy	340,390		
Air Force and Space Force	329,257		
Marines	176,259		
Coast Guard	40,308		
Commissioned Corps of NOAA	327	Information from NOAA, provided May 27, 2021	
Commissioned Corps of USPHS	6,100	Department of Health and Human Services website *https://uscg.sharepoint-mil.us/sites/PWA-DCO-5P/Active RulemakingProjects/CG-REGActiveRulemakingProjects/Undocketed-MMCFeeWaiver/ECON/NPRM/Data/Population/In-ScopeOldPreMay26,2021/PopulationSetActiveDuty/USPHSSize.pdf?CT=1712845632479&OR=ItemsView* (last visited 4/11/24).	
Total Active Uniformed Service Members.	1,358,813		
Members of Selected Reserve of the Ready Reserve			
Army Reserve	180,647	Defense Manpower Data Center website, *https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports*, (last visited 4/9/2024). Downloaded from section ''military personal, Military and civilian personnel by service/agency by state/country, March 2022''.	This data is as of March 2022.[2]
Army National Guard of the U.S.	333,182		
Navy Reserve	56,017		
Air Force Reserve	69,697		
Air National Guard of the U.S.	106,964		
Marine Corps Reserves	33,607		
Coast Guard Reserves	6,108		
Commissioned Corps of USPHS (Ready Reserve).	N.A.[3]		
Space Force Reserve	[4] 0		
Total Members of Selected Reserve of the Ready Reserve.	786,222		
Total Active Uniformed Service Members + Members of Selected Reserve of the Ready Reserve.	2,145,035		

[1] This table does not include personnel on temporary duty or deployed in support of contingency operations. The data is the latest available as of June 2022.
[2] Latest available data as of the search date, September 1, 2022.
[3] USPHS Ready Reserve was created in March 2020 and started to take applications in Fall 2020.
[4] The Space Force, as of September 1, 2022, does not have a reserve element.

[14] Applicants must submit documentation consistent with CG–MMC Policy Letter 02–20 to show that they are eligible for the fee exemption. Documentation may include a copy of active duty orders citing Titles 10 or 14 of the U.S.C., or a letter from the relevant command or personnel office on official letterhead stating that the applicant is a current member of the uniformed services.

[15] The legal authority is discussed in greater detail in section II of this preamble, Background.

[16] *https://www.usphs.gov/ready-reserve* (last visited 4/9/2024).

Of the 2,145,035 eligible persons, only a small number applied for an MMC and received a fee waiver. Based on available data, 2020 through 2022 inclusively, an average of 622 eligible persons were granted a waiver of MMC fees per year. The Coast Guard assumes that, in the 10-year period following implementation of Policy Letter 02–20, an average of 622 persons will continue to annually request and receive a waiver of MMC fees.

MMC Fees To Be Exempted

Table 3 provides the MMC evaluation, examination, and issuance fees waived for qualifying individuals based on Policy Letter 02–20.[17] The column on the right side shows the aggregated evaluation, examination, and issuance fees for each type of credential transaction. The average fee for an MMC, as can be seen at the bottom of table 3, is $159.38.[18]

TABLE 3—FEE FOR MMCS AND ASSOCIATED ENDORSEMENTS FROM TABLE 1 TO § 10.219(a) IN 46 CFR 10.219(a)

If you apply for	Evaluation, then the fee is . . .	Examination, then the fee is . . .	Issuance, then the fee is . . .	Total
MMC with officer endorsement:				
Original:				
Upper level 1	$100	$110	$45	$255
Lower level 2	100	95	45	240
Renewal	50	45	45	140
Raise of grade	100	45	45	190
Modification or removal of limitation or scope	50	45	45	140
Radio Officer endorsement:				
Original	50	45	45	140
Renewal	50	n/a	45	95
Staff officer endorsements:				
Original	90	n/a	45	135
Renewal	50	n/a	45	95
MMC with rating endorsement:				
Original endorsement for ratings other than qualified ratings	95	n/a	45	140
Original endorsement for qualified rating	95	140	45	280
Upgrade or raise of grade	95	140	45	280
Renewal endorsement for ratings other than qualified ratings	50	n/a	45	95
Renewal endorsement for qualified rating	50	45	45	140
Modification or removal of limitation or scope	50	45	45	140
STCW endorsement:				
Original	0	0	0	n/a
Renewal	0	0	0	n/a
Reissue, replacement, and duplicate	n/a	n/a	45	45
			Summary Statistics	
			Mean	$159.38
			Lower Bound	$45.00
			Upper Bound	$280.00
			Credential transaction types that require fees.	16

Cost and Transfer Impacts of Policy Letter 02–20

As stated previously, there were three impacts of the policy letter. The first was it resulted in a cost to applicants to provide the documentation needed to show eligibility for the MMC fee waiver. The second was the cost to the Coast Guard to process this documentation. The third was the transfer price associated with the costs of the fees being shifted from individual applicants to the Federal Government. The costs to applicants are discussed in detail in section (1), the costs to the Coast Guard are discussed in section (2), the combined costs to applicants and the Coast Guard are discussed in section (3), and the transfer costs are detailed in section (4).

(1) Labor Costs for Applicants Providing Documentation Showing Eligibility for MMC Fee Waiver

Applicants for an MMC fee waiver, under Policy Letter 02–20, provided documentation to show eligibility. Examples of documentation include, but are not limited to, active duty orders citing Titles 10 or 14 of the U.S.C., a letter from the command or personnel office on official letterhead stating that the applicant was serving under Titles 10 or 14 of the U.S.C., or similar documentation. The applicant submitted the documentation with their application for an MMC.[19]

[17] See Table 1 to 10.219(a)—Fees in 46 CFR 10.219.

[18] The $159.38 is the nominal figure. Converting this into 2021 dollar terms, from 2023, it is $139.28. The conversion process, along with its impact on the RA, is discussed in more detail further in the RA.

[19] In order to provide maximum flexibility to applicants, the acceptable forms of documentation will be provided in updated guidance that the Coast Guard is planning to publish when this final rule is published.

The National Maritime Center (NMC) estimated that it took applicants 15 minutes to obtain eligibility documentation and include it with an MMC application.[20] [21] The Coast Guard estimates the mean hourly rate of active duty uniformed service members at $40.93 per hour (in 2023 dollars).[22] To estimate hourly rates, the Coast Guard divides $85,416.12 (the average annual pay of all active duty military personnel, rounded) by 2,087, which the Office of Personnel and Management uses as the number of working hours in a year, per 5 U.S.C. 5504(b)(1).[23] Therefore, the Coast Guard estimates the average hourly rate of active duty uniformed service members, in 2023 dollar terms, is $40.93 [24] ($85,416.12 ÷ 2,087, rounded).

The Coast Guard estimates it takes 15 minutes to provide the documentation showing eligibility for the fee waiver and forecasts 622 applicants per year. We estimate the total cost (in 2023 dollars) for all applicants to be $6,365 per year, rounded (622 applicants × $40.93 per hour × (15 minutes ÷ 60 minutes) [25]).

Table 4 shows the estimated nominal cost over a 14-year period, including discounted and annualized figures. Because the policy letter became effective in 2020, table 4 shows the estimated costs for the 14-year period covering 2020 through 2033.[26] Table 4 shows the pre-policy letter baseline, which is the 14-year period following the implementation of the policy letter. All dollar figures in table 4, as with all other tables in this Regulatory Analysis, are in 2023 dollars unless otherwise stated.

TABLE 4—LABOR COSTS FOR APPLICANTS COMPLETING MMC FEE WAIVER DOCUMENTATION

[Policy Letter 02–20 impact, pre-policy letter implementation baseline]

Table 4—Labor Costs to In-Scope Applicants of Completing MMC Fee Waiver Documentation (Policy Letter 02–20 Impact) (Pre-policy letter implementation baseline)

Year	Nominal	3%	7%
Year 1 (2020)	$6,365	$6,955	$7,797
Year 2 (2021)	6,365	6,752	7,287
Year 3 (2022)	6,365	6,556	7,797
Year 4 (2023)	6,365	6,365	6,365
Year 5 (2024)	6,365	6,179	5,948
Year 6 (2025)	6,365	5,999	5,559
Year 7 (2026)	6,365	5,825	5,195
Year 8 (2027)	6,365	5,655	4,856
Year 9 (2028)	6,365	5,490	4,538
Year 10 (2029)	6,365	5,330	4,241
Year 11 (2030)	6,365	5,175	3,964
Year 12 (2031)	6,365	5,024	3,704
Year 13 (2032)	6,365	4,878	3,462
Year 14 (2033)	6,365	4,736	3,235
Total	89,105	80,919	73,948
NPV of nominal stream	.....	71,895	55,662
Annualized	.....	6,365	6,365

Please note totals may not sum up exactly due to rounding.

(2) Labor Costs to the Coast Guard To Evaluate and Process Documentation Showing Eligibility for MMC Fee Waivers

Just as there are labor costs for applicants to submit documentation, there are labor costs to the Coast Guard to evaluate and process the documentation showing eligibility for an MMC fee waiver. The NMC estimates that the time to process the typical documentation is 10 minutes, or 0.17 hours (10 ÷ 60). The processing is performed by personnel holding positions at the Government General Schedule (GS) pay scale of GS–07. According to Commandant Instruction 7310.1W,[27] the hourly loaded rate for a GS–07 Coast Guard employee is

[20] The NMC is responsible for receiving and evaluating MMC applications and issuing MMCs to qualified mariners.

[21] The Coast Guard, in its calculations, has assumed that applicants provide their own documentation as opposed to command personnel providing the documentation on their behalf. The Coast Guard does not have information on the breakdown between the two groups.

[22] This dollar figure for uniformed service members is provided in nominal terms, as opposed to a loaded rate (adjusted for benefits). This is due to the complexity of measuring and obtaining readily available data on the uniformed service members benefit compensation package. We compared civilian employees and uniformed service members and concluded that the comparison is not appropriate, since civilian employees and uniformed service members receive significantly different benefits. Uniformed personnel, for example, are provided full housing (or equivalent financial compensation), food or partial food stipend, full medical coverage for themselves and their families, significant educational benefits during their time in service and, upon completing terms of military service, pensions (for those who complete the requisite amount of service) complete moving expenses throughout their careers, and other benefits that are dependent upon an individual's assignment. By comparison, few employees in the private sector receive such benefits.

[23] The $85,416.12 figure was estimated using the January 2023 Monthly Basic Pay Table on the Department of Defense website, *https://militarypay.defense.gov/Portals/3/Documents/2023%20Basic%20Pay%20Table.pdf* (last visited 4/9/2024), which in turn was found under ''active-duty pay'' at *https://militarypay.defense.gov/Pay/Basic-Pay/Active-Duty-Pay/* (last visited 4/9/2024). In calculating this average, we excluded all zero cells in the table, as they are fields for which wages cannot exist. For example, it is not possible to obtain a 0-to-10 rating with fewer than 20 years of experience. Hence, the zeros in the table for that rating, for years of experience under 20, were excluded from our calculations. After deriving the unweighted monthly average from this table ($7,118.01), the figure was annualized by multiplying by 12 to obtain $85,416.12. It should be noted that this figure may not be exact due to rounding.

[24] Rounded to nearest whole cent.

[25] This figure is rounded to the nearest whole cent.

[26] It should be noted that for the 3 years (2020 through 2022, inclusively), we are implicitly applying our assumptions regarding the final rule's population numbers and costs for 2022 the years that follow. The same reasoning applies to analysis later in this RA on the 2020 through 2022 periods examined for Policy Letter 02–20.

[27] This was the latest Commandant Instructions for Reimbursable Standard Rates available as of the time this final rule was written, January 15, 2024.

$50.00.[28] This rate is in 2023 dollars. Thus, the labor cost to the Coast Guard to process the eligibility documentation is $8.50 (0.17 hours × $50.00 per hour) per applicant (in 2023 dollars).

As stated previously, the Coast Guard assumes 622 applicants will receive a MMC fee waiver each year. Given this, the Coast Guard predicts it will spend $5,287 per year to evaluate and process documentation provided by applicants showing eligibility for fee waivers (622 × $8.50 = $5,287, rounded to the nearest whole dollar). The Coast Guard estimates the aggregate 14-year cost to the Government is $60,608, with an annualized figure of $5,287, discounted at 7 percent. Table 5 provides the labor costs by year.

TABLE 5—LABOR COSTS TO COAST GUARD TO EVALUATE ELIGIBILITY FOR MMC FEE WAIVER

[Policy Letter 02–20 impact, pre-policy letter implementation baseline]

Year	Nominal	3%	7%
Year 1 (2020)	$5,287	$5,777	$6,477
Year 2 (2021)	5,287	5,609	6,053
Year 3 (2022)	5,287	5,446	5,657
Year 4 (2023)	5,287	5,287	5,287
Year 5 (2024)	5,287	5,133	4,941
Year 6 (2025)	5,287	4,984	4,618
Year 7 (2026)	5,287	4,838	4,316
Year 8 (2027)	5,287	4,697	4,033
Year 9 (2028)	5,287	4,561	3,770
Year 10 (2029)	5,287	4,428	3,523
Year 11 (2030)	5,287	4,299	3,292
Year 12 (2031)	5,287	4,174	3,077
Year 13 (2032)	5,287	4,052	2,876
Year 14 (2033)	5,287	3,934	2,688
Total	74,018	67,218	60,608
Annualized	.....	5,287	5,287

Please note totals may not sum due to rounding.

(3) Aggregated Labor Costs for Applicants and the Coast Guard Associated With Documentation of Eligibility for an MMC Fee Waiver

The Coast Guard estimates the total costs related to the documentation of eligibility for applicants and the Coast Guard shown in tables 4 and 5 for the 14-year period following the implementation of the policy letter in table 6. The estimated total costs to evaluate and process the documentation for applicants and the Coast Guard for the 14-year period is $133,569, with an annualized cost of $11,652, discounted at 7 percent.

TABLE 6—TOTAL COSTS TO APPLICANTS AND COAST GUARD TO EVALUATE AND PROCESS DOCUMENTATION OF ELIGIBILITY FOR MMC FEE WAIVER

[Policy Letter 02–20 impact, pre-policy letter implementation baseline]

Year	Nominal	3%	7%
Year 1 (2020)	$11,652	$12,732	$14,274
Year 2 (2021)	11,652	12,361	13,340
Year 3 (2022)	11,652	12,001	12,467
Year 4 (2023)	11,652	11,652	11,652
Year 5 (2024)	11,652	11,312	10,889
Year 6 (2025)	11,652	10,983	10,177
Year 7 (2026)	11,652	10,663	9,511
Year 8 (2027)	11,652	10,352	8,889
Year 9 (2028)	11,652	10,051	8,307
Year 10 (2029)	11,652	9,758	7,764
Year 11 (2030)	11,652	9,474	7,256
Year 12 (2031)	11,652	9,198	6,781
Year 13 (2032)	11,652	8,930	6,338
Year 14 (2033)	11,652	8,670	5,923
Total	163,123	148,137	133,569
NPV of nominal stream	.....	131,617	101,899
Annualized	.....	11,652	11,652

Please note totals may not sum due to rounding.

[28] Page two of enclosure 2 to Commandant Instruction 7310.1W (*https://media.defense.gov/2022/Aug/24/2003063079/-1/-1/0/CI_7310_1W.PDF*) (last visited 4/9/2024).

(4) Eliminating Transfer Payments to Federal Government of Providing MMC Fee Waivers

Before the Coast Guard implemented Policy Letter 02–20, applicants had to pay evaluation, examination, and issuance fees to obtain an MMC.[29] Implementing the policy letter eliminated this requirement for applicants eligible for a fee waiver. No longer requiring applicants to pay MMC fees represents a loss of revenue to the Federal Government and an equal gain to eligible MMC applicants. This is referred to as a transfer payment. For those MMC fees that were eliminated by the policy letter, the Federal Government will face a shortfall in revenues. The revenues from those fees will need to be made up through alternative means (for example, increased taxes, new or increased fees for other services, or similar sources of revenue or in some other manner). Thus, there will be no net social benefit or cost with respect to transfer payments.

As stated previously, the average annual number of uniformed service members who received a waiver of MMC fees between 2020 and 2022 (inclusively) was 622. The estimated average fee associated with the applications for these MMCs was $159 each (in 2023 dollars).[30]

For this population, the cost was $98,898 per year in nominal terms (622 × $159.00 = $98,898). Thus, for the 14 years after the implementation of the policy letter, the Coast Guard estimates transfer payments will total $1,133,720, with an annualized amount of $98,898, discounted at 7 percent. These estimates can be seen in table 7.

TABLE 7—TRANSFER PAYMENTS—ELIMINATED

[Policy Letter 02–20 impact, pre-policy letter implementation baseline]

Year	Nominal	3%	7%
Year 1 (2020)	$98,898	$108,069	$121,154
Year 2 (2021)	98,898	104,921	113,228
Year 3 (2022)	98,898	101,865	105,821
Year 4 (2023)	98,898	98,898	98,898
Year 5 (2024)	98,898	96,017	92,428
Year 6 (2025)	98,898	93,221	86,381
Year 7 (2026)	98,898	90,506	80,730
Year 8 (2027)	98,898	87,870	75,449
Year 9 (2028)	98,898	85,310	70,513
Year 10 (2029)	98,898	82,826	65,900
Year 11 (2030)	98,898	80,413	61,589
Year 12 (2031)	98,898	78,071	57,560
Year 13 (2032)	98,898	75,797	53,794
Year 14 (2033)	98,898	73,589	50,275
Total	1,384,572	1,257,372	1,133,720
NPV of nominal stream	.....	1,117,159	864,909
Annualized	.....	98,898	98,898

Please note totals may not sum due to rounding.

Benefits of Policy Letter 02–20

The Coast Guard has identified one qualitative benefit of Policy Letter 02–20 stemming from the elimination of the MMC fees referred to in Executive Order 13860. The fee waiver may provide eligible uniformed service members greater flexibility with respect to pursuing careers after leaving the uniformed services.

Part II. Final Rule

This final rule codifies Policy Letter 02–20 in terms of required actions.[31] In addition, it covers only a subset of the affected population of the policy letter. This final rule covers only the Selected Reserves and Ready Reserves of the uniformed services while the policy letter covered all current members of the reserves of the uniformed services and National Guard who were on active duty in the past. As a result, this final rule covers a smaller portion of the affected population than the policy letter. However, as discussed previously, there is no available data to accurately estimate this difference. The reason there is no available data is because the NMC only collects data on those receiving the NMC fee exemptions and does so on an aggregate basis. The NMC does not collect more detailed data such as what branch they are in or whether they are in the reserve. Due to the smaller number of eligible applicants, the Coast Guard surmises that when compared to the policy letter, this final rule will result in a small cost savings to the applicant and the Coast Guard for no longer needing to provide and review the documentation for the fee waiver.

The following cost analysis discusses the impact of the difference in the reservist populations on the number of MMC applications. However, due to a lack of data, it is not possible to quantify the cost difference.

Affected Population for Final Rule

As this final rule covers a narrower definition of reservists than Policy Letter 02–20, it will cover fewer than 622 persons per year. Due to a lack of data, the Coast Guard assumes that, for this final rule, the number of applicants for MMC exemptions is 622.

Cost Analysis for Final Rule

This final rule involves a narrower population than Policy Letter 02–20, as the Policy Letter covered current, and previously serving, members of the reserves of the uniformed services and National Guard while this final rule covers only those who are currently on active duty or are members of the Selected Reserve or Ready Reserve. The final rule, unlike the Policy Letter, does not include those who were on active duty in the past. As the Coast Guard does not have data on the differences between the two populations, and

[29] Listed in table 3 of this RA.

[30] This number is rounded to the closest whole number. The number can be found in table 3 of this RA.

[31] This is as opposed to the final rule population. The issues regarding the final rule population are discussed below.

therefore cannot quantify the difference, it assumes that the reduction in the number of waivers from the policy letter and exemptions from this final rule is zero.[32]

If the number of applicants seeking exemptions under this final rule is fewer than the number of waivers under the policy letter, there will be a decrease in the costs of this final rule when compared to the costs of the policy letter. For every applicant that does not seek an exemption under this final rule (as opposed to a waiver under the policy letter), this final rule will result in a cost savings of $10.24 per applicant related to providing the necessary documentation, and a cost savings of $8.50 per applicant for the Coast Guard, related to reviewing that documentation. If this final rule results in any decrease in the number of individuals seeking an exemption from MMC fees, the amount will be $159 (rounded to the closest dollar) per applicant (the average MMC fee paid by an applicant).

As stated previously, this final rule codifies an already existing policy letter. The only difference between the policy letter and this final rule is that this final rule does not cover a subset of the reserve forces that the policy letter covers. Due to a lack of data regarding this potential difference, it is not possible to estimate differences in costs or benefits. The lack of data also makes it impossible to even determine whether there actually is a difference in populations between this final rule and the policy letter. If there is a difference between the policy letter and this final rule in populations, the costs and cost savings differences will amount to the figures cited in the previous paragraph on a per individual basis.

Benefits of the Final Rule

The Coast Guard believes that updating regulations in the CFR with this final rule may reduce the burden on the affected population by increasing efficiency and transparency, as opposed to remaining a standalone policy letter.[33]

Regulatory Alternatives Considered

In developing this final rule, the Coast Guard considered three alternatives to the exemption (fourth alternative).

The first alternative was the exemption of the MMC fees listed in table 1 to § 10.219(a) in 46 CFR 10.219(a), as shown in table 3 of this final rule. Because this alternative would not fulfill the requirements of Executive Order 13860 or the NDAA 2020, the Coast Guard rejected this alternative.

The second alternative was to make no change to the user fee schedule for members of the uniformed services, but to establish program to reimburse MMC fees for uniformed service members. Under this alternative, the population applying for MMCs would initially pay MMC fees and then file a request for reimbursement with their service in order to be compensated for the cost. However, the process to reimburse fees would be a greater burden than this final rule's framework for eligible applicants, who would pay MMC fees out of pocket and then request compensation through their service. Filing a request for reimbursement would also increase the amount of documentation applicants would be required to file and would add an administrative burden to the services in establishing and implementing reimbursement programs. The Coast Guard rejected this alternative.

The third alternative was to extend the exemption only to the portion of the population consisting of members of the Selected Reserve of the Ready Reserve of any of the armed forces (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), and the Ready Reserve Corps of the USPHS who are on ''active duty,'' [34] while excluding those simply in an ''active status.'' [35] The Coast Guard rejected this alternative because it does not best support the intent of Executive Order 13860 and the NDAA 2020 to help attract active duty service members to obtain an MMC, and provide meaningful, well-paying jobs to U.S. veterans in support of U.S. national security requirements.

The Coast Guard believes that the intent of Executive Order 13860 and NDAA 2020 is best supported through a fourth alternative—extending the eligibility for MMC fee exemptions to members of the Selected Reserve of the Reserves of the Army, Navy, Air Force, Marines, Coast Guard and Space Force (such as Selected and Ready Reservists), and not limiting eligibility to only members of the uniformed services on active duty. This alternative best supports the intent of Executive Order 13860 and the NDAA 2020 by ensuring a wide range of service members who wish to pursue an MMC are provided support and by expanding the population eligible to receive an exemption from MMC fees. The Coast Guard believes this alternative will result in a larger number of credentialed mariners available to support U.S national security requirements and provide meaningful, well-paying jobs to U.S. veterans.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Coast Guard has considered whether this final rule has a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This final rule codifies certain actions taken in the previously implemented Policy Letter 02–20. Therefore, this final rule exempts fees for the evaluation of an MMC application, the administration of a required examination, and the issuance of an MMC for members of the uniformed services. Since the impacts discussed above in the RA affect individuals and not business (firms), not-for-profit organizations, and State or Local governmental jurisdictions, this final rule will not impact small entities as defined by the Small Business Administration in 13 CFR 121.201. Based on this analysis, this final rule will not affect a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast

[32] For a more detailed discussion of the cost difference discussions between this final rule and the policy letter in the ''Cost and Transfer Impacts of Cost Analysis of Policy Letter 02–20'' section of the RA.

[33] This final rule also incorporates greater flexibility with respect to pursuing careers. As this has already been achieved by issuing the policy letter, independent of this final rule, we list only the increased clarity and transparency that would be obtained through codifying the Coast Guard's policy for exempting MMC fees through this final rule.

[34] *Active duty* is defined here as under 10 U.S.C. 101(d)(1). Under that section it means ''full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.''

[35] All members of the Ready Reserve are in active status. Selected Reserves are only part of that group. Individual ready reserves are also active status.

Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This final rule codifies actions taken under the previously implemented Policy Letter 02–20, therefore, this final rule calls for a change to an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden, follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The information collection associated with this final rule is the currently approved collection, OMB Control Number 1625–0040, ''Applications for Merchant Mariner Credentials and Medical Certificates.'' In order to process the fee exemptions in this final rule, the Coast Guard will require eligible applicants for an MMC to provide documentation of their eligibility for a fee exemption.[36] In addition, it will require the NMC to evaluate and process this documentation part of an evaluation for an MMC.

reTitle: Applications for Merchant Mariner Credentials and Medical Certificates.

OMB Control Number: 1625–0040

Summary of the Collection of Information: The Coast Guard currently collects information from individuals seeking to obtain an MMC, renew an MMC, and obtain a merchant mariner medical certificate. The final rule requires applicants who are members of the uniformed services (622 applicants per year), and who sought a waiver of MMC fees, to provide documentation of eligibility for the MMC fee waiver as part of an MMC application (form CG–719B).

Need for Information: Title 46 CFR, section 10.217(a), requires MMC applicants to apply at one of the Coast Guard's 17 Regional Exam Centers, located nationwide or any other location designated by the Coast Guard. The Coast Guard is responsible for issuing MMCs to applicants within the qualifying age, character, and habits of life, experience, professional qualifications, and physical fitness. The instruments contained within OMB Control No. 1625–0040 serve as a means for the applicant to apply for an MMC and a merchant mariner medical certificate.

Use of Information: The Coast Guard conducts this collection of information solely for the purposes of determining eligibility for issuance of an MMC in accordance with applicable statutes and regulations. The Coast Guard evaluates the collected information to determine whether applicants are qualified to serve under the authority of the requested credential with respect to their professional qualifications and suitability.

Description of the Respondents: All applicants for an MMC, whether original, renewal, duplicate, raise of grade, or to add a new endorsement on a previously issued MMC, are included in this collection. The respondent population includes the number of uniformed service members applying for MMCs who receive a waiver of MMC fees (622 applicants annually).

Number of Respondents: The currently approved number of respondents is 310,604.[37] This final rule will add an additional 622 respondents per year.

Frequency of Response: The frequency of response is once per year.[38]

Burden of Response: The collection of information from this final rule requires the population to spend 15 minutes (0.25 hours) to provide evidence of eligibility for an MMC fee exemption.

Estimate of Total Annual Burden: The current collection of information estimates the total number of respondent's hours at 62,004. The Coast Guard estimates this final rule will increase the annual burden by 156 ($0.25 \times 622 = 155.5$, rounded up to nearest whole number) hours. Hence this final rule is expected to result in a new total burden hour total of 62,160.[39]

As required by 44 U.S.C. 3507(d), we will submit a copy of this final rule to OMB for its review of the collection of information.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard can enforce the collection of information requirements in this final rule, OMB will need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke,* 529 U.S. 89, 529 U.S. 89, 120 S.Ct. 1135 (2000). Therefore, because the States may not regulate within these categories, this final rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

[36] In order to provide maximum flexibility to applicants, the Coast Guard is planning to issue updated guidance on the acceptable forms of documentation for this final rule after this final rule is published.

[37] This is the latest Collection of Information, OMB control number 1625–0040, dated April 14, 2023. This was the latest Collection of Information available as of the time the Regulatory Analysis for this final rule was written.

[38] Please note there 622 applicants are expected every year. We are not implying that each individual applicant will be applying every year.

[39] 62,004 + 156 = 62,160.

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million (adjusted for inflation) or more in any one year. Although this final rule will not result in such an expenditure, we do discuss the potential effects of this final rule elsewhere in this preamble.

G. Taking of Private Property

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This final rule is not an economically significant rule and will not create an environmental risk to health or safety that might disproportionately affect children.

J. Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a significant energy action under this order because it is not a significant regulatory action under Executive Order 12866 and therefore unlikely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why the use of these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this final rule under DHS Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action falls under a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This final rule is categorically excluded under paragraphs L54 and L56 of Appendix A, table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. The categorical exclusion (CATEX) L54 pertains to regulations that are editorial or procedural, and CATEX L56 pertains to regulations concerning training, qualifying, licensing, and disciplining maritime personnel.

This final rule involves the fees for MMCs and associated endorsements.

List of Subjects in 46 CFR Part 10

Penalties, Personally identifiable information, Reporting and recordkeeping requirements, Seafarers.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 10 as follows:

PART 10—MERCHANT MARINER CREDENTIAL

■ 1. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2104, 2110; 46 U.S.C. chapters 71, 73, and 75; 46 U.S.C. 7701, 8903, 8904, and 70105; Executive Order 10173; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 2. Amend § 10.219 by adding paragraph (m) to read as follows:

§ 10.219 Fees.

* * * * *

(m) For members of the uniformed services, a qualified applicant under this section is exempt from paying evaluation, examination, or issuance fees for an MMC as described in paragraph (b)(2) of this section.

(1) For purposes of paragraph (m) of this section, *qualified applicant* means an individual who, at the time of submission of an application, is—

(i) A member of the uniformed services listed in 10 U.S.C. 101(a)(5) on active duty;

(ii) A member of the Selected Reserve, as described in 10 U.S.C. 10143(a), of a reserve component named in 10 U.S.C. 10101; or

(iii) A member of the Ready Reserve Corps of the Public Health Service established in 42 U.S.C. 204(a)(1).

(2) For purposes of paragraph (m)(1)(i) of this section—

(i) For the members of the armed forces, as defined in 10 U.S.C. 101(a)(4), active duty is defined by 10 U.S.C. 101(d)(1);

(ii) For the commissioned corps of the National Oceanic and Atmospheric Administration, active duty has the same meaning as found in 33 U.S.C. 3002(b)(1); and

(iii) For the members of the commissioned corps of the Public Health Service, active duty has the meaning defined in 42 CFR 21.72(f).

Dated: July 29, 2024.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Prevention Policy.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 240730–0208]

RIN 0648–BM87

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Changes to Bigeye Tuna Catch Limits in Longline Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS seeks comments on this interim final rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) that implements a recent decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the western and central Pacific Ocean (WCPFC or Commission) increasing the WCPFC bigeye tuna catch limit for U.S. longline fishing vessels from 3,554 metric tons (mt) to 6,554 mt. This action is necessary to satisfy the obligations of the United States as a member of the Commission.

DATES: This interim final rule is effective on August 6, 2024. Comments on the interim final rule must be submitted in writing by September 5, 2024.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2024–0085, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2024–0085 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah Malloy, Deputy Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the Regulatory Impact Review and the Supplemental Environmental Assessment are available at *https://www.regulations.gov* or may be obtained from Sarah Malloy, Deputy Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory species (HMS) in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes members, cooperating non-members, and participating territories (collectively referred to here as ''members''). The United States is a member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are participating territories.

As a contracting party to the Convention and a member of the Commission, the United States implements applicable conservation and management measures and other decisions adopted by the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: *https://www.wcpfc.int/doc/convention-area-map.*

Background on the WCPFC Decision

This interim final rule would implement specific provisions of Conservation and Management Measure (CMM) 2023–01, ''Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean.'' The Commission adopted CMM 2023–01 at its twentieth regular annual session, in December 2023, and it went into effect in February 2024. The provisions of CMM 2023–01 are described in more detail below.

CMM 2023–01 is the latest in a series of CMMs devoted to the conservation and management of tropical tuna stocks, particularly stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*). The stated purpose of CMM 2023–01 is to support fisheries for skipjack tuna, bigeye tuna, and yellowfin tuna in the Convention Area that benefit WCPFC members and their communities, and to do so in a way that is fair to all WCPFC members and addresses the special requirements of developing states and participating territories. CMM 2023–01's provisions are based on specific objectives for each of the three tropical tuna stocks.

Many of the provisions of CMM 2023–01 have already been implemented by NMFS or will be implemented in separate rulemakings. This interim final rule implements the numerical change to the longline bigeye tuna catch limit for the United States.

Under NMFS regulations at 50 CFR 300.224(a), the existing longline bigeye tuna catch limit for the United States is 3,554 mt per calendar year. The limit does not apply to (1) catch landed in the U.S. participating territories to the Commission (American Samoa, Guam, or CNMI); (2) catch made by vessels with ''dual permits'' (*i.e.,* vessels with both Hawai'i Longline Limit Access and American Samoa Limited Access permits) outside of the U.S. EEZ surrounding the Hawai'ian Archipelago; and (3) catch made by vessels operating under specified fishing agreements with the U.S. participating territories under 50 CFR 665.819(c), which may not exceed 3,000 mt (88 FR 39201, June 15, 2023).

Table 3 in CMM 2023–01 establishes a 6,554 mt longline bigeye tuna catch limit for the United States per calendar year. CMM 2023–01 also does not include the language of paragraph 9 of CMM 2021–01, which provided for attribution of catch to U.S. participating territories for vessels operating under agreements with the U.S. participating territories. Thus, the language in CMM 2023–01 no longer authorizes an exemption from the limit for catch by vessels operating under specified fishing agreements with U.S. participating territories.

Under this interim final rule, the limit at 50 CFR 300.224(a) will change from 3,554 mt to 6,554 mt. The limit of 6,554 mt will remain effective until replaced. No other changes to the regulations at 50 CFR 300.224 would be made at this time. As noted above, Table 3 of CMM 2023–01 expressly prohibits attribution of catch of U.S. longline vessels operating under agreements to the U.S. participating territories. Accordingly, approval of specified fishing agreements under 50 CFR 300.224(d) is no longer authorized. NMFS will update the regulatory provision at § 300.224(d) as part of a future rulemaking.

Paragraph 38 of CMM 2023–01 continues the provision of requiring any overages of limits to be deducted from the following year's limit.

CMM 2023–01 is in effect until February 15, 2027. However, as has been NMFS's practice, the elements of the interim final rule will remain in effect until they are replaced or amended, to avoid a lapse in the management of the fisheries.

The Action

The Commission-adopted longline bigeye tuna catch limit for the United States for 2024 is 6,554 mt. Thus, NMFS is implementing a calendar year catch limit of 6,554 mt that would remain effective until replaced.

The calendar year longline bigeye tuna catch limit will apply to U.S-flagged longline vessels operating as part of the U.S. longline fisheries. The limit will not apply to catch landed in the U.S. territories of American Samoa, CNMI, or Guam or catch made by vessels with dual permits outside of the U.S. EEZ surrounding Hawaii.

Consistent with the basis for the limits prescribed in CMM 2023–01 and with regulations issued by NMFS to implement bigeye tuna catch limits in U.S. longline fisheries as described below, the catch limit is measured in terms of retained catches—that is, bigeye tuna that are caught by longline gear and retained on board the vessel.

Existing regulations at 50 CFR 300.224 regarding announcement of a fishery closure and prohibitions during a fishery closure will remain in place under this proposed action.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim final rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the interim final rule, because prior notice and the opportunity for public comment would be contrary to the public interest. NMFS anticipates the currently codified 3,554 mt longline bigeye tuna catch limit to be reached imminently. If the limit is not revised before it is reached, regulations require the fishery to close, which would be contrary to the public interest because the fishery would close under a limit that is no longer consistent with applicable law (CMM 2023–01). Prior notice and comment is also unnecessary because stakeholders and industry groups were involved with the development of this action as active participants in WCPFC negotiations leading to the adoption of CMM 2023–01. Nevertheless, NMFS will consider and respond to public comments received on the interim final rule and will accordingly make any appropriate revisions.

Consistent with 5 U.S.C. 553(d)(1), this interim final rule will become effective immediately upon publication because it is a substantive rule which relieves a regulatory restriction (*i.e.,* modifies the bigeye tuna catch limit from 3,554 mt to 6,554 mt).

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the CNMI, Guam, and the State of Hawai'i. Determinations to Hawai'i and each of the territories were submitted on June 6, 2024, for review by the responsible State and territorial agencies under section 307 of the CZMA.

Executive Order 12866

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

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for the interim final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable. As stated above, there is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the interim final rule, because prior notice and the opportunity for public comment would be contrary to the public interest. Therefore, no regulatory flexibility analysis was required and none has been prepared.

Paperwork Reduction Act

This interim final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 30, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 300, subpart O, as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.224, revise paragraph (a)(1) to read as follows:

§ 300.224 Longline fishing restrictions.

* * * * *

(a) * * *

(1) There is a limit of 6,554 metric tons of bigeye tuna per calendar year that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

* * * * *

[FR Doc. 2024–17295 Filed 8–5–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 240610–0155; RTID 0648–XE156]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2024 Commercial Closure of Red Snapper in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for red snapper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects that commercial landings of red snapper have reached the commercial annual catch limit (ACL) for the 2024 fishing year. Therefore, NMFS is closing the commercial sector for red snapper in the South Atlantic EEZ. This closure is necessary to protect the red snapper resource.

DATES: This temporary rule is effective from August 6, 2024 through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes red snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and NMFS, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 14, 2024, NMFS published a final temporary rule to reduce overfishing of red snapper in Federal waters of the South Atlantic (89 FR 50530). Regulations at 50 CFR 622.193(aa)(1) specify the commercial ACL and accountability measure for red snapper in the South Atlantic for the 2024 fishing year. Among other measures, for the 2024 fishing year the commercial ACL was reduced from 124,815 pounds (lb) or 56,615 kilograms (kg) to 85,268 lb (38,677 kg), round weight (50 CFR 622.193(aa)(1)). NMFS is required to close the commercial sector for red snapper when NMFS projects its landings will reach or have reached the commercial ACL. NMFS has determined that the commercial ACL for South Atlantic red snapper has been reached. Accordingly, the commercial sector for South Atlantic red snapper is closed from August 6, 2024 through the end of 2024. Unless NMFS specifies otherwise, the commercial season for the 2025 fishing year will begin on the second Monday in July [50 CFR 622.183(b)(5)(i)].

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper with red snapper on board must have landed and bartered, traded, or sold such red snapper prior to August 6, 2024. Because the harvest of red snapper by the recreational sector is also closed for the rest of 2024 (89 FR 50530, June 14, 2024), during this commercial closure, all harvest and possession of red snapper in or from the South Atlantic EEZ is prohibited through the end of 2024.

Also during the commercial closure for South Atlantic red snapper, all sale or purchase of red snapper is prohibited. This prohibition on the harvest, possession, sale, or purchase applies in the South Atlantic on a vessel issued a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, regardless if such species were harvested or possessed in state or Federal waters [50 CFR 622.181(c)(2) and 622.193(aa)(1)].

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(aa)(1), which was issued pursuant to section 305(c) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that established the accountability measure for red snapper has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect red snapper because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial ACL.

For the reasons just stated, there is also good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 1, 2024.

Lindsay Fullenkamp,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–17347 Filed 8–1–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 151
Tuesday, August 6, 2024

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 25

[Docket No. FAA–2024–0988; Notice No. 25–24–03–SC]

Special Conditions: Northwest Aerospace Technologies, Inc (NAT), Boeing Model 787–9 Airplane; Installation of High Wall Suites

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 787–9 series airplanes. These airplanes, as modified by NAT, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of high wall suites in the passenger cabin. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before August 26, 2024.

ADDRESSES: Send comments identified by Docket No. FAA–2024–0988 using any of the following methods:

Federal eRegulations 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 (DOT), 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.

FOR FURTHER INFORMATION CONTACT: Artiom Kostiouk, Cabin Safety, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave SW, Washington, DC 20591; telephone and fax (202) 267–5446; email *artiom.m.kostiouk@faa.gov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

On September 26, 2022, NAT applied for a Supplemental Type Certificate to install suites in the passenger cabin of Boeing Model 787–9 series airplanes. While the comment period provided by the FAA for proposed special conditions has typically been thirty days, the FAA is providing twenty days in this instance, due to the pendency of the anticipated delivery date for the affected airplane models.

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

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 *www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these proposed special conditions. Send submissions containing CBI to the individual listed in the For Further Information Contact section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed special conditions.

Background

As stated above, NAT applied for a supplemental type certificate for the installation of suites in the passenger cabin in Boeing Model 787–9 series airplanes. The Boeing Model 787–9 airplane, currently approved under Type Certificate No. T00021SE, is a twin-engine transport category airplane, with a maximum seating capacity for 420 passengers, and a maximum take-off weight of 553,000 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, NAT must show that the Boeing Model 787–9 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00021SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 787–9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 787–9 airplane must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 787–9 airplane will incorporate the following novel or unusual design feature:

Single-passenger suites with high walls that diminish occupant awareness of their surroundings in emergency situations. These suites are considered a novel design for transport category airplanes and were not considered when applicable airworthiness standards were created.

Discussion

For the Model 787–9 airplane, NAT has proposed a customer option for the installation of six high wall suites (HWS) arranged in two rows of three suites each in a 1–1–1 configuration. The characteristics of this HWS design are unique such that the suite walls are higher than conventional mini-suites with partial height surroundings. While the walls for these suites do not extend fully up from the floor to the ceiling, such as those found in traditional ''high wall'' suites, their wall height of 60 inches is greater than the eye level of a 5th percentile female, impeding visual awareness and egress. These suites are also not remote from the main cabin (such as overhead crew rests). Additionally, the design of these suites is novel in the inclusion of berths that are accessible to the occupant of the suite during flight, unlike previous high wall suite designs.

Part 25 in its current form does not have regulations that address suite installations in the cabin with walls of height that reduce occupant visibility and situational awareness.

Due to the novel design features of these HWS, suitable passenger alerting, supplemental oxygen, and firefighting equipment and procedures are needed for this configuration to ensure occupant awareness in emergency situations. Furthermore, the proposed suite design necessitates the development of additional special conditions, including, but not limited to crew procedures for managing hazards and suite occupants, as well as maintaining cabin-egress route dimensions after deformation of the walls and seats.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to Boeing Model 787–9 series airplanes. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 787–9 series airplanes, as modified by NAT.

The suites must have the following features:

1. A supplemental oxygen system with the following:

a. Oxygen masks for each seat and berth installed in the suite that meets the same 14 CFR part 25 regulations as the supplemental oxygen system for the main passenger-cabin occupants.

b. An aural and visual alert system to warn occupants and to indicate the need to don oxygen masks in the event of decompression. The aural alert must activate concurrently with the deployment of the oxygen masks in the main passenger cabin and must be loud enough to be heard and clearly understood from each suite berth and seat location.

c. When an occupant needs to locate and don a deployed oxygen mask, sufficient levels of lighting to perform this task must be automatically activated within the suite.

d. Automatic presentation of oxygen for occupants lying in the berth.

e. If a chemical oxygen generator is used as the oxygen supply source, the suite oxygen installation must meet §§ 25.795(d) and 25.1450 at amendment 25–138 or higher.

2. The design approval holder must provide operating procedures to move suite occupants when smoke is present, or firefighting is occurring near or in the suites, for incorporation into the operator's training programs and appropriate operational manuals:

a. A limitation must be included in the airplane flight manual (AFM) requiring that crewmembers be trained in the operating procedures related to the suites.

3. The design of each suite, and the location of the firefighting equipment where suites are installed, must allow the crewmembers to conduct effective firefighting in the suite. For a manual, hand-held extinguishing system (designed as the sole means to fight a fire) for the suite:

a. A limitation must be included in the AFM requiring that crewmembers be trained in the firefighting procedures.

b. Each suite design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the suite compartment.

4. Approved procedures describing the methods for searching the suite compartment for fire sources must be established. These procedures should include a drawing or photo clearly indicating the location of the stowage drawer and other potential sources of smoke (*e.g.,* the monitor). They must be transmitted to the operator for incorporation into their training programs and appropriate operations manuals.

5. If a berth is installed, occupancy of each suite is limited to a single passenger.

a. Each berth installed in the suite must incorporate a safety belt that meets § 25.785(f).

b. Each berth must be placarded to indicate the appropriate orientation of the occupant's head direction.

c. Each berth cushion must meet § 25.853(c).

6. If waste-disposal receptacles are fitted in the suite, the suite must be equipped with an automatic fire-extinguishing system that meets the performance requirements of § 25.854(b).

7. The design of each suite must:

a. Maintain minimum main aisle(s), cross aisle(s), and passageway(s) required by 14 CFR part 25 requirements when subjected to the ultimate inertia forces listed in § 25.561(d).

b. Prevent structural failure or deformation of components that could block access to the available evacuation routes (*e.g.,* seats, doors, contents of stowage compartments, etc.).

8. In addition to the requirements of § 25.562 for seat systems, which are occupiable during taxi, takeoff, and landing, the suite structure must be designed for the additional loads imposed by the seats as a result of the conditions specified in § 25.562(b).

Issued in in Kansas City, Missouri, on July 30, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–17157 Filed 8–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–6423–P–01]

RIN 2502–AJ72

Disbursing Multifamily Mortgage Proceeds: Permitting Mortgagees To Disburse Mortgage Proceeds With Mortgagor-Provided Funds

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: When funds provided by a mortgagor to a mortgagee are not fully disbursed with the initial advance of the insured mortgage proceeds, the proposed rule would permit mortgagees to disburse up to 1 percent of the mortgage amount initially endorsed for insurance before requiring that the funds provided by the mortgagor be disbursed in full. This proposed change would allow mortgagees to pool mortgages into mortgage-backed securities guaranteed by the Government National Mortgage Association prior to the funds provided by the mortgagor being disbursed in full.

DATES: Comments due October 7, 2024.

ADDRESSES: To receive consideration as public comments, comments must be submitted through one of the two methods specified in the text that follows. All submissions must refer to the docket number and title of this proposed rule.

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Commenters should follow the instructions provided on *www.regulations.gov* to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying at *www.regulations.gov* or between 8:00 a.m. and 5:00 p.m. weekdays at the above address. HUD strongly encourages the public to view the docket file at *www.regulations.gov.* Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (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.*

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Fobbs III, Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 7th Street SW, Room 6134, Washington, DC 20410, telephone 202–402–3242 (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.*

SUPPLEMENTARY INFORMATION:

I. Background

24 CFR 200.54 and Ginnie Mae Guaranteed Mortgage-Backed Securities

Mortgagees seeking to originate a Federal Housing Administration (FHA)-insured mortgage regulated pursuant to 24 CFR part 200, subpart A, must comply with the project completion funding requirements in 24 CFR 200.54. These require that a mortgagor deposit funds with its mortgagee that are sufficient, when added to the proceeds from the FHA-insured mortgage, to assure completion of planned multifamily or healthcare facility project work and to pay the initial service charge, carrying charges, and legal and organization expenses incident to the construction of the project. Typically, 24 CFR 200.54(b) requires that the funds deposited by the mortgagor with the mortgagee (mortgagor-provided funds) must be disbursed in full for project work, material, and incidental charges and expenses (collectively, ''project-related expenses'') before the mortgagee may disburse any mortgage proceeds. HUD requires that mortgagees disburse the mortgagor-provided funds in full before disbursing any mortgage proceeds as a basic risk measure.[1]

For most mortgages regulated pursuant to 24 CFR part 200, subpart A, the mortgagor-provided funds are disbursed in full to pay for project-related expenses with the initial advance of the insured mortgage proceeds at the time the insured mortgage is endorsed. For certain mortgages, however, the amount of mortgagor-provided funds exceeds the amount of project-related expenses due at the time the insured mortgage is

[1] HUD's current regulations at 24 CFR 200.54(c) allow an exception to the requirement in 24 CFR 200.54(b) for certain projects involving low-income housing tax credit syndication proceeds, historic tax-credit syndication proceeds, New Markets Tax Credits proceeds, and funds provided by a grant or loan from a Federal, State, or local government.

endorsed. Where the mortgagor-provided funds are not fully disbursed at the time the insured mortgage is endorsed, the mortgagor-provided funds are fully disbursed through subsequent disbursements by the mortgagee, usually with the mortgagor-provided funds being disbursed within two months after the insured mortgage is endorsed.

Given that 24 CFR 200.54(b) does not permit insured mortgage proceeds to be disbursed until the mortgagee disburses all mortgagor-provided funds, if the mortgagor-provided funds are not fully disbursed at the time the insured mortgage is endorsed, the mortgage cannot be pooled into a mortgage-backed security (MBS) guaranteed by the Government National Mortgage Association (Ginnie Mae) without conflicting with 24 CFR 200.54(b).[2] As such, for an insured mortgage to be pooled into a Ginnie Mae guaranteed MBS, the insured mortgage proceeds must be permitted to be disbursed.

This conflict with 24 CFR 200.54(b) typically only exists for a short period of usually no longer than two months after the endorsement of the FHA-insured mortgage, by which time the mortgagor-provided funds are usually fully disbursed. During the short period where this conflict exists, the mortgagee must either implement unusual and burdensome mortgage servicing practices to maintain compliance with 24 CFR 200.54(b) or else the mortgagee will not be able to pool the insured mortgage into a Ginnie Mae guaranteed MBS at the time of endorsement. If a mortgagee is unable to pool an insured mortgage into a Ginnie Mae guaranteed MBS at endorsement, the mortgagee might never be able to securitize the insured mortgage and might fail to meet contractually required delivery dates between the mortgagee and investor. This could potentially lead to costly investor compensation fees. The mortgagee may also experience issues relating to its financial liquidity cycle. When many insured mortgages are unable to be pooled into Ginnie Mae guaranteed MBSs at the time the insured mortgages are endorsed, cascading issues for the broader mortgage market can occur. These can include reducing the overall liquidity of the mortgage market and increasing the cost on mortgagors to borrow funds, which reduces the availability of housing and ultimately harms HUD's mission to create strong, sustainable, inclusive communities and affordable homes for all.

Partial Regulatory Waiver of 24 CFR 200.54(b)

HUD has recently addressed the described conflict with the requirements in 24 CFR 200.54(b) for mortgages insured under National Housing Act sections 213 and 221(d)(4) by issuing a partial regulatory waiver of the requirements of 24 CFR 200.54(b) (Partial Waiver of 24 CFR 200.54(b)).[3] The Partial Waiver of 24 CFR 200.54(b) partially waived the requirement in 24 CFR 200.54(b) that mortgagor-provided funds ''must be disbursed in full'' for project-related expenses before any disbursement of funds from the insured mortgage. Instead, the Partial Waiver of 24 CFR 200.54(b) permitted, to the extent necessary, a mortgagee to disburse funds from the insured mortgage in an amount up to one-half percent (0.5%) of the initially endorsed mortgage amount. The Partial Waiver of 24 CFR 200.54(b) allows mortgagees to pool insured mortgages into Ginnie Mae guaranteed MBSs when mortgagor-provided funds are not fully disbursed at the time the insured mortgage is endorsed because it allows mortgagees to meet the Ginnie Mae requirement that the insured mortgage proceeds be disbursable.

II. This Proposed Rule

The Proposed Exception to 24 CFR 200.54(b)

Through this proposed rule, HUD proposes to add an exception to the requirement in 24 CFR 200.54(b) that the funds provided by the mortgagor must be disbursed in full before the disbursement of any proceeds from the insured mortgage. This proposed rule would also make non-substantive terminology and organizational edits to 24 CFR 200.54 that would not affect any other requirements within the section.

The exception proposed to be added to 24 CFR 200.54(b) would permit mortgagees, where the funds provided by the mortgagor are not fully disbursed with the initial advance of the insured mortgage proceeds, to disburse up to 1 percent of the mortgage amount initially endorsed for insurance before requiring that the funds provided by the mortgagor be disbursed in full. This proposed exception would permit that a mortgagee could disburse mortgage proceeds at the time the mortgage is initially endorsed for insurance up to a maximum of 1 percent of the initially endorsed mortgage amount. Alternatively, a mortgagee could choose to disburse mortgage proceeds in any amount on a monthly basis, whether consecutive or not, up to a combined maximum of 1 percent of the initially endorsed insured mortgage amount until the mortgagor-provided funds are fully disbursed.

As described in the Background section of this proposed rule, the Partial Waiver of 24 CFR 200.54(b) permits a mortgagee to disburse funds from the insured mortgage in an amount up to one-half percent (0.5%) of the initially endorsed mortgage amount. HUD is proposing to set the amount of the proposed exception to 24 CFR 200.54(b) at 1 percent of the initially endorsed mortgage amount because in an environment where mortgage interest rates increase, additional mortgagor-provided funds are required to be deposited with the mortgagee. Where additional mortgagor-provided funds are deposited with a mortgagee, there is an increased chance that the mortgagor-provided funds will not be fully disbursed when the insured mortgage is initially endorsed. Permitting a 1% of the initially endorsed mortgage amount exception to 24 CFR 200.54(b) will allow additional mortgages to be securitized at the time of endorsement with no incremental risk to HUD compared to the one-half percent (0.5%) prescribed in the Partial Waiver of 24 CFR 200.54(b).

The proposed exception to 24 CFR 200.54(b) would allow mortgagees to disburse mortgagor-provided funds for project-related expenses in conjunction with the proceeds from the insured mortgage at the time the mortgage is initially endorsed even where the mortgagor-provided funds are not fully disbursed with the initial advance of the insured mortgage proceeds. This would allow mortgagees to pool a mortgage into a Ginnie Mae guaranteed MBS even when the mortgagor-provided funds were not fully disbursed with the initial advance of the insured mortgage proceeds.

This proposed exception would help keep FHA-insured mortgage products competitive in economic environments with rising interest rates and/or multi-year high interest rates, especially for new construction projects, where a higher proportion of mortgage proceeds are constrained by FHA's debt service coverage ratio requirements. In an economic environment with rising and high interest rates, mortgagors must deposit additional funds with their mortgagee, making it more likely that

[2] For additional information about Ginnie Mae and Ginnie Mae's guarantee of MBSs, *see* Ginnie Mae's About Us web page, available at *https://www.ginniemae.gov/about_us/who_we_are/Pages/funding_government_lending.aspx.*

[3] The Partial Waiver of 24 CFR 200.54(b) was initially granted in July 2021. *See* 87 FR 14563 (Mar. 15, 2022). The Partial Waiver of 24 CFR 200.54(b) has subsequently been extended and remains in effect until July 4, 2025.

the mortgagor-provided funds will not be fully disbursed during the initial advance of the insured mortgage proceeds. HUD believes that the proposed exception would help ensure that interest rates for FHA-insured mortgages remain competitive and ensure the liquidity of FHA-insured mortgages on the secondary mortgage market.

Alternative Solution Considered

In determining whether to propose the exception to 24 CFR 200.54(b), HUD considered whether an alternative solution to the proposed exception to 24 CFR 200.54(b) existed that would better address the issue outlined throughout this proposed rule. One alternative solution considered by HUD was to encourage the mortgage industry to contract for the future delivery of MBSs once all mortgagor-provided funds had been disbursed from the insured mortgages that were to be pooled. While this solution could, in theory, correct the same issue that the proposed exception addresses, HUD ultimately determined that this would likely cause higher borrowing costs for mortgagors because interest rates would need to be hedged through some mechanism. Further, mortgagees would potentially experience unfavorable accounting classifications, having to book recently closed mortgages as ''mortgages held for sale,'' rather than booking closed mortgages as the more favorable ''mortgage serving rights.'' Mortgagees could also face unfavorable changes to their counterparty credit profile because of the need to hold whole mortgages on their balance sheet for a number of months, likely precluding smaller mortgagees from warehouse credit and potentially creating funding constraints. For these reasons, HUD believes that the proposed exception to 24 CFR 200.54(b) would be a better solution for mortgagors, mortgagees, FHA, and the secondary mortgage markets.

Evaluation of the Partial Waiver of 24 CFR 200.54(b)

HUD has evaluated the results of granting the Partial Waiver of 24 CFR 200.54(b). At the time that HUD granted the Partial Waiver of 24 CFR 200.54(b), HUD determined that permitting up to one-half percent (.5%) of the initially endorsed mortgage amount to be disbursed represented only a negligible increase of risk to FHA. As expected, since granting the Partial Waiver of 24 CFR 200.54(b) in July 2021, HUD has received positive feedback from mortgagees regarding the use of the partial waiver and FHA has experienced no negative impacts due to mortgagees' reliance on the partial waiver.

In reviewing the knowledge gained from the implementation of the Partial Waiver of 24 CFR 200.54(b), HUD designed this proposed rule to be similar to the partial waiver, with a notable exception being that this proposed rule permits mortgagees to disburse mortgage proceeds in an amount up to 1 percent, rather than one-half percent, of the initially endorsed mortgage amount before requiring that the mortgagor-provided funds be disbursed in full. HUD determined that the proposed 1 percent of the initially endorsed mortgage amount produces no meaningful increase of risk to FHA, while better helping to ensure that mortgagees are more easily able to pool mortgages into Ginnie Mae guaranteed MBSs.

In summary, HUD believes that the proposed exception to 24 CFR 200.54(b) is the best solution to the potential conflict with the requirements in 24 CFR 200.54(b) where the mortgagor-provided funds are not fully disbursed with the initial advance of the insured mortgage proceeds for mortgages intended to be pooled into Ginnie Mae guaranteed MBSs. The proposed exception would assist FHA in keeping its mortgage products competitive and would further HUD's mission to create strong, sustainable, inclusive communities and affordable homes for all.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. Executive Order 13563 (Improving Regulations and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The order also directs Executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 further directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866, among other things.

As discussed in this preamble, the only substantive regulatory change proposed in this rule would permit mortgagees, where the funds provided by the mortgagor are not fully disbursed with the initial advance of the insured mortgage proceeds, to disburse up to 1 percent of the mortgage amount initially endorsed for insurance before requiring that the funds provided by the mortgagor be disbursed in full. This rule was determined not to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 as amended by Executive Order 14094 and is not an economically significant regulatory action and therefore was not subject to OMB review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are limited to permitting mortgagees, where the funds provided by the mortgagor are not fully disbursed with the initial advance of the insured mortgage proceeds, to disburse up to 1 percent of the mortgage amount initially endorsed for insurance before requiring that the funds provided by the mortgagor be disbursed in full. These proposed changes would not have a significant economic impact on a substantial number of small entities. Accordingly, the undersigned certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the

Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection on *www.regulations.gov* and between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

For the reasons stated above, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. In § 200.54:

■ a. Revise paragraph (a) by removing the citation to ''paragraph (d)'' and adding, in its place, a citation to ''paragraph (c)'';

■ b. Revise paragraph (b) by removing the word ''mortgage'' and adding, in its place, ''insured mortgage'';

■ c. Redesignate paragraph (c) as paragraph (b)(1);

■ d. Amend newly redesignated paragraph (b)(1) by removing the word ''mortgage'' and adding, in its place, ''insured mortgage'' and by adding the word ''or'' at the end of the paragraph;

■ e. Add paragraph (b)(2); and

■ f. Redesignate paragraph (d) as paragraph (c).

The addition reads as follows:

§ 200.54 Project completion funding.

* * * * *

(b) * * *

(2) If the funds provided by the mortgagor are not fully disbursed with the initial advance of the insured mortgage proceeds, the mortgagee may disburse up to 1 percent of the mortgage amount initially endorsed for insurance before requiring that the funds provided by the mortgagor be disbursed in full. The 1 percent of the initially endorsed mortgage amount may be disbursed in full at the time of initial endorsement or may be disbursed in any amount on a monthly basis, whether consecutive or nonconsecutive, until the funds provided by the mortgagor are fully disbursed.

* * * * *

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2024–17033 Filed 8–5–24; 8:45 am]

BILLING CODE 4210–67–P

POSTAL SERVICE

39 CFR Part 111

Address Correction Notices IMpb

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to remove the hardcopy address correction notice option for all packages bearing an Intelligent Mail® package barcode (IMpb®).

DATES: Submit comments on or before September 5, 2024.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Address Correction Notices IMpb''. Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Michelle Evans at (901) 681–4474 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Background

Ancillary service endorsements provide an option for mailers to instruct the Postal Service on how to treat their mail if it is determined to be undeliverable-as-addressed and to request address correction services. Address corrections are currently available in four available formats: a returned mailpiece with the new address or reason for nondelivery attached; PS Form 3547, *Notice to Mailer of Correction in Address,* that is mailed to the return address on a mailpiece; PS Form 3579, *Notice of Undeliverable Periodical,* mailed to the publisher address indicated in the publication ID Statement; or via ACS™ (Address Change Service) which is an electronic address correction notice made available to the sender via download from a secure USPS website that requires a login and password to access the files. Address correction fees are charged based on the method in which they are provided, with return mail costs and manual address correction fees that reflect the USPS costs to handle those notices.

The IMpb applied to packages allows shippers to obtain postage discounts and the ability to track their packages through the Postal network. The Postal Service can effectively provide address correction notices to our IMpb mailers electronically via ACS faster and more efficiently.

Proposal

The Postal Service is proposing to remove the option to request PS Forms 3547, *Notice to Mailer of Correction in Address,* and PS Form 3579, *Notice of Undeliverable Periodical,* for packages with an IMpb.

IMpb mailers that desire address correction information from undeliverable as addressed (UAA) mail will be required to receive address correction notices electronically via ACS. IMpb mailers will have to sign up for IMpb ACS or Traditional ACS.

The Postal Service is proposing to implement this change effective March 5, 2025. However, mailers may begin to request ACS immediately. We believe this proposed revision will provide customers with more efficient and less costly address correction notices.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service proposes to amend 39 CFR part 111 as follows:

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

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

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

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

* * * * *

204 Barcode Standards

* * * * *

2.0 Standards for Package and Extra Service Barcodes

2.1 Intelligent Mail Package Barcode

2.1.1 Definition

* * * * *

[Revise 2.1 by adding a new 2.1.14 to read as follows:]

2.1.14 IMpb With Ancillary Services

When certain ancillary services are used to receive separate address corrections for forwarded parcels, shippers that apply an IMpb to their parcels must request ACS under 507.4.1.5.

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

1.5.1 First-Class Mail, USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial, and Priority Mail

Undeliverable-as-addressed First-Class Mail (including postcards), USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial, and Priority Mail pieces are treated under Exhibit 1.5.1 with these additional conditions:

* * * * *

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

f. Address Change Service (ACS) under 4.0 is available for First-Class Mail, USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial, and Priority Mail pieces with the ACS participant code for an authorized ACS participant and a valid ancillary service endorsement. Mailers participating in OneCode ACS under 4.2.6 that print an Intelligent Mail barcode on First-Class Mail automation letters may omit the participant code and endorsement. Parcel shippers must use either IMpb ACS or apply an ACS participant code to receive separate address corrections. The only endorsements permitted on First-Class Mail, USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial and Priority Mail valid ACS pieces are ''Address Service Requested'', ''Change Service Requested'' or ''Electronic Service Requested'' subject to the following:

* * * * *

1.5.2 Periodicals

Undeliverable-as-addressed (UAA) Periodicals publications (including publications pending Periodicals authorization) are treated as described in Exhibit 1.5.2, with these additional conditions:

* * * * *

[Revise item a by adding a new last sentence to read as follows:]

a. c. * * * Parcel shippers must use either IMpb ACS or apply an ACS participant code to receive separate address corrections.

* * * * *

1.5.3 USPS Marketing Mail

Undeliverable-as-addressed (UAA) USPS Marketing Mail pieces are treated as described in Exhibit 1.5.3, with these additional conditions:

* * * * *

[Revise the text of item f by adding a new last sentence to read as follows:]

f. * * * Parcel shippers must use either IMpb ACS or apply an ACS participant code when separate address corrections are requested.

* * * * *

1.5.4 Package Services and Parcel Select

Undeliverable-as-addressed (UAA) Package Services and Parcel Select mailpieces are treated as described in Exhibit 1.5.4, with these additional conditions:

[Revise the text of item a by adding a new last sentence to read as follows:]

a. * * * Parcel shippers must use either use IMpb ACS or apply an ACS participant code when separate address corrections are requested.

* * * * *

4.0 Address Correction Services

4.1 Address Correction Service

* * * * *

4.1.5 Other Classes

[Revise the third sentence and add a new fourth and fifth sentence of 4.1.5 to read as follows:]

* * * Except for Full-Service and Seamless acceptance mailings, when separate corrections are necessary for First-Class Mail and USPS Marketing Mail, Form 3547 is mailed to the sender with the address correction fee charged and the mail is forwarded. When separate address corrections are necessary for forwarded parcels, shippers that apply the IMpb to their parcels must request ACS and an electronic address correction notice via ACS is provided to the participant and the electronic address correction fee will be charged. There are two versions of ACS available to parcel shippers, IMpb ACS or Traditional ACS.* * *

* * * * *

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–17113 Filed 8–5–24; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0186; FRL–12105–03–R1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Regional Haze State Implementation Plan for the Second Implementation Period; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule that published July 19, 2024. The current comment period for the proposed rule was set to end on August 19, 2024. Due to a technical issue, some of the background materials for the proposed rule were not made available to *www.regulations.gov* until July 24, 2024. The EPA is therefore extending the comment period for the proposed action to August 26, 2024.

DATES: The comment period for the proposed rule published on July 19, 2024, at 89 FR 58663 is extended. Comments must now be received on or before August 26, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0186 at *https://www.regulations.gov,* or via email to *rackauskas.eric@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests if possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 19, 2024, the EPA published the proposed rule ''Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Regional Haze State Implementation Plan for the Second Implementation'' in the **Federal Register** (89 FR 58663). The original deadline to submit comments was August 19, 2024. This action extends the comment period; written comments must now be received by August 26, 2024.

Dated: July 29, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024–17222 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2024–0225; FRL–12122–01–R8]

Air Plan Approval and Conditional Approval; Colorado; Regulation Numbers 7 and 21 and RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve and conditionally approve portions of a State Implementation Plan (SIP) submission from the State of Colorado dated May 3, 2024. The submission relates to Colorado Air Quality Control Commission (AQCC or Commission) Regulation Number 7 (Reg. 7) and Regulation Number 21 (Reg. 21), and addresses Colorado SIP obligations related to reasonably available control technology (RACT) requirements for sources in nonattainment areas for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 5, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2024–0225, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.* Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street,

Denver, Colorado 80202–1129, telephone number: (303) 312–6563, email address: *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What action is EPA proposing to take?

As explained below, EPA is proposing to approve and conditionally approve various Colorado SIP provisions with respect to the adequacy of reporting requirements that the State resubmitted on May 3, 2024. These provisions were part of SIP submittals originally submitted by Colorado on May 14, 2018; May 13, 2020; March 22, 2021; and May 20, 2022, to address RACT requirements for purposes of the 2008 ozone NAAQS. EPA previously finalized approvals, conditional approvals, limited approvals, limited disapprovals, and disapprovals of different portions of these submittals on May 9, 2023; [1] November 7, 2023; [2] and December 8, 2023.[3] As relevant to today's proposal, EPA previously issued a limited approval/limited disapproval of certain SIP provisions, with the limited disapproval portion applicable to the adequacy of the reporting requirements associated with those provisions in the May 9, 2023 action.[4]

On May 3, 2024, the State of Colorado resubmitted portions of the prior SIP submissions that were the subject of the limited disapproval and also submitted a letter committing to undertake additional steps to improve public access to regulatory compliance information and clarify existing SIP reporting requirements (Commitment Letter).[5] Based on the additional information described in this letter, EPA is now proposing to approve Colorado's Reg. 7 and Reg. 21 with respect to the adequacy of reporting requirements for storage tank emission controls, storage tank and wet seal centrifugal compressor control device testing, consumer products, and architectural and industrial maintenance (AIM) coatings. EPA is basing its proposed approval on the additional information and clarification that the State provided concerning the existing reporting requirements that apply to them. Based on the additional information and commitments by the State to make additional revisions, EPA is also proposing to conditionally approve the adequacy of reporting requirements for metal parts and metal products coatings, wood products coatings, combustion equipment at major sources, and foam manufacturing. This proposed conditional approval is based on the State's commitment to make further revisions to the reporting requirements for these specific rules, and to submit those revisions to EPA for approval into the SIP, to address the deficiencies identified in the May 9, 2023 rulemaking that were the basis for the limited disapproval.[6]

Under section 110(k)(4) of the CAA, the EPA may conditionally approve a SIP submission based on a commitment from a state to adopt specific enforceable measures by a date certain no later than one year from the date of approval of the plan revision.[7] If EPA finalizes the proposed conditional approval of the identified Reg. 7 rules, the State must meet its commitment to submit the necessary SIP revisions to EPA by May 31, 2025.[8] If the State fails to do so, this conditional approval action would automatically become a disapproval on that date. If the State submits timely SIP revisions but EPA finds the SIP submittal to be incomplete, this conditional approval action would become a disapproval on the date of EPA's incompleteness finding. In either case, EPA would notify the State by letter that the conditional approval has converted to a disapproval. The EPA subsequently would publish a document in the **Federal Register** notifying the public that the conditional approval was converted to a disapproval. EPA notes that the provisions that we are proposing to conditionally approve are already part of the SIP due to our May 9, 2023 limited approval. Thus, in the event the conditional approval is converted to a disapproval, the underlying SIP provisions that were the subject of the prior limited approval/limited disapproval would remain in the SIP, but the prior limited disapproval of those provisions with respect to the adequacy of reporting requirements would return.

If we finalize this rulemaking as proposed, Colorado will have corrected some of the deficiencies identified in our May 9, 2023 limited disapproval, and committed to correct the remaining deficiencies as described in its Commitment Letter. We are concurrently making an interim final determination to defer application of CAA section 179 sanctions associated with our May 9, 2023 limited disapproval. Consistent with applicable sanction regulations,[9] EPA will be making the interim final determination based on this proposal to approve and conditionally approve SIP revisions from Colorado to resolve the deficiencies that were the basis of our prior limited disapproval that triggered sanctions. If this conditional approval converts to a disapproval due to the State's failure to meet its commitment, then the offset sanction under CAA section 179(b)(2) would apply in the affected area on the later of: (1) the date when the approval becomes a disapproval or EPA issues such a proposed or final disapproval, whichever is applicable; or (2) December 9, 2024 (*i.e.* 18 months from the finding that started the original sanctions clock).[10] Subsequently, the highway sanction under section 179(b)(1) would apply in the affected area six months after the date the offset sanction applies.[11]

The basis for our proposed action is discussed in this proposed rulemaking. Technical information that we are relying on, as well as the State's Commitment Letter, are in the docket, available at *https://www.regulations.gov,* Docket ID No. EPA–R08–OAR–2024–0225.

II. Background

2008 8-Hour Ozone NAAQS Nonattainment

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (based on the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3

[1] Final rule, Air Plan Approval, Conditional Approval, Limited Approval and Limited Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 88 FR 29827.

[2] Final rule, Air Plan Approval and Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 88 FR 76676.

[3] Final rule, Air Plan Disapproval; Colorado; RACT Elements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 88 FR 85511.

[4] 88 FR 29827.

[5] ''Resubmittal of SIP revisions following Reconsideration. EPA Docket Nos.: EPA–R08–OAR–2022–0632; EPA–R08–OAR–2022–0857; and FRL–10362–02–R8'' commitment letter. Available in the docket for this action.

[6] *Id.*

[7] The provisions that we are proposing to conditionally approve are already part of the SIP due to our May 9, 2023 limited approval and thus are federally enforceable by the State and EPA, notwithstanding concerns about the current reporting requirements that may limit potential enforceability by others under CAA section 304 citizen suit authority.

[8] *See* Commitment Letter, p. 13.

[9] 40 CFR 52.31(d)(2)(i).

[10] *See id.* In this case, the finding that started the original sanctions clock was the May 9, 2023 limited disapproval.

[11] *See id.*

years), to provide increased protection of public health and the environment.[12] The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Specifically, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.[13] Effective July 20, 2012, EPA designated any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data as nonattainment.[14] In that action, EPA designated the Denver Metro/North Front Range (DMNFR) Area as nonattainment and classified the area as Marginal.[15] Ozone nonattainment areas are classified based on the severity of their ozone levels, as determined using the area's design value. The design value is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at a monitoring site.[16] States with areas designated as nonattainment and classified as Marginal were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data.[17]

On May 4, 2016, EPA published its determination that the DMNFR Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the applicable Marginal area attainment deadline, and accordingly reclassified the area as Moderate.[18] Colorado submitted SIP revisions to the EPA on May 31, 2017, to meet the requirements for the Moderate classification in the DMNFR Area.[19] Among the requirements for Moderate areas, states must submit SIP provisions to impose RACT level controls on relevant emission sources in the nonattainment area. EPA took final action approving the majority of the May 31, 2017 submittal on July 3, 2018, but deferred action on portions of the Reg. 7 rules submitted by the state to meet RACT requirements.[20] On February 24, 2021, EPA took final action approving additional measures as addressing Colorado's RACT obligations for Moderate nonattainment areas.[21] States with nonattainment areas classified as Moderate were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, based on 2015–2017 monitoring data.[22] On December 26, 2019, EPA published its determination that the DMNFR Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the applicable attainment deadline for Moderate areas, and accordingly reclassified the area as Serious.[23]

EPA's May 9, 2023 Final Rule

On May 9, 2023, EPA took final action approving portions of the 2008 8-hour ozone Serious area attainment plan for the DMNFR Area submitted by the State of Colorado on March 22, 2021, and portions of additional SIP submissions made by the State related to those requirements on May 8, 2019, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022.[24] The State made these SIP submissions to meet Serious ozone nonattainment plan requirements for the DMNFR Area, to address RACT requirements for certain source categories in the DMNFR Area, and to adopt volatile organic compounds (VOC) standards for consumer products and architectural and industrial maintenance coatings. In the May 9, 2023 action, EPA also finalized a limited approval and limited disapproval of parts of the SIP submissions made on May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022, with respect to certain RACT categories,[25] and finalized a limited conditional approval and limited disapproval of specific provisions intended to meet RACT requirements.[26]

The limited disapproval portions of the May 9, 2023 final rule resulted from the Agency's determination that although the rules met RACT requirements with respect to stringency, they lacked adequate periodic reporting requirements as required under the CAA and EPA regulations. Section 110 of the CAA includes several subsections requiring that a state's SIP provisions be enforceable, and that states require reporting from sources. Under section 110(a)(2)(A), state SIPs must ''include enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Further, section 110(a)(2)(C) requires SIPs to ''include a program to provide for the enforcement of the measures described in subparagraph (A).''

Typically, a primary mechanism for ensuring that a SIP provision is legally and practicably enforceable is for a state to impose sufficient monitoring, recordkeeping, and reporting (MRR) requirements on affected sources. Section 110(a)(2)(F)(ii) speaks more explicitly to source reporting by requiring SIPs to ''require periodic reports on the nature and amounts of emissions and emissions-related data,'' as may be prescribed by EPA. EPA has promulgated regulations implementing section 110(a)(2)(F) requirements at 40 CFR 51.211(a), which requires state SIPs to provide for periodic reports to the state on the nature and amount of emissions from stationary sources. EPA notes that reporting requirements serve multiple purposes, including promoting transparency, providing deterrence against violations, and supporting effective enforcement of SIP requirements. A lack of adequate reporting requirements can undermine citizens' ability to participate in the enforcement of the SIP as authorized and provided for in CAA section 304. As explained in our May 9, 2023 action, EPA concluded that the rules subject to the limited disapproval did not ''include sufficient reporting requirements to ensure that citizens will be able to enforce the SIP requirements,

[12] Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008). The EPA has since further strengthened the ozone NAAQS, but the 2008 8-hour standard remains in effect. *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015).

[13] 40 CFR 50.15(b).

[14] Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012).

[15] *Id.* at 30110. The nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. *See* 40 CFR 81.306.

[16] 40 CFR part 50, appendix I.

[17] *See* 40 CFR 51.903.

[18] Final rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 FR 26697 (May 4, 2016).

[19] CAA section 182, 42 U.S.C. 7511a, outlines SIP requirements applicable to ozone nonattainment areas in each classification category. Areas classified Moderate under the 2008 8-hour ozone NAAQS had a submission deadline of January 1, 2017 for these SIP revisions (81 FR 26699).

[20] Final rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions (83 FR 31068).

[21] Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125.

[22] *See* 40 CFR 51.903.

[23] Final rule, Finding of Failure to Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897 (Dec. 26, 2019); *see* 40 CFR 81.306.

[24] 88 FR 29827, table 1, 29829–29830 (May 9, 2023).

[25] *Id.* at 29830–29831, table 2 (listing portions subject to limited approval and limited disapproval), table 3 (RACT categories).

[26] *Id.* at 29830–29831, table 3. All other portions of the May 9, 2023 final rule were effective as of June 8, 2023, and remain in effect.

as is necessary under the CAA and EPA regulations.'' [27]

On July 10, 2023, the State submitted a Petition for Reconsideration asking EPA to reconsider the limited disapproval portions of the May 9, 2023 final rule. EPA responded to the Petition for Reconsideration in a letter dated August 31, 2023, informing the State that EPA was granting the petition as to the limited disapproval portions of the May 9, 2023 final rule.[28] Since granting the petition for reconsideration, EPA has offered Colorado the opportunity to explain more fully how the State's regulations provide for adequate reporting, to inform EPA of various actions taken by the Colorado Air Pollution Control Division (Division) to enhance access to public records and information, and to consider what changes to existing regulations would improve reporting requirements to address deficiencies. As a result of these discussions, Colorado has resubmitted Reg. 7 and Reg. 21 with additional explanations to support proposed approval of some provisions and a commitment to make changes to support proposed conditional approval of others.

III. Summary of State's SIP Submittals

In this action, we are evaluating Colorado's May 3, 2024 SIP submittal intended to address reporting requirements in response to the May 9, 2023 limited disapproval. In this submittal, the State explained why some of the SIP provisions subject to the limited disapproval have adequate reporting requirements, and made a commitment to add reporting requirements for the other SIP provisions subject to the limited disapproval. The portions of the original SIP submittals that the State has resubmitted for EPA's evaluation with respect to reporting requirements are described below.

May 14, 2018 Submittal

This submittal contained amendments to Reg. 7, sections XII. (Volatile Organic Compound Emissions from Oil and Gas Operations) and XVIII. (Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations) to implement RACT for oil and gas sources covered by the EPA's 2016 Oil and Gas Control Techniques Guidelines (CTG).[29] We previously acted on this SIP submittal,[30] which included finalizing a limited disapproval of Reg. 7, section XII.J.1., concerning centrifugal compressors.

May 13, 2020 Submittals

On May 13, 2020, the State made two SIP submittals. One of the submittals included a full reorganization of Reg. 7 into parts A–E, amended oil and gas storage tank requirements, updated RACT requirements for major sources of VOC and nitrogen oxides (NO_X) in the DMNFR Area, updated requirements for gasoline transport truck testing and vapor control systems, and included typographical, grammatical, and formatting corrections throughout. We previously acted on this SIP submittal,[31] including finalizing a limited disapproval of Reg. 7, part D, sections I.D., I.E., and I.F. concerning storage tanks and section I.J.1. concerning centrifugal compressors.

The second submittal contained a new Reg. 21 to limit the VOC content in consumer products and in AIM coatings manufactured, distributed, or sold in the DMNFR Area. Specifically, this rule adopted VOC standards in the Ozone Transport Commission (OTC) AIM coatings model rule phase 2 (2014) and VOC standards in the OTC consumer products model rule phase 4 (2013). Reg. 21 included definitions, exemptions, labeling, and recordkeeping provisions based on the OTC model rules. We previously acted on this SIP submittal,[32] including a limited disapproval of Reg. 21, parts A and B.

March 22, 2021 Submittal

This submittal contained the State's Serious ozone attainment plan and revisions to Reg. 7 to include RACT requirements in Colorado's ozone SIP for major sources that emit 50 tons per year (tpy) or more of VOC and/or NO_X. The Reg. 7 revisions included expanding categorical requirements to reduce VOC emissions related to wood surface coatings in part C, section I.O.; adding NO_X emission limits for turbines, boilers, and landfill or biogas engines in part E, section II.; and adding categorical requirements to reduce VOC emissions related to foam manufacturing in part E, section V. The State also made non-substantive typographical, grammatical, and formatting corrections to Reg. 7. We previously acted on this SIP submittal,[33] including a limited approval/limited disapproval of Reg. 7, part C, section I.O. concerning wood products coatings and part E, sections II.A. and V. concerning RACT rules for combustion equipment and foam manufacturing. The limited disapproval was only with respect to the adequacy of source reporting requirements.

May 20, 2022 Submittals

One of the State's May 20, 2022 submittals contained amendments to Reg. 7 that establish categorical RACT requirements for major sources of NO_X and sources covered by the miscellaneous metal parts coatings CTG in the DMNFR Area. Specifically, on July 16, 2021, the AQCC adopted RACT requirements in part C, section I. for miscellaneous metal parts coatings and part E, section II. RACT requirements for process heaters at major sources of NO_X emissions. The State also made non-substantive typographical, grammatical, and formatting corrections to Reg. 7.

The other May 20, 2022 submittal contained revisions concerning RACT requirements for oil and gas sources. Specifically, on December 17, 2021, the AQCC adopted revisions to Reg. 7, part D, section I. for performance or manufacturer testing for combustion equipment used to control emissions from storage vessels and wet seal centrifugal compressors.

We previously acted on these May 20, 2022 SIP submittals,[34] including a limited approval/limited disapproval of Reg. 7, part C, section I.L. pertaining to metal parts and product coatings; part D, sections I.E. and I.J. pertaining to inspections of and performance testing for storage tanks and centrifugal compressors; and part E, section II. pertaining to combustion equipment rules. The limited disapproval was only with respect to the adequacy of source reporting requirements.

IV. Procedural Requirements

The CAA requires that states meet certain procedural requirements before submitting a SIP submittal to the EPA, including the requirement that states adopt SIP revisions after reasonable notice and public hearing.[35] In our November 9, 2022 proposed and May 9, 2023 final actions, we determined that Colorado had satisfied this requirement with respect to the SIP provisions that

[27] 88 FR at 29828.

[28] *See* letter from EPA Regional Administrator KC Becker to Colorado Attorney General Phil Weiser (Aug. 31, 2023), in the docket for this action.

[29] Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA–453/B–16–001 (Oct. 2016).

[30] Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071 (Nov. 5, 2021) and 88 FR 29827 (May 9, 2023).

[31] 86 FR 61071 (Nov. 5, 2021) and 88 FR 29827 (May 9, 2023).

[32] 88 FR 29827 (May 9, 2023).

[33] 88 FR 29827 (May 9, 2023), 88 FR 76676 (Nov. 7, 2023), and 88 FR 85511 (Dec. 8, 2023).

[34] 88 FR 29827 (May 9, 2023) and 88 FR 76676 (Nov. 7, 2023).

[35] CAA section 110(a)(2), 42 U.S.C. 7410(a)(2).

the State has resubmitted again for consideration here. For additional background, see the November 9, 2022 proposed and May 9, 2023 final rules. We had previously acted on the State's May 14, 2018; May 13, 2020; March 22, 2021; and May 20, 2022 submittals, but in this action, EPA is evaluating Colorado's May 3, 2024 SIP submittal intended to address reporting requirements in response to the May 9, 2023 limited disapproval. In this submission, the State has resubmitted the SIP provisions described above, explained why it has adequate reporting requirements for some of those SIP provisions, and made a commitment to add reporting requirements for the other SIP provisions.

V. EPA's Evaluation of SIP Control Measures in Light of New Information Submitted to EPA by the State of Colorado in the Commitment Letter

In this proposed action, we are evaluating Colorado's May 3, 2024 SIP submittal, which was intended to address reporting requirements in response to the May 9, 2023 limited disapproval, for the limited purpose of considering whether the submitted SIP provisions include reporting requirements that are adequate to comply with relevant requirements of CAA section 110 (as outlined in section II. of this document) and EPA regulations at 40 CFR 51.211(a). This consideration includes assessing whether the reporting requirements are sufficient to make the submitted SIP provisions legally and practicably enforceable by citizens.

Our proposed approval and conditional approval of the respective SIP provisions in today's action does not otherwise alter our previous determination that these rules implement RACT with respect to the sources covered by the rules, but for the specified deficiencies in reporting requirements identified in the limited disapproval. We are taking comment on today's proposal for 30 days. Any comments on this proposal should address only our proposed approval and conditional approval with respect to reporting requirements.

In the May 9, 2023 limited disapproval, we noted that the provisions at issue only required facilities to provide records to the state upon request of the state. In other words, these rules did not require sources to make any other periodic report related to compliance with the applicable provisions. We determined that this is inconsistent with CAA and regulatory requirements and undermines citizen enforceability of the specified rules. To address EPA's limited disapproval with respect to the absence of periodic reporting requirements, Colorado submitted a commitment letter to EPA on May 3, 2024. The Commitment Letter describes the process the State undertook to identify existing adequate reporting requirements for some of the SIP provisions subject to the limited disapproval, as well as a commitment to add adequate reporting provisions to the other SIP provisions subject to the limited disapproval. In this action, we are proposing to determine that the State has provided adequate information and made the requisite commitments to make further changes to its rules that would ensure compliance with the relevant CAA provisions under section 110 and EPA regulations, and to allow for citizen enforceability of these rules under CAA section 304, so long as the State fulfills its commitments as described in the Commitment Letter.

In evaluating what additional revisions might be appropriate to address EPA's limited disapproval, Colorado focused on three concepts to ensure public access to information necessary to evaluate compliance with SIP emission limitations: (1) the frequency of reporting; (2) the content of the information reported; and (3) public access to the reported information. More specifically, Colorado focused on three questions: (1) does the SIP require sources to report information necessary to evaluate compliance on a periodic basis?; (2) is the content of the information reported sufficient for a member of the public to evaluate whether the source is in compliance with applicable SIP emission limits?; and (3) can a member of the public access the requisite reported information? In general, EPA agrees with Colorado's approach of considering the three concepts of frequency, content, and public access to the information, as a useful approach to assess reporting requirements, based on the facts and circumstances related to a given SIP provision, such as the affected sources, form of the emission limitation, and other relevant considerations. Based upon EPA's evaluation of Colorado's May 3, 2024 SIP submission, which includes additional information submitted by the State and Colorado's commitment to revise certain rules, we are now proposing to approve some of the SIP provisions and to conditionally approve the other SIP provisions that were previously subject to the limited disapproval, as described below.

Metal Parts and Metal Product Rules, Reg. 7, Part C., Section I.L.

Reg. 7, part C, section I. contains rules for surface coating operations.[36] Section I.L. includes metal parts and metal products rules and applies to major and minor sources of VOC in the DMNFR Area. The rules require sources to use products that comply with VOC content limits listed in tables 1 and 2 of the regulation. The recordkeeping provisions in Reg. 7, part C., section I.L.5. currently require applicable records to be maintained for five years and made available to the Division upon request.

In its May 3, 2024 letter, the State clarifies that at least every five years, sources subject to metal parts and product rules must submit Air Pollution Emission Notices (APENs) that include records of the products used by the source. SIP-approved Reg. 3, part A, section II. requires that APENs specify the nature of the facility, process, or activity, and include an estimate of the annual actual emissions, including emission controls.[37] APENs are required for sources in a nonattainment area with uncontrolled actual emissions of criteria pollutants (including the ozone precursors VOC and NO_X) of one ton per year or more, and an affected source must submit them at least once every five years. Revised APENs must also be submitted by sources when various conditions occur, including when a significant change in annual actual emissions occurs, when new control equipment is installed, and when a permit limitation must be modified. Sources subject to section I.L.5. are required to list their most commonly used products on their APENs with enough specificity to enable the public to find the VOC content of those products. APENs are publicly available through the Division's Public Records Portal.[38]

In its Commitment Letter, Colorado also expresses concerns about EPA's statement regarding a potential director's discretion issue related to the APEN program in our response to comments in the May 9, 2023 final action.[39] In this document, we clarify

[36] Reg. 7, part C SIP-approved rules can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[37] SIP approved Reg. 3 APEN requirements can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[38] *See https://oitco.hylandcloud.com/CDPHERMPublicAccess/index.html.*

[39] *See* EPA, *Response to Comments for the Federal Register Notice on Air Plan Approval; Colorado; Serious Attainment Plan Elements and*

that the statement was intended to explain why we did not view the APEN program as sufficient by itself to provide adequate reporting requirements for the relevant rules subject to the limited disapproval. We did not intend to suggest that the APEN program itself creates a problematic director's discretion issue, or that the information required to be submitted through APENs in SIP-approved Reg. 3 is itself problematic. Rather, EPA intended the statement to be specific to the point addressed in that response to comments, and to whether the APEN program could sufficiently address the periodic reporting requirement deficiencies identified in the relevant regulations that resulted in the limited disapproval.

In its Commitment Letter, Colorado provided additional information about the APEN program, and has committed to incorporate additional reporting requirements for the metal parts and metal products source category. In particular, because the APEN list of products used by a source might not be entirely comprehensive and a change in products used might not trigger the submittal of a revised APEN under Reg. 3 (and which therefore might result in the APEN not being updated until the 5-year expiration of the previous notice), Colorado has committed to SIP revisions that will require sources to report information necessary to evaluate compliance on a periodic basis through, at a minimum, annual reports.[40] The content of the information reported through the semi-annual or annual reports will include information on VOC content limits of products used such that the public can access the information necessary to evaluate compliance with the applicable SIP emission limits in section I.L. A member of the public will be able to access the requisite reported information through the Division's Public Records Portal.[41] Accordingly, we are proposing to find that the revisions to which the State has committed would address the deficiencies identified in our May 9, 2023 limited disapproval, and we propose to conditionally approve Reg. 7, part C, section I.L.

Wood Products Coating Rules, Reg. 7, Part C., Section I.O.

Reg. 7, part C., section I.O. includes wood products coating rules applicable to major stationary sources of VOC emissions in the DMNFR Area.[42] The rules require sources to use products that comply with VOC content limits in section I.O.3. The recordkeeping provisions in section I.O.5. require applicable records to be maintained for five years and to be made available to the Division upon request.

In its Commitment Letter, the State clarifies that sources subject to wood products coating rules are subject to requirements for mandatory periodic reporting of certain information under state law for APEN filing requirements and under federal law for Title V reporting, such as deviations from emission limits. Sources must also submit an APEN to the State at least every five years, reporting the products used, among other things. These APENs are publicly available through the Division's Public Records Portal. Nonetheless, to help ensure that the public will be able to sufficiently evaluate whether sources are using products compliant with the VOC content limit in section I.O.3., and to ensure that the information is reasonably current (*i.e.,* updated more frequently than every 5 years), Colorado has committed to SIP revisions that will require sources to report information necessary to evaluate compliance on a periodic basis through, at a minimum, semi-annual reports.[43] The content of the information reported through the semi-annual reports will include information on VOC content limits of products used such that the public can access the information necessary to evaluate compliance with the applicable SIP emission limits in section I.O. A member of the public will be able to access the requisite reported information through the Division's Public Records Portal. Accordingly, we are proposing to find that the revisions to which the State has committed would address the deficiencies identified in our May 9, 2023 limited disapproval, and we propose to conditionally approve Reg. 7, part C., section I.O.

Combustion Equipment Rules, Reg. 7, Part E, Section II

Reg. 7, part E, section II. includes regulations for combustion equipment located at major sources of NO_X emissions in the DMNFR Area.[44] These rules require sources to comply with NO_X emission limits and combustion tuning requirements. The recordkeeping provisions in SIP-approved Reg. 7, part E, section II.A.7. require that affected sources keep records for a period of five years and make them available to the Division upon request. Additionally, as the State clarifies in the Commitment Letter, most of the subject combustion equipment is also subject to either continuous emissions monitoring or performance testing requirements, with corresponding reporting of excess emissions and performance testing. For example, the State explains that SIP-approved section II.A.8. requires sources that demonstrate compliance with emission limits in section II.A.4. using continuous emissions monitoring systems (CEMS) or continuous emissions rate monitoring systems (CERMS) to submit quarterly or semi-annual excess emissions reports to the Division. For units demonstrating compliance with section II.A.4 using performance testing, the State explains that sources must submit performance test reports to the Division within 60 days after completion of the performance test program. Under state law and the CAA Title V permitting program, the State further explains that sources are also subject to requirements for periodic reporting of certain information, such as deviations from emissions limitations. This information is publicly available through the Division's Public Records Portal. These specific reporting provisions were not the subject of the EPA limited disapproval. That limited disapproval applied to sources covered by the rule that are subject to combustion process adjustment requirements but did not have associated CEMS/CERMS or performance testing requirements.

To help ensure that members of the public will be able to evaluate compliance with the applicable emissions limitations, particularly with respect to sources not also subject to CEMS/CERMS or performance testing requirements, the State has committed to SIP revisions that will require sources to submit periodic reports containing information necessary to evaluate compliance.[45] The content of the information reported will include information with respect to sources not also subject to continuous monitoring or performance testing such that the public can access the information necessary to evaluate compliance with all of the applicable SIP emission limitations in Reg. 7, part E, section II. A member of the public will be able to access the

Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area (Apr. 25, 2023) (''Response to Comments''), at 48.

[40] Commitment Letter, p. 5.

[41] Colorado's Commitment Letter also lists other ways the public has access to reporting information. Colorado May 3, 2024 letter to EPA, p. 2–3.

[42] Reg. 7, part C SIP approved rules can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[43] Commitment Letter, p. 5.

[44] Reg. 7, part E SIP approved rules can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[45] Commitment Letter, p. 2–3.

requisite reported information through the Division's Public Records Portal. Accordingly, we are proposing to find that the revisions to which the State has committed would address the deficiencies identified in our May 9, 2023 limited disapproval, and we propose to conditionally approve Reg. 7, part E, section II.

Foam Manufacturing Rules, Reg. 7, Part E, Section V

Reg. 7, part E., section V. includes regulations for foam manufacturing operations located at major sources of VOC emissions in the DMNFR Area.[46] The rules require sources to comply with VOC emission limits in section V.A.4. The recordkeeping provisions in section V.A.7. require that affected sources keep records for a period of five years and make them available to the Division upon request.

The State's Commitment Letter clarifies that these sources are also subject to periodic reporting of certain information, including deviations from emissions limits such as pounds of VOC per material used, under the CAA federal Title V permitting program and state law. Colorado also explains that as to performance tests on emission control equipment that are required in Reg. 7, part E, section V.A.6., subject sources must submit test reports to the Division within 30 days of the performance tests, per SIP-approved requirements in the Common Provisions,[47] and that these reports are publicly available through the Division's Public Records Portal.

To help ensure that members of the public will be able to sufficiently evaluate source compliance with applicable emission limits, the SIP revisions that Colorado has committed to make as described in the Commitment Letter will require sources to report information necessary to evaluate compliance on a periodic basis through semi-annual reports.[48] The content of the information reported through the semi-annual reports will include information on a pounds of VOC per material used basis such that the public can access the information necessary to evaluate compliance with the applicable SIP emission limits in section V. A member of the public will be able to access the requisite reported information through the Division's Public Records Portal.[49] Accordingly, we are proposing to find that the revisions to which the State has committed would address the deficiencies identified in our May 9, 2023 limited disapproval, and we propose to conditionally approve Reg. 7, part E., section V.

Inspections of and Performance Testing for Storage Tanks and Centrifugal Compressors, Reg. 7, Part D, Sections I.E. and I.J.[50]

Reg. 7, part D., sections I.E. and I.J. include regulations for inspections and performance testing for storage tanks and centrifugal compressors located at major and minor VOC oil and gas exploration and production operations, natural gas compressor stations, and natural gas drip stations in the DMNFR Area.[51] The rules require sources to comply with SIP emission limitations, including combustion efficiency requirements for storage tank controls in I.D.3.a.(i) and performance testing requirements for enclosed combustion devices in sections I.E.3. and I.J.1.h.

The State's Commitment Letter explains how members of the public can obtain information on a periodic basis with the relevant content to evaluate compliance with storage tank emission limitations and any enclosed combustion device testing for the specified tanks or compressors. The State explains that owners or operators of storage tanks must conduct weekly inspections and submit an annual report to the Division with information in section I.F.3.c. to demonstrate compliance with the 95% VOC emission control strategy.[52] The State further explains that this reporting must include a list of all storage tanks controlled pursuant to this rule, the monthly VOC emissions and emission factor, and the control efficiency for air pollution control equipment for each storage tank. Sources must also submit APENs at least every five years for storage tanks with uncontrolled actual VOC emissions equal to or greater than one ton per year. In the APENs, owners or operators report, among other information, actual annual emissions and control device efficiency. These annual reports and APENs are available to the public in the Division's Public Records Portal.

In the Commitment Letter, Colorado also explains that section I.E.3.a. requires owners or operators of storage vessels with the potential for VOC emissions equal to or greater than six tons per year to conduct performance testing of the control device used to reduce emissions at least every five years. Section I.J.1.h. requires that combustion devices used to reduce VOC emissions from wet seal fluid degassing systems on wet seal centrifugal compressors be tested at least every five years.[53] For storage vessels and wet seal centrifugal compressors subject to sections I.E.3.a. and I.J.1.h., the State explains that the federal testing requirements in 40 CFR 60.5413a that Colorado has incorporated by reference into its SIP include periodic reporting requirements.[54] Colorado further explains that these testing requirements include performance testing of control devices used to reduce VOC emissions from storage vessels and wet seal fluid degassing systems on wet seal centrifugal compressors.

Colorado also explains that the provisions in EPA's New Source Performance Standards (NSPS) OOOOa, incorporated into the SIP and applicable to any existing or new storage vessel or wet seal centrifugal compressor subject to the rule, requires owners or operators to submit performance test reports on a periodic basis. Accordingly, based on the additional information and clarification provided by the State in the Commitment Letter that NSPS OOOOa provisions for submitting performance test reports to EPA on a periodic basis have been incorporated into the SIP and that a member of the public will be able to access the requisite reported information through EPA,[55] we are now proposing to approve the provisions in sections I.E. and I.J. with respect to the adequacy of reporting requirements.

[46] Reg. 7, part E SIP approved rules can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[47] *See* section II.C.1. SIP-approved Common Provisions can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip. See also* May 15, 2024 email from Leah Martland, Colorado Air Pollution Control Division, to Abby Fulton, EPA, ''Request On Commitment Letter to EPA'' verifying the SIP-approved citation and explanation that the thirty day time period is specified in the Division's Compliance Test Manual (see page 9), which is available at *https://cdphe.colorado.gov/compliance-and-enforcement.*

[48] Commitment Letter, p. 7.

[49] *See* p. 2–3 of the Commitment Letter for a description of ways the public can access records and information.

[50] Previously Reg. 7, sections XII.E. and XII.J.

[51] Reg. 7, part D SIP approved rules can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[52] Reg. 7, part D., section I.F.3.a.

[53] The applicability threshold for performance testing of control devices for storage vessels and wet seal centrifugal in sections I.E.3.a. and I.J.1.h. is the same for control devices subject to NSPS OOOOa performance testing.

[54] *See* initial performance test reporting requirements in § 60.5413a(b)(5)(i)–(ii), reporting requirements of periodic performance tests in §§ 60.5420a(b)(9) and 60.5413a(d)(12), and reporting requirements for control devices tested by the manufacturer in §§ 60.5420a(b)(10) and 60.5413a(e)–(e)(1).

[55] Performance test information submitted through EPA's Central Data Exchange (*https://cdx.epa.gov/*) is available to the public. *See* 40 CFR 60.5420a(b)(9).

Consumer Products and Architectural and Industrial Maintenance (AIM) Coatings Rules, Reg. 21, Parts A and B

Reg. 21, parts A and B include regulations for consumer products and AIM coatings.[56] The rules apply to any person who sells, supplies, offers for sale, distributes for sale, or manufactures for sale consumer products in Colorado. Reg. 21 also applies to any person who supplies, sells, offers for sale, or manufacturers any AIM coating in Colorado and any person who applies or solicits the application of any AIM coating in Colorado. While these requirements apply statewide in Colorado, for purposes of federal applicability in Colorado's SIP, these requirements are only included in the SIP for sources in Colorado's ozone nonattainment area. The rules require affected entities to comply with the VOC content limits for consumer products in part A, table 1 and AIM coatings in part B, table 1. Container labeling requirements for consumer products are in part A, section III., and provide, among other things, that labels must include the date the product was manufactured or a date code representing the date of manufacture. Container labeling requirements for AIM coatings are in part B, section III., and provide, among other things, that labels must include the date the coating was manufactured or a date code representing the date of manufacture, and the applicable emission limitation (*e.g.,* VOC content in grams per liter of coating).

In the State's Commitment Letter, Colorado explains how members of the public can obtain information to assess compliance with the VOC content limits through existing publicly available means.[57] Colorado has provided additional explanation about how already available information such as product labels, manufacturer websites, safety data sheets, and product testing give the public a way to evaluate a consumer product or AIM coating's compliance with emission limits in Reg. 21. Based on the availability of this information, the State has indicated why additional reporting requirements for the State's version of the AIM rule, unlike the federally applicable AIM rule, would not require any additional periodic source reporting requirements to make it enforceable. For these reasons, EPA proposes to agree that no additional reporting is needed with respect to this SIP provision. Accordingly, after considering all the information provided in the Commitment Letter, EPA is now proposing to approve the Reg. 21 provisions with respect to the adequacy of reporting.

VI. Proposed Action

For the reasons explained above, EPA proposes to conditionally approve revisions to metal parts and metal products coatings rules in Reg. 7, part C, section I.L.; wood products coatings rules in Reg. 7, part C, section I.O.; rules for combustion equipment at major sources in Reg. 7, part E, section II.; and rules for foam manufacturing operations in Reg. 7, part E, section V. as described in the State's Commitment Letter. We also propose to fully approve storage tank emission control and storage tank and wet seal centrifugal compressor control device testing requirements for oil and gas exploration and production operations, natural gas compressor stations, and natural gas drip stations in the DMNFR Area in Reg. 7, part D., sections I.E. and I.J., and consumer products and AIM coatings rules in Reg. 21, which were previously subject to our May 9, 2023 limited disapproval based on the additional information that the State has provided.

VII. Consideration of Section 110(*l*) of the CAA

Under section 110(*l*) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(*l*) requires that each revision to an implementation plan submitted by a state be adopted by the state after reasonable notice and public hearing. The Colorado SIP provisions that the EPA is proposing to approve and to conditionally approve in this action do not interfere with any applicable requirements of the Act. In the case of those for which EPA is proposing approval, the State has provided additional information and explanation concerning how the existing provisions require reporting sufficient to meet CAA requirements. In the case of those for which EPA is proposing conditional approval, the State is committing to adopt and submit additional reporting obligations on sources that EPA anticipates will meet CAA requirements. Thus, EPA is proposing to find that the approval and conditional approval of the State's May 3, 2024 SIP submission is consistent with section 110(*l*). Colorado's submittals provide adequate evidence that the provisions were adopted after reasonable public notice and hearings. Therefore, EPA proposes to determine the CAA section 110(*l*) requirements are satisfied.

VIII. Environmental Justice Considerations

As discussed in our May 9, 2023 final rule, the EPA reviewed demographic data, which provides an assessment of individual demographic groups of populations living within the DMNFR Area. The EPA then compared the data to the national averages for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that for populations within the DMNFR Area, there are census block groups in which the percentage of people of color (persons who reported their race as a category other than White alone and/or Hispanic or Latino) is greater than the national average of 39%, with some census block groups ranking above the 80th percentile.[58] There are also census block groups within the DMNFR Area where the percentage of low-income population is above the national average of 33% with some census block groups ranking above the 80th percentile.[59]

This proposed action is intended to ensure that certain Colorado regulations have adequate reporting requirements or other mechanisms to make them legally and practicably enforceable, in accordance with the citizen suit provision of CAA section 304. We expect that this action will generally be neutral or (combined with the anticipated final action) contribute to reduced environmental and health impacts on all populations in the DMNFR Area, including people of color and low-income populations. At a minimum, we expect that this action will not worsen any existing air quality. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

[56] Reg. 21 SIP approved rules can be found at *https://www.epa.gov/air-quality-implementation-plans/epa-approved-statutes-and-regulations-colorado-sip.*

[57] Commitment Letter, p. 11.

[58] *See* ''EJSCREEN Maps'' pdf, available within the docket.

[59] *Id.*

Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The AQCC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 29, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–17091 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2021–0663; EPA–R07–OAR–2021–0851; FRL–11688–01–R7]

Air Plan Disapproval; Missouri; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) is proposing to disapprove a State Implementation Plan (SIP) revision submitted by Missouri (the State) on November 1, 2022 regarding interstate transport for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The ''good neighbor'' or ''interstate transport'' provision requires that each State's SIP contain adequate provisions to prohibit emissions from within the State from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other States. This requirement is part of the broader set of ''infrastructure'' requirements designed to ensure that the structural components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA. Missouri previously submitted a SIP revision regarding ozone transport for the 2015 8-hour ozone NAAQS (2015 ozone NAAQS) on June 10, 2019, which the EPA previously disapproved. Missouri submitted a second SIP submission, reanalyzing its good neighbor obligations and making revisions to its SIP, on November 1, 2022. In this document, the EPA proposes to disapprove the November 1, 2022, submission as inadequate to address Missouri's obligations. This disapproval, if finalized, will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, unless the EPA approves a subsequent SIP submission that meets these requirements. Disapproval does not start a mandatory sanctions clock.

DATES: Written comments must be received on or before September 20, 2024. *Virtual public hearing:* The EPA will hold a virtual public hearing on August 21, 2024. The last day to pre-register to speak at the hearing will be August 19, 2024. On August 20, 2024,

the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at *https://www.epa.gov/mo/air-missouri*. If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 13, 2024.

For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0851, to the Federal Rulemaking Portal: *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: There are two dockets supporting this action, EPA–R07–OAR–2021–0851 and EPA–HQ–OAR–2021–0663. EPA–R07–OAR–2021–0851 contains information specific to Missouri, including the notice of proposed rulemaking. Docket ID No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 ozone NAAQS that are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket ID No. EPA–R07–OAR–2021–0851. All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov*.

To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/mo/air-missouri,* or contact us via email at *mcintyre.gerald@epa.gov*. For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7714; email address: *stone.william@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Virtual public hearing: The EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA will hold a virtual public hearing to solicit comments on August 21, 2024.

The hearing will convene at 9 a.m. Central Time (CT) and will conclude at 3 p.m. CT. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details, including information on how to register for the virtual public hearing, on the virtual public hearing website at *https://www.epa.gov/mo/air-missouri*.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/mo/air-missouri,* or contact us via email at *mcintyre.gerald@epa.gov*. The last day to pre-register to speak at the hearing will be August 19, 2024. On August 20, 2024, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at *https://www.epa.gov/mo/air-missouri*. Additionally, requests to speak will be taken on the day of the hearing as time allows.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Each commenter will have approximately 3 to 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by including it in the registration form or emailing it to *mcintyre.gerald@epa.gov*. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the virtual public hearing. A transcript of the virtual public hearing, as well as copies of oral presentations submitted to the EPA, will be included in the docket for this action.

The EPA is asking all hearing attendees to pre-register, even those who do not intend to speak. The EPA will send information on how to join the public hearing to pre-registered attendees and speakers. Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/mo/air-missouri*. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us via email at *mcintyre.gerald@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 13, 2024. The EPA may not be able to arrange accommodations without advance notice.

Preamble glossary of terms and abbreviations: The following are abbreviations of terms used in the preamble.

$/ppb Dollar-per-ppb
2016v1 2016-Based Emissions Modeling Platform Version 1
2016v2 2016-Based Emissions Modeling Platform Version 2
2016v3 2016-Based Emissions Modeling Platform Version 3
AQAT Air Quality Analysis Tool
CAA Clean Air Act
CAIR Clean Air Interstate Rule
CBI Confidential Business Information
CSAPR Cross State Air Pollution Rule
DV Design Value
EGU Electric Generating Unit
EPA Environmental Protection Agency
FIP Federal Implementation Plan
LADCO Lake Michigan Air Directors Consortium
LMOS Lake Michigan Ozone Study

MDA8 Maximum Daily Average 8-Hour
MoDNR Missouri Department of Natural Resources
MOVES3 Motor Vehicle Emission Simulator Version 3
MJO Multi-Jurisdictional Organization
NAAQS National Ambient Air Quality Standards
NO_X Nitrogen Oxides
Non-EGU Non-Electric Generating Unit
NODA Notice of Data Availability
ppb Parts per Billion
ppm Parts per Million
RTC Response to Comments
SCR Selective Catalytic Reduction
SIP State Implementation Plan
SNCR Selective Non-Catalytic Reduction
SOA CC State of the Art Combustion Controls
SSM Startup, Shutdown, and Malfunction
TSD Technical Support Document

Table of Contents

I. Background

On October 1, 2015, the EPA promulgated a revision to the 2015 ozone NAAQS, lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm) for the 8-hour standard.[1] Section 110(a)(1) of the CAA requires States to submit, within three years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''interstate transport'' or ''good neighbor'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other States due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another State (Prong 1) or interfere with maintenance of the NAAQS in another State (Prong 2). The EPA and States must give independent significance to Prong 1 and Prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[3]

A. Executive Summary

In this notice of proposed rulemaking, the EPA is providing an opportunity for public comment on its proposed conclusion that the November 1, 2022 SIP submission (hereafter November 2022 Submission or Submission) from Missouri does not contain the necessary provisions to prohibit emissions from sources within the State from significantly contributing to nonattainment or interfering with maintenance of the 2015 ozone NAAQS in downwind areas as required by the CAA. The EPA is proposing to disapprove the November 2022 Submission as to both Prong 1 and 2 of CAA section 110(a)(2)(D)(i)(I) as insufficient on the basis that it fails to adequately support its determination of Missouri's good neighbor obligations for the 2015 ozone NAAQS.

Previously, the EPA disapproved a prior submission provided by the Missouri Department of Natural Resources (MoDNR) to address these obligations. *See* 88 FR 9336 (February 13, 2023). Following the EPA's proposal to disapprove that submission and proposal for a Federal implementation plan (the proposed Good Neighbor Plan), signed and made public in February and March of 2022, respectively, the MoDNR developed this new Submission. Following review of a draft version of the submission, the EPA advised the MoDNR by letter in fall of 2022 regarding a number of concerns with respect to its approvability. The MoDNR made several adjustments purporting to address the EPA's comments and submitted the Submission as a SIP revision on November 1, 2022, several months after the close of the comment periods on the proposal to disapprove the prior submission and the proposed Good Neighbor Plan.

To evaluate this Submission, the EPA applied its longstanding approach to evaluating good neighbor obligations, the 4-step interstate transport framework (further detailed in section I.D. of this document) that the MoDNR itself used to organize its Submission. The MoDNR specifically worked from the EPA's proposed determinations regarding these obligations by applying the 4-step framework as set forth in the proposed Good Neighbor Plan, 87 FR 20036 (April 6, 2022), while presenting a series of arguments in support of a less stringent set of obligations.

The EPA proposes to find that the MoDNR's November 2022 Submission fails to provide an adequate technical and legal basis to demonstrate that Missouri's good neighbor obligations are adequately addressed, and it unreasonably concludes that only emissions improvements relying on existing control installations at certain identified power plants in the State (which are not, in fact, permanent or enforceable prohibitions, as explained in section III.D.) are sufficient to prohibit Missouri's significant contribution for the 2015 ozone NAAQS. The evidence indicates that additional, cost-effective emissions control opportunities are available across a number of Missouri's large emissions sources and that the MoDNR has not conducted a sufficient review of those emissions control opportunities or

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (D.C. Cir. 2008).

its broader source inventory. See section III.C of this document.

The EPA would reach these conclusions regarding this Submission even in the absence of the Good Neighbor Plan; however, the record evidence that the EPA has developed in the course of developing the Good Neighbor Plan provides important information that assists in the evaluation of this Submission. The EPA always strongly encourages States to develop SIP revisions that can replace or forestall the need for FIPs. The EPA explained in the proposed Good Neighbor Plan that States remain free to develop SIP submissions, and consistent with prior good neighbor rulemakings such as the Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR), the EPA provided States as much information as the Agency could supply at that time to support the ability of States to submit SIP revisions to achieve the emissions reductions that the EPA believed necessary to eliminate significant contribution. *Id.* at 20040. That proposal could not definitively establish or prejudge the necessary components of an approvable SIP; however, the EPA's discussion there provided notice to Missouri and other States of the EPA's own evidence concerning good neighbor impacts and available controls, and, therefore, the EPA's expected process for reviewing SIPs in light of that evidence. The MoDNR had that information available, and indeed worked from it, at the time it developed the Submission here.

Specifically, in the proposed Good Neighbor Plan, the EPA explained that States may select emissions reductions strategies that differ from the emissions controls included in the proposed FIP. The EPA went on to state that for a State to remove all FIP provisions through an approved SIP revision, a State would need to address all of the required reductions determined through the EPA's own review of the evidence and addressed by the FIP for that State, though the States could go about achieving those reductions differently. *Id.* at 20149. The EPA also stated in the proposal that if States were to regulate their Electric Generating Units (EGUs), in the case of SIP submissions not adopting the EGU trading program, the EPA would evaluate such a transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the identified emissions reductions (*i.e.,* reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. *Id.* at 20151. Similarly, for non-Electric Generating Units (non-EGUs), the EPA stated that a State's SIP submission must provide adequate provisions to prohibit an equivalent or greater amount of nitrogen oxide (NO_X) emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other State. *Id.*[4]

The final Good Neighbor Plan signed on March 15, 2023, contained a discussion on SIP submissions similar to the proposal's discussion, which expanded on and clarified certain points in response to comments. There, the EPA reiterated that States remain free to adopt alternative approaches to addressing their significant contribution that differ from the FIP promulgated for that State. However, the EPA stated that, given the Agency's own extensive analysis, it did not anticipate revisiting its findings at Steps 1 or 2 of the transport framework. See 88 FR 36839. Further, the EPA explained that the level of reductions required by the FIP provides an ''important benchmark'' for States in evaluating possible replacement SIPs, and that we generally anticipated that a SIP seeking an alternative approach to eliminating its significant contributions would need to establish an equivalent level of emissions reductions to what the FIP requires at Step 3, and any such replacement SIP will need to comply with CAA section 110(*l*). *Id.*

The EPA recognizes that the MoDNR made this submission in November of 2022, several months after the proposed Good Neighbor Plan was published, and before the final Good Neighbor Plan was issued on March 15, 2023. The information provided to States regarding what the EPA anticipated would likely be needed to develop a SIP that satisfies the 2015 ozone NAAQS good neighbor obligations stated in the proposal was nonetheless available for the MoDNR to consider in developing this submission. This guidance was also consistent with the EPA's stated policies on approvable good neighbor SIPs across many prior transport rulemakings going back at least to the Clean Air Interstate Rule (CAIR) in 2005. *See, e.g.,* 87 FR 55692, 55693 (September 12, 2022); 86 FR 60602, 60607–08, 60610–11 (November 3, 2021); 86 FR 23054, 23147–48 (April 30, 2021); 81 FR 74504, 74569 (October 26, 2016); 76 FR 48208, 48326–28 (August 8, 2011); 70 FR 25162, 25259–62 (May 12, 2005).

As each of these prior notices make clear, when the EPA is evaluating and acting on SIP submissions following the promulgation of a final transport FIP, the EPA has recognized that the FIP can serve an important purpose in helping the EPA to evaluate the sufficiency of a SIP submission (even when the SIPs were submitted prior to the final FIP). However, the EPA will always carefully evaluate any alternative information or arguments a State puts forward in support of a different understanding of their good neighbor obligations. Thus, in disapproving SIP submissions from New York and New Jersey regarding good neighbor obligations for the 2008 ozone NAAQS, following the promulgation of the Revised CSAPR Update (which had been submitted prior to that rule even being proposed), the EPA explained that neither State had provided ''a sufficient demonstration'' that the permanent and enforceable measures adopted into the States' SIPs prohibited ''significant contribution'' in the manner that had been determined in the Revised CSAPR Update, nor ''provided an alternative method for doing so.'' 86 FR 60607–08, 60610–11.

Similarly here, while the MoDNR has not followed the approach of adopting emissions control measures that are either identical or equivalent to the proposed (or final) Good Neighbor Plan, the EPA continues to recognize that States may submit an alternative approach to meeting their good neighbor obligations, and the EPA will approve such submissions as compliant with the Act's requirements assuming the State has set forth a technically and legally justifiable approach. Consistent with the EPA's approach as discussed in prior rulemakings, the EPA will evaluate such SIP submissions on a case-by-case basis. In the original CSAPR rulemaking, the EPA explained that where States do not adopt the specific control requirements of a Good Neighbor FIP, they still must ''provide adequate provisions to prohibit . . . emissions that are determined in the Transport Rule to contribute significantly to nonattainment or interfere with maintenance in another State or States. EPA will review such a SIP on a case-by-case basis.'' *See, e.g.,* 76 FR 48328. In the final Good Neighbor Plan, the EPA explained that although there is not a fixed, mass-based emissions budget established for each State in that action, there are other objective metrics that can guide States in developing SIPs. *See* 88 FR 36842. While the State need not conduct its analysis or select emissions

[4] The EPA clarifies that this language was not intended to suggest that states must regulate EGUs, or the same non-EGU industries identified in the Good Neighbor Plan. Because ''significant contribution'' is ultimately defined at the state level, a state may choose to regulate entirely different categories of sources from a transport FIP so long as the amount of emissions that constitutes ''significant contribution'' is prohibited.

control strategies in a manner identical to the EPA's approach, the end result must nonetheless be adequate to prohibit emissions that significantly contribute to nonattainment and interfere with maintenance.

Further, among the factors the EPA stated in 2018 that it would consider in evaluating alternative approaches is whether consistency in obligations is maintained among States given the ''collective contribution'' nature of the interstate ozone pollution problem. In a list of ''guiding principles'' that the EPA identified for States to consider in an appendix to the modeling memorandum issued in March 2018 (see note 14 infra), the EPA noted that consistency among States is ''a particularly acute issue with respect to regional transport issues in which multiple States may be implicated.'' In addition, the EPA encouraged ''collaboration among States linked to a common receptor and among linked upwind and downwind States in developing and applying a regionally consistent approach to identify and implement good neighbor obligations.''

The MoDNR's submission does not reflect any evident collaboration with other States with whom it shares linked receptors, nor with the States in which those receptors are located. The approach the MoDNR set forward in its November 2022 submission would not achieve emissions reductions (or downwind air quality improvements) that are comparable to those the EPA found warranted to address Missouri's good neighbor obligations for the 2015 ozone NAAQS or those of the other States with which Missouri shares common receptor linkages. Nonetheless, the EPA is not proposing to disapprove this Submission simply due to a lack of equivalency with the Good Neighbor Plan. In this proposal, the EPA sets forth a thorough evaluation of all aspects of the MoDNR's November 2022 Submission to determine whether its analytic conclusions and regulatory approach could be technically or legally justified.

The MoDNR's Submission would, if approved, require a minimum level of emissions control performance from certain named EGUs based on the existing NO_X-control technologies installed at those units. This bears some similarity to the near-term emissions control strategies that the EPA found appropriate for EGUs in the Good Neighbor Plan for States linked in the 2023 analytic year. However, the EPA has found that the MoDNR's approach achieves fewer emissions reductions than the EPA has found could be cost-effectively achieved in the near term at EGUs in the State, the foregone emissions reductions are not achieved through any other means, and the MoDNR has not justified this alternative level of stringency with respect to these strategies.

Further, even though Missouri remains linked to at least one receptor through the 2026 analytic year in the modeling it relies on in its Submission (notwithstanding the MoDNR's arguments that no such linkages exist in 2026, which the EPA is proposing to disapprove), the MoDNR has not imposed any additional emissions control strategies on its sources that could be implemented by that year. The MoDNR instead argues, using a ''dollar-per-ppb'' metric, that such reductions are not needed from its sources because they would not be cost-effective. However, setting aside a number of analytic challenges associated with using such a metric, Missouri did not consistently apply this metric within its own Submission nor demonstrate how this metric would apply across other linked upwind States so as to provide an equitable, workable, or consistent standard for defining significant contribution.

The MoDNR further argues that several particular named non-EGU sources in Missouri are already achieving a level of emissions control equivalent to what was proposed for these source types in the proposed Good Neighbor Plan. However, the MoDNR limited its analysis to the provisional list of sources in the proposed Good Neighbor Plan that the EPA was clear was not intended to be definitive, and the MoDNR conducted no comprehensive survey of the non-EGU industrial sources in Missouri. Despite using the proposed Good Neighbor Plan as its information source for identifying these potential emissions control requirements, the MoDNR did not establish that its non-EGU sources are controlled to a level equivalent to Missouri's Good Neighbor Plan FIP (either as finalized or proposed) or that its divergence from the EPA's conclusions was technically supported.

Thus, the November 2022 Submission at times makes technically unsupported departures from the detailed, comprehensive analytical findings in the proposed Good Neighbor Plan (such as the EPA's evaluation of near-term emissions control strategies at EGUs), while at other times unreasonably limits its own analysis solely to the proposed Good Neighbor Plan in areas the EPA was clear were not intended to be definitive considering their analytical purpose (such as the non-EGU screening evaluation).

Finally, the EPA has identified several reasons why the MoDNR's approach using certain ''Consent Agreements'' with particular named EGU sources is not approvable as the means for implementing those emissions control requirements that the MoDNR concedes would be appropriate to prohibit its significant contribution. Among other issues, these agreements are structured so that they are not yet in effect and will not take effect unless the EPA approves the Submission; however, if the EPA does not ''fully approve'' the Submission, then the covered sources can unilaterally withdraw from the Agreements. The Agreements additionally provide for their termination at any time by consent of the parties and include broad liability waivers. These provisions fail several important CAA requirements for SIPs, including that emissions reduction measures must be permanent and not subject to modification except through the prescribed processes in the Act.

With this general overview of the MoDNR's Submission in mind, the EPA has identified the following specific aspects of the MoDNR's November 2022 Submission that are inadequate and therefore render the Submission not approvable under CAA section 110(k)(3), because they do not meet the requirements of the good neighbor provision for the 2015 ozone NAAQS:

The EPA is disapproving the November 2022 Submission as a whole because the Agency has not identified any method by which the Submission may be partially approved or approved on a limited or conditional basis. Here, we summarize these bases for disapproval, as guided by our 4-step interstate transport framework (the EPA further explains its framework in section I.D.). The EPA's full evaluation of the November 2022 SIP Submission can be found in section III. of this document.

At Step 2, the EPA proposes to find that the MoDNR did not justify in the November 2022 Submission the use of a 1 ppb or 2 ppb contribution threshold for certain receptors to which it contributes in the 2016v2 modeling, and these same deficiencies in the MoDNR's analysis equally apply to the receptor linkages identified in the 2016v3 modeling. The MoDNR therefore incorrectly concluded that Missouri is not linked (*i.e.,* ''contributing'') to certain receptors in 2023 and no longer linked to any receptors in 2026. (The EPA notes that identical arguments were addressed in the SIP Disapproval Action with respect to Missouri's first SIP submission and in the Good Neighbor Plan, and the EPA is not reopening

those determinations in this action.) The EPA is not disapproving the Submission for using the 2016v2 modeling; however, the EPA's analysis is informed by the 2016v3 modeling and the ''violating-monitor'' maintenance-receptor methodology, which reflects substantial public input obtained through the SIP Disapproval and Good Neighbor Plan rulemakings, improves upon the 2016v2 modeling, and substantiates that Missouri is linked to at least one receptor through the 2026 analytic year.

At Step 3, the EPA proposes to find that the MoDNR conducted an inadequate analysis of its sources' emissions contribution to downwind receptors to determine what amount of those emissions ''significantly contribute to nonattainment'' or ''interfere with maintenance'' in the November 2022 Submission. The MoDNR purported to follow the multifactor Step 3 analysis in the proposed Good Neighbor Plan but then identified specific points where it reached alternative conclusions regarding its sources' emissions, thus resulting in the identification of a substantially smaller amount of emissions reduction than the EPA found necessary to eliminate significant contribution in the Good Neighbor Plan. These departures from the EPA's analysis are at odds with the data available to the EPA or are otherwise not adequately justified. The EPA's analysis confirms, consistent with the MoDNR's own methodology using the Air Quality Assessment Tool (AQAT), that the emissions reductions that would be achieved under the November 2022 Submission produce measurably less improvement in ozone levels at the downwind receptors to which Missouri is linked than the Good Neighbor Plan.

With respect to EGUs, the EPA finds that the MoDNR did not adequately explain why additional, near-term, cost-effective emissions reductions were not being required of its EGU sources. Further, the MoDNR did not adequately analyze further emissions control opportunities at its EGU sources or establish why these were not cost-effective. The MoDNR's use of a ''dollar-per-ppb'' metric to dismiss further emissions reductions from both EGUs and non-EGUs as not cost-effective was not adequately explained and rested on unsubstantiated assertions regarding emissions-control costs and downwind changes in ozone levels. In addition, this metric was applied inconsistently to sources within the State and was not coordinated with the obligations of States that share common receptor linkages with Missouri. The MoDNR's additional analysis of its non-EGU sources was not based on a comprehensive inventory of industrial sources in the State but rather drew from a list of tentatively identified facilities from the EPA's proposed Good Neighbor Plan that the EPA was clear was not intended to be definitive. (The Good Neighbor Plan establishes applicability criteria to define source coverage rather than identifying each covered source by name; it also covers new in addition to existing units meeting those applicability criteria. *See* 88 FR 36685.) The MoDNR failed to examine whether there was cost-effective emissions control potential across the State's inventory of large non-EGU NO_X-emitting sources.

At Step 4, the EPA proposes that even as to those emissions reductions the MoDNR's November 2022 Submission purports to require, it is inadequate to meet good neighbor requirements for the 2015 ozone NAAQS and other requirements of the Act. First, the Consent Agreements with certain named EGUs are not an acceptable method for implementing the emissions control strategies the MoDNR identified, because these agreements are not in effect, the trigger by which they could come into effect is not appropriate and inconsistent with the timing requirements of the good neighbor provision, and their terms allow for modification or withdrawal of requirements through processes that conflict with several bedrock CAA requirements regarding SIP revisions. Second, the MoDNR's approach of regulating only certain named existing EGU sources, rather than regulating both existing and new sources on industry-wide bases, fails to analyze or address the potential for production and emissions shifting among sources, which the EPA has consistently identified is an important consideration in developing emissions control strategies to address transport obligations. *See, e.g.,* 70 FR 25261 (May 12, 2005).

Taken together, the deficiencies identified in this summary and further detailed in section III. lead the EPA to propose to conclude it cannot approve the MoDNR's November 2022 Submission as meeting the requirements of the good neighbor provision for the 2015 ozone NAAQS. The EPA is ready to work with the MoDNR and the State of Missouri and any other state to develop an approvable SIP submission to meet these requirements.

B. Description of the EPA's 4-Step Interstate Transport Regulatory Process

For decades, when evaluating SIPs and formulating FIPs, the EPA has consistently utilized the 4-step interstate transport framework (or 4-step framework), which was developed to give meaning to the critical statutory terms in CAA section 110(a)(2)(D)(i)(I) and to provide a reasonable organization to the analysis of the complex air quality challenge of interstate ozone transport. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior NAAQS using the 4-step framework in several regulatory actions, including the CSAPR, which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,[5] and the CSAPR Update[6] and the Revised CSAPR Update,[7] both of which addressed the 2008 ozone NAAQS.[8] The EPA is using the 4-step framework to organize its evaluation of the MoDNR Air Pollution Control Program November 1, 2022, interstate transport SIP submission for the 2015 ozone NAAQS.

Shaped through the years by input from State air agencies[9] and other stakeholders on the EPA's prior interstate transport rulemakings and SIP actions,[10] as well as a number of court decisions, the EPA has developed and used the 4-step interstate transport framework to evaluate a State's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone

[5] Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[6] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[7] Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021).

[8] In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019). The Revised CSAPR Update was upheld in *Midwest Ozone Group* v. *EPA,* 61 F.4th 187 (D.C. Cir. 2023).

[9] *See* 63 FR 57356, 57361 (October 27, 1998).

[10] In addition to CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

NAAQS: (1) identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify States that impact those air quality problems in other (*i.e.,* downwind) States sufficiently such that the States are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind State's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions. The EPA does not require States to use the 4-step framework in good neighbor SIP submissions, but it is a useful organizational tool that has been upheld by the Supreme Court as ''permissible, workable, and equitable.'' *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 524 (2014).

C. The EPA's Ozone Transport Modeling

In general, the EPA has performed nationwide air quality modeling to project ozone design values (DV), which are used in combination with measured data to identify nonattainment and maintenance receptors at Step 1. To quantify the contribution of emissions from individual upwind States on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors at Step 2, the EPA has performed multiple iterations of nationwide, State-level ozone source apportionment modeling for 2023. The source apportionment modeling projected contributions to ozone at receptors from precursor emissions of anthropogenic NO_X and volatile organic compounds (VOCs) in individual upwind States.

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to air agencies for evaluation of interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which the Agency requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[11] In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because this year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 ozone NAAQS.[12] On October 27, 2017, the EPA released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments (RTC) on the NODA, and was intended to provide information to assist States' efforts to develop SIP submissions to address interstate transport obligations for the 2008 ozone NAAQS.[13] On March 27, 2018, the EPA issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at Step 1 of the 4-step interstate transport framework.[14] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist States in evaluating their impact on potential downwind air quality problems for the 2015 ozone NAAQS under Step 2 of the 4-step interstate transport framework.[15] The EPA notes that the MoDNR relied upon 2023 modeling contribution data released with the March 2018 memorandum in developing its 2019 SIP submission. The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to States developing interstate transport SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.[16]

Following the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/State collaborative project.[17] This collaborative project was a multi-year joint effort by the EPA, MJOs, and States to develop a new, more recent emissions platform for use by the EPA and States in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the notice of proposed rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[18] Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform were also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.[19]

Following the final Revised CSAPR Update, the EPA made further updates to the 2016-based emissions platform to include updated onroad mobile emissions from Version 3 of the EPA's Motor Vehicle Emission Simulator (MOVES3) model [20] and updated

[11] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[12] 82 FR 1735 (January 6, 2017).

[13] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (October 2017 memorandum), available in Docket ID No. EPA–HQ–OAR–2021–0663.

[14] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (March 2018 memorandum), available in Docket ID No. EPA–HQ–OAR–2021–0663.

[15] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.''

[16] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (August 2018 memorandum), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in Docket ID No. EPA–HQ–OAR–2021–0663.

[17] The results of this modeling, as well as the underlying modeling files, are included in Docket ID No. EPA–HQ–OAR–2021–0663. The 2016v1 emissions modeling technical support document is available in Docket ID No. EPA–HQ–OAR–2020–0272–0187, and is included in this docket, Docket ID No. EPA–R07–2021–OAR–0851. Both dockets are available at *https://www.regulations.gov*.

[18] *See* 85 FR 68964, 68981.

[19] See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters Docket ID No. EPA–HQ–OAR–2021–0663.

[20] Additional details and documentation related to the MOVES3 model can be found at *https://*

emissions projections for EGUs that reflected the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other inventory improvements. The EPA published these emissions inventories on its website in September of 2021 and invited initial feedback from States and other interested stakeholders.[21] The construct of the updated emissions platform, 2016v2, is described in the ''Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform,'' hereafter known as the 2016v2 Emissions Modeling TSD, and is included in Docket ID No. EPA–HQ–OAR–2021–0663. The EPA performed air quality modeling using the 2016v2 emissions to provide projections of ozone design values and contributions in 2023 and 2026 that reflect the effects on air quality of the 2016v2 emissions platform. The EPA used the results of the 2016v2 modeling as part of our previous proposed evaluation of the MoDNR's interstate transport SIP submission for the 2015 ozone NAAQS, submitted on June 10, 2019, with respect to Steps 1 and 2 of the 4-step interstate transport framework. *See* 87 FR 9533 (February 22, 2022).

The EPA invited and received comments on the 2016v2 emissions inventories and modeling used to support proposals, including the proposal on Missouri, related to interstate transport under the 2015 ozone NAAQS. In response to these comments, the EPA made a number of updates to the 2016v2 inventories and model design to construct a 2016v3 emissions platform that was used to update the air quality modeling. The EPA used this updated modeling to inform a final rulemaking taking final action on 21 interstate transport SIP submissions for the 2015 ozone NAAQS, which included the MoDNR's June 2019 Submission, as well as a Federal implementation plan action covering 23 States, including Missouri.[22] Details on the 2016v3 air quality modeling and the methods for projecting design values and determining contributions in 2023 and 2026 are described in the TSD titled ''Air Quality Modeling (AQM) Final Rule TSD—2015 Ozone NAAQS Good Neighbor Plan,'' hereafter known as the Final Good Neighbor Plan AQM TSD.[23] Additional details related to the updated 2016v3 emissions platform are located in the TSD titled ''Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform,'' hereafter known as the 2016v3 Emissions Modeling TSD, included in Docket ID No. EPA–HQ–OAR–2021–0668.[24]

In this proposed action, the EPA primarily relies on modeling based on the updated 2016v3 emissions platform in evaluating the MoDNR's November 2022 Submission with respect to Steps 1 and 2 of the 4-step interstate transport framework, which will generally be referenced within this action as the ''2016v3 modeling'' for 2023 and 2026. As discussed further in section I.D.2. of this document, the EPA is also applying its findings regarding violating-monitor maintenance-only receptors in 2023 using certified monitoring data and regulatory design values for 2021 and 2022. The EPA used the 2016v3 modeling to calculate contributions to these receptors.

Nonetheless, we note that the basis for the EPA's disapproval of the November 2022 Submission is not affected by the choice of modeling between the 2016v3 modeling or the 2016v2 modeling on which the MoDNR based its Submission. Both sets of modeling demonstrated linkages between Missouri and multiple receptors above both a 1 percent of the NAAQS and a 1 ppb contribution threshold. The EPA does not propose to disapprove the MoDNR's Submission due to its choice of modeling, but for failing to adequately analyze and prohibit those emissions that constitute ''significant contribution'' to nonattainment or maintenance receptors in other States.

By this action, the EPA is not reopening the determinations made for Missouri in the Good Neighbor Plan regarding the definition of good neighbor obligations through the EPA's exercise of statutory responsibility under CAA section 110(c). Rather, this action is taken pursuant to the EPA's statutory responsibility to act on SIP submissions pursuant to CAA section 110(k). Any comments that are not relevant to the EPA's proposed basis for the disapproval of Missouri's November 2022 Submission will be treated as beyond the scope of this action.

D. The EPA's Approach to Evaluating Interstate Transport SIPs for the 2015 Ozone NAAQS

The EPA proposes to apply a consistent set of policy judgments across all States for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submissions for the 2015 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I). These policy judgments conform with relevant case law and past agency practice as reflected in the CSAPR and related rulemakings. Employing a nationally consistent approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments to ensure an ''efficient and equitable'' approach. *See EME Homer City Generation, LP* v. *EPA,* 572 U.S. 489, 519 (2014). The EPA evaluates any State's arguments for the use of alternative approaches or alternative sets of data with an eye to ensuring national consistency and avoiding inconsistent or inequitable results among upwind States and between upwind and downwind States.

The remainder of this section describes the EPA's analytic framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In this section, the EPA describes its process for selecting analytic years for air quality modeling and analyses performed to identify nonattainment and maintenance receptors and identify upwind State linkages. The EPA is retaining the 2023 and 2026 analytical years used to inform the obligations of the 23 States included in the Good Neighbor Plan, to ensure consistency and equitable treatment of all States. In the Good Neighbor Plan, the EPA evaluated air quality to identify receptors at Step 1 and evaluate interstate contributions at Step 2 for two analytic years: 2023 and 2026. These years are the last full ozone seasons [25]

www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.

[21] *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

[22] ''Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,'' 88 FR 9336 (February 13, 2023), and ''Federal ''Good Neighbor Plan'' for the 2015 Ozone National Ambient Air Quality Standards,'' 88 FR 36654 (June 5, 2023).

[23] ''Air Quality Modeling Final Rule Technical Support Document—2015 Ozone NAAQS Good Neighbor Plan'' in Docket ID No. EPA–R08–OAR–2023–0375, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[24] ''2016v3 Emissions Modeling TSD'' in Docket ID No. EPA–HQ–OAR–2021–0668, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[25] Ozone seasons run each year from May 1–September 30, *see* 40 CFR 52.38(b)(1) and 52.40(c)(1).

before the Moderate and Serious area attainment dates for the 2015 ozone NAAQS, which are August 3, 2024, and August 3, 2027.[26] To demonstrate attainment by these deadlines, downwind States would be required to rely on design values calculated using ozone data from 2021 through 2023 and 2024 through 2026, respectively. Areas that do not attain by the deadline may be ''bumped up'' to a higher nonattainment classification level per CAA sections 181 and 182, thereby incurring additional ongoing obligations. Thus, in the Good Neighbor Plan, consistent with each of its prior good neighbor rulemakings, the EPA focused its analysis in the years with the last full ozone seasons before the attainment dates (*i.e.,* 2023 and 2026).

Here, the MoDNR used the 2023 and 2026 analytic years in its Submission, and both the modeling it considered (2016v2) and the additional modeling the EPA took into account (2016v3) used those analytic years. Because both sets of modeling show that Missouri remains linked, the basis for the EPA's action in this case is not in relation to the acceptability of the air quality modeling or analysis the MoDNR used at Steps 1 and 2, but rather in relation to our findings that the State's approach to defining ''significant contribution'' is inadequate. Further, use of the 2023 and 2026 analytic years ensures consistency in the treatment of States. Where the need for parity among States or other jurisdictions in like circumstances warrants it, courts have recognized that it may be appropriate for agencies like the EPA to rely on prior datasets to ensure consistency in treatment. *See Bd. County Commissioners of Weld County* v. *EPA,* 72 F.4th 284, 290 (D.C. Cir. 2023) (upholding as reasonable the EPA's determination that ''greater parity among counties and faster turnaround [ ] make the original data a better choice than partial updating''). The importance of the use of a single, already-developed dataset focused on the years 2023 and 2026 to define good neighbor obligations for all States to ensure consistency among States and for ''faster turnaround'' to complete this rulemaking is, in the EPA's judgment, sufficiently compelling to justify this approach here.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. This approach reflects the EPA's interpretation of the terms ''nonattainment'' and ''maintenance'' as used in the good neighbor provision in the context of the ozone NAAQS. *See* 88 FR 9341–42 (February 13, 2023). Where the EPA's analysis shows that a site does not meet the definition of a nonattainment or maintenance receptor, the EPA excludes that site from further analysis under the EPA's 4-step interstate transport framework. At Step 2 of the 4-step interstate transport framework, the EPA considers those sites identified as a nonattainment or maintenance receptor in 2023 and identifies which upwind States contribute to those receptors above the contribution threshold.

This approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina*.[27] To summarize this methodology:

The EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the analytic year (*i.e.,* 2023).[28]

In addition, the EPA identified a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015) (*EME Homer City II*).[29] Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Nonattainment receptors are also, by definition, maintenance receptors, and so the EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described earlier, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values.[30] In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance-only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

The Agency has looked closely at measured ozone levels at ambient monitoring sites in 2021 and 2022 for the purposes of informing the identification of potential additional receptors in 2023. As explained in more detail in the February 13, 2022, final action disapproving 19 States' good neighbor SIP submissions, and partially approving and partially disapproving

[26] CAA section 181(a); 40 CFR 51.1303; 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

[27] *See North Carolina* v. *EPA,* 531 F.3d at 910–11 (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[28] *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. *See* 70 FR 25241, 25249 (January 14, 2005); *see also North Carolina,* 531 F.3d at 913–14 (affirming as reasonable the EPA's approach to defining nonattainment in CAIR).

[29] *See* 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

[30] The Agency often uses the terms maintenance receptor and maintenance-only receptor interchangeably when discussing maintenance receptors that are not also nonattainment receptors.

two States' good neighbor SIP submissions (Disapproval Action), *see* 88 FR 9349–50, the EPA finds there is a basis to consider certain sites with elevated ozone levels that are not otherwise identified as receptors to be an additional type of maintenance-only receptor given the likelihood that ozone levels above the NAAQS could persist at those locations through at least 2023. These are referred to as violating-monitor maintenance-only receptors (violating-monitor receptors). In this action, the EPA proposes to use certified ambient monitoring data as an additional method to identify maintenance-only receptors. More specifically, violating-monitor receptors are monitoring sites with measured 2021 and 2022 design values and 2021 and 2022 fourth-highest (4th high) maximum daily average 8-hour (MDA8) ozone concentrations that exceed the NAAQS, despite having model-projected average and maximum design values for 2023 below the NAAQS.[31] The EPA finds these sites are at continuing risk of failing to maintain the 2015 ozone NAAQS, which justifies categorizing these sites as maintenance-only receptors. By applying the criteria that certified 2021 and 2022 design values and 2021 and 2022 4th high MDA8 ozone concentrations must all exceed the NAAQS the EPA gives due consideration to both measured air quality data and its modeling projections. This reasonably identifies monitoring sites as receptors in 2023 using this methodology. If sites do not meet these criteria, then the EPA could reasonably anticipate these sites to not have a problem maintaining the 2015 ozone NAAQS in 2023 and should therefore not be considered receptors.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2, the EPA quantifies the contribution of each upwind State to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each State to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a State's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 parts per billion (ppb) for the 2015 ozone NAAQS), the upwind State is not ''linked'' to a downwind air quality problem, and the EPA therefore concludes that the State does not contribute significantly to nonattainment or interfere with maintenance of the NAAQS in the downwind States. However, if a State's contribution equals or exceeds the 1 percent threshold, the State's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated pursuant to the requirements of CAA section 110(a)(2)(D)(i)(I).

In this proposed action, the EPA relies in the first instance on the 1 percent threshold for the purpose of evaluating a State's contribution to nonattainment or maintenance of the 2015 ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in the Disapproval Action and in the Good Neighbor Plan. The EPA has acknowledged that States may be able to justify use of a different threshold at Step 2. For reasons explained in section III.A. of this document, the MoDNR did not successfully make this demonstration. In addition, the EPA explained in both the proposed and final Disapproval Action and Good Neighbor Plan that the need for consistent treatment of all States counsels against recognizing alternative thresholds on a state-by-state basis absent an adequate circumstance-specific justification. *See* 88 FR 9373–75. Likewise, maintaining continuity across ozone NAAQS through consistent application of a 1 percent of NAAQS threshold at Step 2 is appropriate, so that, as the NAAQS is revised and made more protective, the contribution threshold is correspondingly adjusted as well. *See* 88 FR 36712–17; 88 FR 9371–75. *See also* 86 FR 23085 (use of 1 percent threshold in the Revised CSAPR Update); 81 FR 74518 (basis for use of 1 percent threshold for the 2008 ozone NAAQS in the CSAPR Update); 76 FR 48237–38 (original determination to use 1 percent threshold for the 1997 ozone NAAQS in the CSAPR).

Therefore, application of a consistent contribution threshold is necessary to identify those upwind States that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind States also allows the EPA (and States) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next and helps ensure that good neighbor obligations align with the stringency of the NAAQS.

The EPA addresses the MoDNR's arguments for the use of higher Step 2 thresholds in section III.A.; however, to the extent those arguments are identical to those considered and rejected in disapproving Missouri's previous SIP submission, the Agency is not reopening such determinations.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with the EPA's longstanding approach to eliminating significant contribution and interference with maintenance, at Step 3, a multifactor assessment of potential emissions controls is conducted for States linked at Steps 1 and 2. The EPA's analysis at Step 3 in prior Federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind States), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a State is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or State-provided alternative air quality and contribution modeling establishes that a State is linked at Steps 1 and 2, it will be insufficient at Step 3 for a State merely to point to its existing rules requiring control measures as a basis for the EPA's approval of the SIP submission. The reason is that the emissions-reducing effects of all existing emissions control requirements are generally already reflected in the future year projected air quality results of the modeling for Steps 1 and 2. If the State is shown to still be linked to one or more downwind receptor(s) despite these existing controls, but that State believes it has no outstanding good neighbor obligations, the EPA expects the State to provide sufficient justification to support a conclusion that the State has adequate provisions prohibiting ''any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will'' ''contribute significantly to nonattainment in, or interfere with maintenance by,'' any other State with respect to the NAAQS. CAA section 110(a)(2)(D)(i)(I). While the EPA has not prescribed a particular method for this assessment, the EPA expects States at a minimum to present a sufficient technical evaluation. This would

[31] A design value is calculated using the annual 4th high MDA8 ozone concentration averaged over 3 years.

typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.[32]

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, States (or the EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a State linked at Steps 1 and 2 to rely on an emissions control measure at Step 4 to address its interstate transport obligations, that measure must be included in the State's SIP so that it is permanent and federally enforceable. *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions . . . .''). *See also* CAA section 110(a)(2)(A); *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by a State to meet CAA requirements must be included in the SIP).

II. Missouri SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 Ozone NAAQS

A. Prior Submission

On June 10, 2019, the MoDNR Air Pollution Control Program made a SIP submission to address interstate transport of air pollution for the 2015 ozone NAAQS (June 2019 Submission). On February 22, 2022, the EPA proposed to disapprove the June 2019 Submission. 87 FR 9533. On January 31, 2023, the EPA signed a final rulemaking, finalizing disapproval of 19 SIP submissions, and partial approval and partial disapproval of two SIP submissions, for inadequately addressing the good neighbor provision for the 2015 ozone NAAQS including Missouri. 88 FR 9336 (Feb. 13, 2023) (February 2023 Disapproval Action). The June 2019 Submission is not at issue in this proposed action, and the EPA is not reopening its disapproval of it.[33]

B. Summary of Missouri's 2015 Ozone Interstate Transport SIP Submission From November 2022

On November 1, 2022, the MoDNR submitted another SIP submission to the EPA addressing the infrastructure requirements of CAA section 110(a)(2), specifically the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements, for the 2015 ozone NAAQS (November 2022 Submission). The November 2022 Submission is the subject of this proposed action. The November 2022 Submission was deemed complete by operation of law on May 1, 2023.

The November 2022 Submission contains the MoDNR's analysis of the State's impact on air quality in downwind States organized around the EPA's 4-step framework and based on the EPA's 2016v2 modeling at Steps 1 and 2.[34] Missouri asserts its current SIP is already addressing all of Missouri's good neighbor obligations under the 2015 ozone NAAQS.[35] The MoDNR then includes a Step 3 analysis and some potential ozone season emissions reductions at Step 4, which the MoDNR's submission provides will become effective only if the EPA approves the November 2022 Submission.[36]

The MoDNR's November 2022 Submission provides background information on the EPA's 4-step interstate transport framework, the EPA's guidance for good neighbor SIPs for the 2015 ozone standard, the MoDNR's June 2019 Submission, the EPA's proposed disapproval of that Submission and the FIP that was proposed on April 6, 2022, and the MoDNR's decision to submit a new SIP submission addressing transport obligations for the 2015 ozone standard.[37]

1. Information Provided at Steps 1 and 2

In the next portion of the November 2022 Submission, the MoDNR uses the EPA's 2016v2 modeling results to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in the State at Steps 1 and 2 of the 4-step interstate transport framework. In the 2016v2 modeling, Missouri contributes above 1 percent of the NAAQS to 4 receptors, including above 1 ppb to two of those receptors, see table 2.

Missouri compares its contributions in the EPA modeling released with the March 2018 memorandum with the EPA's 2016v2 modeling results for 2023 released in February 2022. In the EPA modeling released with the March 2018 memorandum, Missouri was linked to six nonattainment and maintenance receptors above one percent of the level of the 2015 ozone NAAQS (0.70 ppb). See table 1. In the 2016v2 modeling Missouri is not linked to those six receptors in 2023 but is identified as linked to four other receptors. See table 2. For the monitor (Site ID: 260050003) in Allegan, MI; the monitor (Site ID: 261630019) in Wayne, MI; the monitor (Site ID: 482011039) in Harris, TX; and the monitor (Site ID: 550790085) in Milwaukee, WI; the 2016v2 modeling indicates that these monitors' 2023 design values would not be above the NAAQS and therefore they were not identified as receptors at Step 1. The 2016v2 modeling indicates that Missouri's contribution to the receptor ID 480391004, Brazoria, TX, is below the 1 percent of the NAAQS threshold and so Missouri is not linked to it at Step 2. For the receptor (Site ID: 551170006) in Sheboygan, WI, the MoDNR notes that in the EPA's updated 2016v2 modeling, this monitor is still projected to be a nonattainment receptor, but the EPA did not calculate any upwind State contributions to it because there were fewer than five days where the model-predicted MDA8 was above 60 ppb.[38] Missouri is therefore not identified as being linked to this receptor in the 2016v2 modeling.

[32] As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_X SIP Call, 63 FR 57356, 57399–405. *See also* Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[33] The EPA's February 2023 Disapproval Action is currently under judicial review. *E.g., State of Missouri* v. *EPA,* No. 23–1719 (8th Cir.); *Union Electric Company, d/b/a Ameren Missouri* v. *EPA,* No. 23–1751 (8th Cir.).

[34] November 2022 Submission at 9–37.

[35] *Id.* at 18.

[36] *Id.* at appendix A at 3, 14–15; appendix B at 3, 14–15; appendix C at 3, 16–17; appendix D at 3, 15–17; appendix E at 3, 13–14; appendix F at 3, 12–13.

[37] *Id.* at 1–4.

[38] The EPA notes this is consistent with the EPA's Modeling Guidance.

TABLE 1—THE EPA'S MARCH 2018 MEMORANDUM—DOWNWIND RECEPTORS WITH MISSOURI CONTRIBUTIONS ABOVE 0.70 ppb

Site (monitor, county, State)	2023 Projected average DV (ppb)	2023 Projected maximum DV (ppb)	Missouri projected contribution (ppb)	Comments
260050003, Allegan, MI	69.0	71.7	2.61	Maintenance receptor.
261630019, Wayne, MI	69.0	71.0	0.92	Maintenance receptor.
484392003, Brazoria, TX	74.0	74.9	0.88	Nonattainment receptor.
482011039, Harris, TX	71.8	73.5	0.88	Nonattainment receptor.
550790085 Milwaukee, WI	71.2	73.0	0.93	Nonattainment receptor.
551170006, Sheboygan, WI	72.8	75.1	1.37	Nonattainment receptor.

TABLE 2—MISSOURI CONTRIBUTIONS ABOVE 0.70 ppb TO RECEPTORS BASED ON THE EPA'S 2016v2 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Projected average design value (ppb)	2023 Projected maximum design value (ppb)	MO projected contribution (ppb)
550590025	Kenosha, Wisconsin	Maintenance	69.2	72.3	1.66
550590019	Kenosha, Wisconsin	Nonattainment	72.8	73.7	1.08
170317002	Cook, Illinois	Maintenance	70.1	73.0	0.94
551010020	Racine, Wisconsin	Nonattainment	71.3	73.2	0.92

Using what it describes as a ''weight of evidence'' approach, the State analyzed each of the four receptors in table 2 using 2016v2 contribution modeling results and the EPA's August 2018 memorandum described in section I.C.

For the Racine, Wisconsin receptor (Site ID: 551010020), the MoDNR noted that Missouri's projected contribution to this receptor is 0.92 ppb, which is less than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 67 percent of the total contribution from all upwind States and that the contribution captured by the 1 ppb threshold is 92.23 percent of the amount captured by the 0.70 ppb threshold at this receptor. The MoDNR asserted that the 1 ppb threshold would capture a substantial amount of total upwind States' contribution to ozone concentrations at this receptor, which will lead to meaningful emissions reductions to ensure attainment of the NAAQS at this monitor in 2023. Therefore, the MoDNR relied on a 1 ppb threshold to conclude that its existing SIP sufficiently addresses the good neighbor obligation for the 2015 ozone NAAQS with respect to this receptor.

For the Kenosha-Chiwaukee, Wisconsin receptor (Site ID: 550590025), the MoDNR noted that its projected contribution to this receptor is 1.08 ppb, which is more than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 86.9 percent of the total upwind contributions and that a 2 ppb threshold would capture 71 percent of the total upwind State contributions. The MoDNR also observed that an alternative 2 ppb threshold would capture 81.7 percent of the upwind State contributions captured under a 1 ppb threshold. Using these data, the MoDNR asserted that a 2 ppb threshold is appropriate because it would capture at least 70 percent of the total upwind State contributions and thus the burden should fall on States other than Missouri (*i.e.,* only on those States contributing above 2 ppb) to provide emissions reductions that will help ensure attainment of the NAAQS at the site. The MoDNR also asserted that the primary contributors to the projected ozone concentrations at the monitor in Kenosha-Chiwaukee include emissions from Illinois, Indiana, and Wisconsin. The MoDNR cited the EPA's 2016v2 modeling projecting that emissions from these States would contribute a combined 30.79 ppb in 2023 to the Kenosha-Chiwaukee receptor. The MoDNR pointed to the Lake Michigan Air Directors Consortium's (LADCO's) interstate transport modeling results for the 2015 ozone NAAQS to support these claims. The MoDNR asserted that LADCO's analysis indicates that the ozone levels at the Wisconsin shoreline of Lake Michigan are heavily affected by the emissions from Illinois, Indiana, and Wisconsin.[39]

[39] *See* ''Interstate Transport Modeling for the 2015 Ozone National Ambient Air Quality Standard, the TSD'', included in this docket, Docket ID No. EPA–R07–OAR–2021–0851. *https://www.ladco.org/wp-content/uploads/Documents/Reports/TSDs/O3/LADCO_2015O3iSIP_TSD_13Aug2018.pdf.*

The MoDNR further pointed out that two other monitoring sites in Wisconsin (Site IDs: 551270006 and 551330027) further inland from Lake Michigan have no projected problems with attaining and maintaining compliance with the 2015 ozone NAAQS. Based on its assessment of this information, the MoDNR concluded that its existing SIP sufficiently addresses its good neighbor obligations for the 2015 ozone NAAQS with respect to the Kenosha-Chiwaukee receptor based only on this Step 2 weight of evidence analysis.

For the Kenosha-Water Tower, Wisconsin Site receptor (Site ID: 550590019) the MoDNR noted that its projected contribution to this receptor is 1.66 ppb, which is more than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 88.5 percent of the total upwind contributions and that a 2 ppb threshold would capture 71.8 percent of the total upwind State contributions. The MoDNR also observed that an alternative 2 ppb threshold would capture 81.1 percent of the upwind State contributions captured under a 1 ppb threshold. Using these data, the MoDNR asserted that a 2 ppb threshold is appropriate because it would capture at least 70 percent of the total upwind State contributions and thus the burden should fall on States other than Missouri (*i.e.,* only on those States contributing above 2 ppb) to provide emissions reductions that will help ensure attainment of the NAAQS at the site. The MoDNR then noted that its projected contribution of 1.66 ppb is less than 2 ppb. The MoDNR also

asserted that the primary contributors to the projected ozone concentrations at the monitor in Kenosha-Water Tower include emissions from Illinois, Indiana, and Wisconsin. The MoDNR cited the EPA modeling projecting that emissions from these States would contribute a combined 28.47 ppb in 2023 to the Kenosha-Water Tower receptor.

The MoDNR again asserted its interpretation that the LADCO analysis indicates that the ozone levels at the Wisconsin shoreline of Lake Michigan are heavily affected by the emissions from Illinois, Indiana, and Wisconsin.

The MoDNR again pointed out that two other monitoring sites in Wisconsin (Site IDs: 551270006 and 551330027) further inland from Lake Michigan have no projected problems with attaining and maintaining compliance with the 2015 ozone NAAQS. The MoDNR concluded that the nonattainment receptor at Kenosha-Water Tower is heavily influenced by local transport emissions and lake breeze effects over Lake Michigan. Based on its assessment of this information, the MoDNR concluded that its existing SIP sufficiently addresses the good neighbor obligation for the 2015 ozone NAAQS with respect to the Kenosha-Water Tower receptor based only on this Step 2 weight of evidence analysis.

For the Cook County Chicago-Evanston, Illinois receptor (Site ID: 170317002), the MoDNR noted that its projected contribution to this receptor is 0.94 ppb, which is less than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 69.7 percent of the total contribution from all upwind States and that the contribution captured by the 1 ppb threshold is 92.9 percent of the amount captured by the 0.70 ppb threshold at this receptor. The MoDNR asserted that the 1 ppb threshold would capture a substantial amount of total upwind States' contribution to ozone concentrations at this receptor, thus the burden should fall on States other than Missouri (*i.e.,* only on those States contributing above 1 ppb) to provide meaningful emissions reductions to ensure attainment of the NAAQS at this site. Therefore, the MoDNR relied on a 1 ppb threshold to conclude that its existing SIP sufficiently addresses the good neighbor obligation for the 2015 ozone NAAQS with respect to this receptor.

The MoDNR further pointed out that the other nine receptors in Cook County, Illinois show 40 percent less impact from Missouri in the 2016v2 modeling than the County Chicago-Evanston, Illinois receptor. The MoDNR concluded that this difference indicates uncertainty on any conclusion that emissions from Missouri are contributing significantly to this single monitor in Cook County, while at the same time not contributing significantly to any other monitor in Cook County.[40]

The MoDNR cited a 2019 Lake Michigan Ozone Study (LMOS or the study) relating to high ozone monitor concentrations near Lake Michigan. According to the MoDNR, the study recommends a finer grid resolution to better characterize ozone concentrations near large bodies of water. The MoDNR interprets the study as showing that upwind States' NO_X emissions may have little to no impact on ground level ozone concentrations that are linked to downwind receptors because on high ozone level days the ozone concentrations in these areas are sensitive to emissions of VOCs and not NO_X. The MoDNR also contends that, based on information included in the EPA's ''Air Quality Modeling for the 2016v2 Emissions Platform Modeling TSD'' and the receptor specific data included in the EPA's document titled ''CAMx 2016v2 MDA8 O3 Model Performance Stats by Site,'' the EPA's 2016v2 modeling is ''severely underperforming'' in this region of the country where all of Missouri's linked receptors in the EPA's 2016v2 modeling are located.[41]

For these reasons the MoDNR concludes that the weight of evidence analyses provided for these receptors in the November 2022 Submission shows that Missouri's current SIP is adequately addressing its good neighbor obligations with respect to each of these four receptors.[42] In its conclusion of Steps 1 and 2, the MoDNR has stated it believes Missouri's good neighbor obligations are met at Steps 1 and 2 for the 2015 ozone NAAQS. However, in its submission, the MoDNR goes on to acknowledge there are uncertainties due to model performance and recent year NO_X emissions from Missouri EGUs that exceed the assurance levels of the CSAPR NO_X Ozone Season Trading Program. Consequently, the MoDNR developed a Step 3 analysis to address these uncertainties (*i.e.,* proceeding from an assumption that Missouri is linked at Step 2) and conducted an analysis of potential emissions control opportunities to ensure that the ''good neighbor obligations are indeed satisfied.'' [43]

[40] November 2022 Submission at 16.

[41] *Id.* at 17.

[42] *Id.* at 18.

[43] *Id.*

2. Information Provided at Step 3

In Step 3, the MoDNR begins by identifying controls that could be implemented at units for the 2023 ozone season. The MoDNR's evaluation at Step 3 gives some consideration to NO_X emitting sources at certain EGUs, as well as certain sources in certain non-EGU sectors, including cement and cement products manufacturing, glass and glass products manufacturing, and pipeline transportation of natural gas industries.

For 2023, the MoDNR made a list of 10 coal-fired EGUs currently equipped with Selective Catalytic Reduction (SCR) in the State. The MoDNR observed that four of these units have Prevention of Significant Deterioration permits requiring continuous operation of their NO_X control equipment (Hawthorn unit 5A, Iatan units 1 and 2, and John Twitty Energy Center unit 2). Based on the existence of these permits, the MoDNR stated that no additional NO_X control requirements would be cost-effective for these units.[44] The MoDNR observed that the six other units do not currently have enforceable requirements to ensure the continuous operation of their control equipment (*i.e.,* SCRs) during the ozone season. The MoDNR claims that, based on its assessment, substantial and timely emissions reductions are both available and cost-effective at five units and that the sixth unit could choose to operate their controls less efficiently or not at all.[45]

The MoDNR also observes that there are two EGUs in Missouri that have Selective Non-Catalytic Reduction (SNCR) but do not currently have enforceable requirements to ensure the continuous operation of their control equipment during ozone season. The MoDNR determined that substantial and timely emissions reductions are both available and cost effective at these two units.

The MoDNR observed that there are nine remaining coal-fired EGUs that have no SCR or SNCR. At the time of submission, four of these units at two facilities (Rush Island and Meramec) are expected to retire by 2026, which is the next applicable attainment date under the 2015 ozone NAAQS following the 2023 deadline for Moderate areas.[46] The MoDNR also stated that the other five units (Labadie and Sikeston) are

[44] *Id.* at 19.

[45] *Id.*

[46] The EPA notes that the next attainment date after the Moderate attainment date is the Serious attainment date of August 3, 2027, but 2026 is the last year with a full ozone season before that date. CAA section 181(a); 40 CFR 51.1303; 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

expected to continue operating at least through 2026. The MoDNR claims that no timely reductions (*i.e.,* by 2023) are available for any of these nine units.[47] The MoDNR determined, however, that new enforceable requirements at the Labadie and Sikeston facilities to ensure the continued operation of the existing NO_X controls (*i.e.,* low NO_X burners, etc.) would help guard against potential backsliding and lock in the emissions reductions these facilities have already achieved.

To determine the new enforceable requirements at the coal-fired EGUs currently equipped with SCR (New Madrid, Thomas Hill facilities and John Twitty Unit 1), the MoDNR first analyzed historical NO_X emissions rates for each unit with SCR to determine what the starting point for a new limit should be. The MoDNR selected what it identified as the third best ozone season emissions rate for five of the units at these facilities, as the MoDNR determined those years to be reflective of continuous SCR operation. Next, the MoDNR took the average of what it identified as the third best emissions rates for these units, which was 0.102 lbs/mmBtu. The MoDNR then decided that a compliance margin of approximately 20 percent was appropriate for this limit, putting the limit at 0.12 lbs/mmBtu. The MoDNR claims that this numeric limit combined with a stipulation that the sources continuously run their controls during the ozone season were enough to ensure meaningful reductions were achieved.[48]

The MoDNR attempted to use the same analysis for the units with SNCR, however the units only had one year of full operation using the control equipment. The MoDNR selected the larger emissions rate of the two units for that year and again added the 20 percent compliance margin to arrive at a numeric NO_X ozone season emissions rate of 0.18 lbs/mmBtu.[49] The MoDNR also used this historical emissions rate analysis with the 20 percent compliance margin to establish the limits for the units without SCR and SNCR to prevent backsliding, arriving at a 0.12 lbs/mmBtu rate for one facility and 0.13 lbs/mmBtu rate for a second facility.[50] The MoDNR acknowledged that for these units without existing post-combustion controls, this rate would not achieve new emissions reductions, but rather avoid potential increases in emissions.

The MoDNR estimated that these limits, combined (0.12 lbs/mmBtu on coal-fired units with existing SCR, and 0.18 lbs/mmBtu on coal-fired units with existing SNCR, and anti-backsliding limits on coal-fired units without SCR or SNCR), would achieve ozone season NO_X reductions of 6,713 tons annually compared to emissions levels at these units in 2021, assuming these units operate at the limited rate.[51]

The MoDNR then used these new emissions reductions it claims would be achieved through these new NO_X emissions limits to evaluate the impact to linked downwind receptors. The MoDNR used the EPA's Ozone AQAT for this analysis.[52] The MoDNR analyzed the cost of different control strategies for the EGUs discussed above to determine what controls it viewed as cost-effective.[53] The MoDNR evaluated annual costs for the operation of SCR at the six units with existing SCR described above that do not currently have limits requiring the operation of SCR. This did not include capital cost because the units already have SCR. The MoDNR performed the same analysis for the Sioux facility that is equipped with SNCR. Similar to the SCR units, these annual costs do not include capital costs because the units are already equipped with these controls. The MoDNR then summed these costs and divided the costs by the modeled improvement in ppb at each linked receptor. The MoDNR identified the cost per 1 ppb improvement at the linked receptors as the ''cost effectiveness results.'' [54]

The MoDNR states that it considered Missouri's modeled contribution to the four linked receptors relative to in-state and other upwind States contributions, the conclusions it drew at Step 2 of their November 2022 Submission, and the costs and the corresponding reduction of ozone concentrations at the four linked receptors resulting from the new NO_X emissions limits at certain facilities.[55] With consideration of those factors, the MoDNR asserts that the projected emissions reductions in 2023 from the new NO_X emissions limits would fully satisfy Missouri's good neighbor obligation for the 2015 ozone NAAQS.[56]

The MoDNR also reviewed the cost of new post-combustion controls included in the proposed Good Neighbor Plan (87 FR 20036, April 6, 2022) for 2026. In the proposed Good Neighbor Plan, the additional emissions reductions required for EGUs in 2026 are based primarily on the potential retrofit of additional post-combustion controls for NO_X on most coal-fired EGUs and a portion of oil/gas-fired EGUs that are currently lacking such controls. In the proposed Good Neighbor Plan, the EPA identified SCR retrofits for coal-fired EGUs as part of the strategy to eliminate significant contribution from States linked in the 2026 analytic year. The proposed Good Neighbor Plan also included new emissions limitations for non-EGU point sources including pipeline natural gas transportation, cement and concrete manufacturing, glass and glass product manufacturing, basic chemical manufacturing, petroleum and coal products manufacturing, and pulp, paper, and paperboard manufacturing. Because Missouri was among the States found linked through 2026 in the 2016v2 modeling, the EPA proposed in the Good Neighbor Plan to apply these requirements for non-EGU sources in the State.

In the MoDNR's submission, it acknowledges that the EPA's 2016v2 modeling results for 2026 show that Missouri continues to contribute above 1 percent of the NAAQS in 2026 to one nonattainment receptor, but less than 1 ppb, and also continues to contribute above 1 percent of the NAAQS in 2026 to three maintenance receptors: to two maintenance receptors above 1 percent of the NAAQS but less than 1 ppb and to one maintenance receptor above 1 ppb. However, the MoDNR asserts that the Kenosha, Wisconsin, receptor (Site ID: 550590025) will no longer be a maintenance receptor in 2026 due to emissions reductions under the Good Neighbor Plan and the new NO_X limits that would be implemented by Missouri if the November 2022 Submission is approved by the EPA.[57] The MoDNR concluded that Missouri has no remaining good neighbor obligations for the 2015 ozone NAAQS in 2026 because Missouri is projected to contribute less than 1 ppb to the other three receptors before considering the impact of the EPA's proposed Good Neighbor Plan in 26 States.[58]

The MoDNR further claims that the cost-effectiveness of the retrofit of SCR at the Labadie facility and Sikeston facility using the expected remaining life of those units is more than ten times the average cost-effectiveness of the State's planned controls associated with

[47] November 2022 Submission at 21.

[48] *Id.* at 25.

[49] *Id.* at 26.

[50] *Id.*

[51] *Id.* at 26–27.

[52] *Id.* at 27–28.

[53] *Id.* at 28–29.

[54] *Id.* at 29.

[55] *Id.*

[56] *Id.*

[57] November 2022 Submission at 30. *See also* appendix A at 3, 14–15; appendix B at 3, 14–15; appendix C at 3, 16–17; appendix D at 3, 15–17; appendix E at 3, 13–14; appendix F at 3, 12–13.

[58] *Id.* at 30. The EPA notes that Missouri is included in the 26 states covered by the proposed Good Neighbor Plan.

better operation of controls at EGUs with existing SCR and SNCR. The MoDNR then divided the cost by the modeled improvement in ppb at each of the three receptors to which Missouri contributes above 1 ppb in 2023. The MoDNR used those values and cost-effectiveness to calculate the cost effectiveness of the SCR retrofits for each of the three receptors in maintenance or nonattainment in 2026.[59] The MoDNR asserted that SCR retrofits at existing coal-fired EGUs are not cost-effective, nor required for the purpose of satisfying Missouri's good neighbor obligations under the 2015 ozone NAAQS.[60]

The MoDNR also purported to analyze the cost of controls included in the proposed Good Neighbor Plan for non-EGUs. According to the MoDNR, the EPA's proposed Good Neighbor Plan included proposed requirements for preheater/precalciner kilns at a limit of 2.8 lbs. NO_X/ton of clinker produced. The MoDNR indicated that the State's rule, *10 CSR 10–6.380 Control of NO_X Emissions from Portland Cement Kilns,* covers the cement kilns identified by the EPA in the ''Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026'' included in Docket ID No. EPA–HQ–OAR–2021–0668–0191.[61] The MoDNR further asserts that the State's rule includes a more stringent requirement of 2.7 lbs NO_X/ton of clinker produced during the regulatory ozone season (May—September). The MoDNR concluded that no cost-effective emissions reductions in this source category in Missouri are available.[62]

The MoDNR also observed that the proposed Good Neighbor Plan included new control requirements in the glass and glass product manufacturing industry. Two facilities in Missouri were listed in the ''Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026'' as potentially subject to these proposed requirements: Pittsburg Corning Corporation in Sedalia, Missouri, and Piramal Glass USA Inc. in Park Hills, MO. The MoDNR addressed these two facilities by first identifying that the Piramal plant in Park Hills, Missouri, was expected to close in March of 2022.[63] The MoDNR then observed that the EPA estimated a total cost of $5.8 million for the NO_X controls at the Pittsburg Corning Corporation in the proposed Good Neighbor Plan. The MoDNR further notes that the 2020 and 2021 NO_X emissions at this facility were 17 and 44 tons, respectively. The MoDNR concluded from this that emissions reductions for the glass manufacturing sector in Missouri are not cost effective and that no further requirements are needed under this source category to address Missouri's good neighbor obligations under the 2015 ozone NAAQS.[64]

The MoDNR observed that the EPA identified four pipeline natural gas transportation facilities in Missouri as potentially subject to new controls in the proposed Good Neighbor Plan. The EPA projected the average annual cost per ton NO_X reduced for Missouri as $5,452 for this industry category. The MoDNR calculated cost effectiveness values in terms of annual dollars spent in Missouri per 1 ppb improvement at the remaining three downwind linked monitors using the EPA's estimated cost per ton reduced figure from the proposed Good Neighbor Plan, similar to the analysis the MoDNR performed for the SCR retrofit for EGUs. The MoDNR concludes that emissions reductions for the pipeline natural gas transportation sector in Missouri are not cost-effective and that no further requirements are needed under this source category to address Missouri's good neighbor obligations under the 2015 ozone NAAQS.[65]

3. Information Provided at Step 4

In Step 4, the MoDNR lists several EGU sources with which the State has developed ''Consent Agreements'' (Agreements or the Agreements) with NO_X emissions limits based on the MoDNR's Step 3 analysis.[66] First, the MoDNR explains the requirements for EGUs with SCR. The Agreements require each facility to operate the existing SCR system control devices at least 95 percent of the time during the ozone season when burning coal. The MoDNR asserts that the five percent allowance for non-operation of the SCR is necessary to account for operational issues that SCRs might experience such as catalyst maintenance, plugging issues, and potential supply issues of the SCR reagent.

Next, the MoDNR explains the numeric limits for the controlled units and how the State arrived at the limit of 0.120 pounds per million British Thermal Units (lbs./mmBtu) for the ozone season (see Step 3 discussion detailed earlier in this section). The MoDNR also states that the Agreements contain necessary monitoring, recordkeeping, and reporting to verify compliance with these limits.

Next the MoDNR explains several other additional terms in the Agreements. The terms include provisions for Startup, Shutdown, and Malfunction (SSM). The MoDNR explains what constitutes SSM for each facility and when the hours of operation may be excluded from the requirement to operate the SCR when burning coal at least 95 percent of the time in ozone season. The Agreement for the John Twitty plant defines startup as ending when the unit reaches minimum gross load offered to the Southwest Power Pool (the Regional Transmission Operator) and exempts those hours on the front end. For the New Madrid and Thomas Hill plants, the Agreements provide that they may exclude startup hours following the process in the State SSM rule, 10 CSR 10–6.050. All three facilities are subject to the process in the State SSM rule to exempt hours for shutdown and malfunction when determining compliance with the percent operating time requirement. The MoDNR clarified that the SSM exemptions do not apply to the numeric emissions rate limit of 0.120 lbs./mmBtu.

Next the MoDNR explained that the Agreements also include a ''regulatory safety valve'' that suspends the numeric emissions rate limits under certain circumstances. The MoDNR explains that the purpose of this provision is to provide regulatory relief in the event that the SCR system could not be operated, but the unit was needed to ensure electric grid reliability/stability. The Agreements have several notification and justification requirements to use this mechanism. The MoDNR asserts that the regulatory safety valve was designed for use only during rare, unexpected grid emergency situations.

In the next section, the MoDNR explains the requirements for EGUs with SNCR. The Agreement for the Sioux Energy Center is designed very similarly to the Agreements the MoDNR made for EGUs with SCR. The MoDNR asserted that the SNCR agreement stipulates a 90 percent operating time requirement as opposed to a 95 percent operating time requirement for the SCR control units, because it was necessary

[59] November 2022 Submission at 31.

[60] *Id.*

[61] ''Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026'' is also found in Docket ID No. EPA–HQ–OAR–2021–0668 and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[62] November 2022 Submission at 32.

[63] *Id.* at 33.

[64] *Id.*

[65] *Id.*

[66] *Id.* at 34–37. The Agreements are included in the November 2022 Submission in Appendices A through F.

to allow for the weekly tuning procedures for the complementary over-fire air NO_X control system at the Sioux facility. The MoDNR determined that a numeric emissions rate limit for the SNCR controlled units of 0.18 lbs/mmBtu is appropriate based on analysis of historic emissions rates. The MoDNR added similar SSM provisions to the Agreement with the John Twitty facility described above. The MoDNR also included the same regulatory safety valve language for this Agreement as described above.

Next the MoDNR explained the Agreements with Labadie Energy Center and Sikeston Power station. These Agreements include numeric limits of 0.12 lbs/mmBtu and 0.13 lbs/mmBtu respectively. Both facilities are required to continuously operate their currently installed control technologies, generally consisting of combustion-control measures. The MoDNR explains that both Agreements have the same SSM provisions, but they do not include a regulatory safety valve like the Agreements for the SCR and SNCR controlled units because the State determined that they were not necessary.

III. The EPA's Evaluation of Missouri's November 2022 Submission

A. Evaluation of Information Provided by Missouri Regarding Steps 1 and 2

In the November 2022 Submission, the MoDNR provided its interpretation of the 2016v2 modeling results for 2023 and 2026 to eliminate receptors and its linkages identified in the prior modeling released with the March 2018 memorandum, and to identify projected nonattainment and maintenance receptors in 2023 and 2026 as well as Missouri's contributions to them.

The MoDNR utilized a 1 ppb or 2 ppb threshold at Step 2 as it found it needed to reach a conclusion that Missouri was not ''linked'' to particular downwind nonattainment or maintenance receptors. The EPA had suggested in its August 2018 memorandum that with appropriate additional analysis it may be acceptable for States to use a 1 ppb contribution threshold, instead of the 1 percent of the NAAQS threshold that the EPA has traditionally used, for the purposes of identifying linkages to appropriate downwind receptors, so long as appropriate circumstance-specific information and justification was included.

The MoDNR argued for application of an alternative 1 ppb or 2 ppb threshold, depending on whether Missouri's contributions were below 1 ppb or 2 ppb, by presenting the different numerical percentages of collective contribution that the respective thresholds would capture, and then asserting that the percentages of upwind contribution captured from the 1 ppb or 2 ppb threshold would be sufficiently meaningful. Stated differently, the MoDNR's logic is that so long as the States contributing above these thresholds will shoulder the burden of implementing their own emissions reductions to eliminate significant contribution to the shared receptors, it is appropriate for Missouri to use these thresholds for the purpose of excluding Missouri's emissions sources from having any such obligations. (We note that no other States linked to these receptors included any emissions reductions in their interstate transport SIP submissions for the 2015 ozone NAAQS.)

The EPA proposes to find that the MoDNR did not justify the use of either an alternative contribution threshold of either 1 ppb or 2 ppb. As an initial matter, the MoDNR's theories for use of a 1 ppb or 2 ppb threshold repeat the same arguments that the EPA considered and rejected in acting on Missouri's first submission (June 2019 Submission). *See* 87 FR 9541–43 (February 22, 2022); 88 FR 9358 (February 13, 2023). The EPA is not reopening those determinations; they apply with equal force to the MoDNR's attempts to again justify a higher threshold here; and so are incorporated by reference.

Second, the EPA has, in the SIP Disapproval and Good Neighbor Plan actions carefully evaluated a variety of issues associated with the August 2018 memorandum and potentially recognizing alternative Step 2 contribution thresholds and found in these notice-and-comment rulemakings that, absent an adequate circumstance-specific justification, a 1 percent threshold is the most appropriate threshold for identifying States that ''contribute'' to downwind ozone receptors for the 2015 ozone NAAQS. 88 FR 9342; 88 FR 36678 (June 5, 2023).[67] Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is important. Continuing to use a 1 percent of the NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, to ensure an appropriately larger amount of total upwind-State contribution is captured for purposes of fully addressing interstate transport. *See* 88 FR 9370–72. *Accord* 76 FR 48237–38 (August 8, 2011). In addition, the Agency has explained through both its Disapproval Action and Good Neighbor Plan rulemakings that consistency and equity among States is an important consideration in addressing interstate ozone pollution, which weighs in favor of consistency absent a strong justification otherwise. See 88 FR 9371–75. Larger thresholds such as 1 ppb or 2 ppb would reduce the amount of cumulative upwind State emissions that would be captured, whereas the purpose of the threshold at Step 2 is simply to serve as a de minimis screening threshold, to screen in States for further evaluation of emissions control opportunities, or, stated differently, to screen out States with de minimis contributions from further analysis even if they do have cost-effective emissions reduction potential. *See* 88 FR 9371.

The EPA has not rescinded the August 2018 memorandum, but at the same time, the Agency does not view that memorandum as completely endorsing the use of a threshold higher than 1 percent of the NAAQS. Rather, the memorandum invited State agencies to provide technically sound analytical justifications for use of a 1 ppb or any other threshold based on state-specific circumstances. The MoDNR in this Submission has not advanced new arguments that have not already been considered. The need for consistency in application of a threshold is important. The EPA did not approve the use of a 1 ppb threshold for any State for the 2015 ozone NAAQS. 88 FR 9370–75. Further, it is now clear (to a degree that it may not have been in 2018–2019 when Missouri and other States were developing their SIP submissions) that no States linked even at the higher thresholds the MoDNR asserts are appropriate actually proposed to implement any emissions reductions to benefit these or any other receptors. States' use of the higher thresholds to avoid implementing emissions reductions is contrary to the August 2018 Memo, which provides that ''the use of a 1 ppb threshold to identify linked upwind States still provides the potential, at Step 3, for meaningful emission reductions in linked upwind States in order to aid downwind States

[67] The EPA identified the same concerns in proposing to disapprove Missouri's prior SIP submission (June 2019 Submission) and other states' submissions, *e.g.,* 87 FR 9541–43. The MoDNR had these considerations available to it when it developed the November 2022 Submission but did not address the concerns the EPA identified in continuing to put forward the use of higher thresholds in this Submission.

with attainment and maintenance of the 2015 ozone NAAQS.'' [68] As the EPA identified in the Disapproval Action, States' reliance on incidental, hypothetical air quality benefits from other contributing States as a basis to justify use of a higher threshold to dismiss their own contribution is improper under the EPA's longstanding approach to evaluating States' obligations on a consistent and equitable basis. This would introduce an inter-dependency into the solution of the ''collective contribution'' problem that ozone pollution poses and is inconsistent with requiring each State to eliminate its own significant contribution. *See* Response to Comments at 295–297 in the final Disapproval Action docket (EPA–HQ–OAR–2021–0663). In the proposed and final Good Neighbor Plan, the EPA evaluated all other States linked to these same receptors to which Missouri is linked using the 1 percent of NAAQS threshold. *See* 88 FR 36678. For these reasons, the EPA proposes to find that the 1 percent threshold is appropriate to use to establish whether Missouri's emissions ''contribute'' to other States' ozone receptors, and the EPA proposes that Missouri's November 2022 Submission did not adequately justify use of any higher thresholds.

In addressing Missouri's linkages in 2026, the EPA notes that the 2016v2 modeling used by the MoDNR indicated four linkages above the 1 percent threshold to nonattainment or maintenance receptors in that year. The EPA finds the MoDNR's dismissal of three of those linkages for being below a 1 ppb threshold is unsatisfactory for the same reasons described above regarding Missouri's linkages in 2023. With respect to Missouri's contribution of 1.53 ppb to the Kenosha–Chiwaukee receptor in 2026, the MoDNR argued that this site will not actually be a receptor, once the emissions reductions in the proposed Good Neighbor Plan are implemented, as well as the emissions controls the MoDNR purports to require in the current November 2022 Submission. This argument is flawed for several reasons. First, the EPA's analysis in the proposed Good Neighbor Plan indicated that the Kenosha-Chiwaukee receptor would remain a maintenance receptor after the implementation of retrofits of post-combustion emissions controls at EGUs in the linked upwind States, including Missouri.[69] Thus, the available evidence at the time of the MoDNR's submission does not support the stated conclusion. Second, the MoDNR's argument provides no justification why the other States linked to this receptor should be subject to the full stringency of the proposed Good Neighbor Plan (which would include post-combustion control retrofits at EGUs and the non-EGU control measures) while Missouri's sources should enjoy the benefit of only implementing the near-term EGU emissions control strategies relying on existing installed control technologies that the MoDNR purports to require in its November 2022 Submission. (Note that even if the MoDNR's reasoning were applied to the EPA's 2016v3 (rather than 2016v2) modeling and the final (rather than proposed) Good Neighbor Plan (discussed further below), the EPA would reach the same conclusion: Missouri is linked to the Sheboygan receptor through 2026 with a 1.68 ppb contribution, and Sheboygan is projected to remain a receptor through 2026, even with the full implementation of the final Good Neighbor Plan emissions control strategies in all of the upwind States, including Missouri, linked to that receptor through 2026.[70])

The MoDNR presents further arguments identical to arguments provided by the MoDNR in public comment on the proposed disapproval of the MoDNR's first submission:[71] specifically, that due to claimed model underperformance in 2016v2 and other concerns the MoDNR has about modeling ozone near Lake Michigan, the weight of evidence analyses provided for these receptors in the November 2022 Submission shows that Missouri's current SIP is adequately addressing its good neighbor obligations with respect to each of these newly identified four receptors in the 2016v2 modeling.

The EPA addressed the MoDNR's assertions about the LMOS in responding to its comments on the proposed disapproval of Missouri's June 2019 Submission, which were nearly verbatim to the November 2022 Submission on this topic.[72] The EPA's response to this comment can be found on pages 139 and 152 to 153 of the Response to Comment document supporting the previous final SIP Disapproval Action.[73] The EPA is not reopening its determinations in the SIP Disapproval Action on this topic, and incorporates that analysis by reference.

As the EPA concluded in the final SIP Disapproval Action, the EPA's 2016v3 modeling is reliable for evaluating good neighbor obligations for the 2015 ozone NAAQS. As stated above, the EPA invited and received comments on the 2016v2 emissions inventories and modeling. In response to these comments, the EPA made a number of updates to the 2016v2 emissions inventories and model design to construct a 2016v3 emissions platform, which was used to update the air quality modeling. Model performance issues noted by the MoDNR in the November 2022 Submission have been addressed in the EPA's 2016v3 modeling. *See* 88 FR 9344–45.

The EPA found that model performance for 2016v3 modeling is improved over the performance for 2016v2 modeling and that the 2016v3 modeling performed well within the range of bias and error performance criteria recommended in the scientific literature, which alleviates the performance concerns in the Midwest asserted by the MoDNR in its November 2022 Submission.[74] [75] The EPA is not reopening these determinations in this action and incorporates its prior analysis by reference.

To be clear, the EPA is not disapproving the November 2022 Submission for using the 2016v2 modeling. Under either the 2016v2 modeling or the 2016v3 modeling, Missouri would be linked to at least one receptor in another State. Therefore, the EPA proposes to find that Missouri is obligated to further evaluate its emissions to determine what portion of its contribution, if any, constitutes ''significant'' contribution. In fact, the MoDNR conducted such an analysis, as discussed and evaluated further in section III.C.

[68] August Memo at 4.

[69] *See* ''Ozone Transport Policy Analysis TSD for the Proposed Rule'', Docket ID No. EPA–HQ–OAR–2021–0668–0133, at p.52 (table C–9) and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[70] *See* ''Ozone Transport Policy Analysis Final Rule TSD'' included in Docket ID No. EPA–HQ–OAR–2021–0668–1080, p. 68 (table C–10) and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[71] The MoDNR's comment letter on the proposed disapproval of Missouri's first submission is included in Docket ID No. EPA–R07–OAR–2021–0851–0021 (''MoDNR Comment Letter''). The MoDNR raised this same issue in the November 2022 Submission in their comment letter at 7–9.

[72] The MoDNR Comment Letter at 9–11.

[73] *See* ''2015 Ozone NAAQS Interstate Transport SIP Disapprovals—RTC Document'' available in Docket ID No. EPA–HQ–OAR–2021–0663.

[74] See ''Air Quality Modeling Technical Support Document 2015 Ozone NAAQS SIP Disapproval Final Action'', table B–3—Performance statistics for MDA8 ozone > 60 ppb for monitor plus modeled receptors. Page B–11.

[75] The EPA directly responded to model performance concerns raised by the MoDNR and others on the 2016v2 modeling in the final SIP Disapproval Action and considered these concerns in the development of the 2016v3 modeling. See 88 FR 9370–71. See also ''2015 Ozone NAAQS Interstate Transport SIP Disapprovals—RTC Document'' at 171–187, available in Docket ID No. EPA–HQ–OAR–2021–0663.

B. Results of the EPA's Step 1 and Step 2 Modeling and Findings for Missouri

As explained in section I., the EPA is relying on the EPA's 2016v3 modeling and violating-monitor methodology for this action, which is the same set of data the EPA used for all other States in the final SIP Disapproval Action and the final Good Neighbor Plan, including for the State of Missouri.

To summarize what was found in these prior actions for Missouri: based on the EPA's updated 2016v3 air quality modeling and considering contributions to violating-monitor receptors, Missouri is projected to contribute more than 1 percent of the NAAQS (*i.e.,* 0.70 ppb), 1 ppb, and even 2 ppb, to multiple downwind nonattainment and maintenance receptors in 2023. Specifically, as shown in table 3, Missouri is projected to contribute 1.87 ppb to a nonattainment receptor in Sheboygan County, Wisconsin, (Site ID: 551170006) and 1.87, 1.39, and 1.01 ppb to three maintenance-only receptors, respectively, in Wisconsin and Illinois in the 2023 analytic year. As shown in table 5, Missouri is also projected to contribute above 1 percent of the NAAQS to four violating-monitor receptors at locations in Michigan, and Wisconsin, in the 2023 analytic year. Furthermore, data for 2026 in table 4 indicate that emissions from Missouri will continue to contribute greater than 1 percent of the NAAQS to one maintenance-only receptor in Wisconsin. In addition, Missouri's contribution exceeds 1 ppb at four receptors in 2023 and one receptor in 2026.

TABLE 3: PROJECTED MISSOURI LINKAGE RESULTS BASED ON THE EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Missouri contribution (ppb)
551170006	Sheboygan, Wisconsin	Nonattainment	72.7	73.6	1.87
170317002	Cook, Illinois	Maintenance-Only	68.5	71.3	1.39
551010020	Racine, Wisconsin	Maintenance-Only	69.7	71.5	1.19
550590019	Kenosha, Wisconsin	Maintenance-Only	70.8	71.7	1.01

Source: Final Good Neighbor Plan AQM TSD

TABLE 4: PROJECTED MISSOURI LINKAGE RESULTS BASED ON THE EPA UPDATED 2026 MODELING

Receptor ID	Location	Nonattainment/maintenance	2026 Average design value (ppb)	2026 Maximum design value (ppb)	Missouri contribution (ppb)
551170006	Sheboygan, Wisconsin	Maintenance-Only	70.8	71.7	1.68

Source: Final Good Neighbor Plan AQM TSD.

TABLE 5: MISSOURI 2023 LINKAGE RESULTS BASED ON VIOLATING-MONITOR MAINTENANCE-ONLY RECEPTORS

Receptor ID	Location	2021 Design value (ppb)	2022 Design value (ppb)	2021 4th high (ppb)	2022 4th high (ppb)	Missouri modeled contribution (ppb)
261210039	Muskegon, Michigan	74	79	75	82	2.95
260050003	Allegan, Michigan	75	75	78	73	2.18
550890008	Ozaukee, Wisconsin	71	72	72	72	1.64
550590025	Kenosha, Wisconsin	72	73	72	71	1.54
481211032	Denton, Texas	76	77	85	77	0.70

Source: Final Good Neighbor Plan AQM TSD.

C. Evaluation of Information Provided by Missouri Regarding Step 3

To determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I), at Step 3 of the 4-step interstate transport framework, a State's emissions are further evaluated, in light of multiple factors, including air quality, levels of emissions controls, and cost considerations.

To evaluate effectively which emissions in the State should be deemed ''significant'' and therefore prohibited, States generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.,* Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be ''significant'' (or interfere with maintenance) in each of its prior Federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City,* 572 U.S. 489, 519 (2014). While the EPA has not directed States that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, State implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants that will contribute significantly to downwind air quality problems. While the Good Neighbor

Plan has defined for purposes of a FIP the obligations for Missouri sources based on extensive modeling, analysis, and technical and policy determinations applied by the EPA, States including Missouri may submit, and the EPA will approve, alternative approaches to defining ''significant contribution'' that meet the Act's requirement to determine whether and to what degree emissions from a State should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the NAAQS in any other State.

In this section, the EPA evaluates the information provided by the MoDNR in its submission, summarized in section II.B., in support of the conclusions the MoDNR draws at Step 3. Although the MoDNR has stated it believes its good neighbor obligations are met at Steps 1 and 2 for the 2015 ozone NAAQS (statements with which the EPA disagrees as explained in the preceding section), the MoDNR then goes on to state that there are uncertainties due to model performance. The MoDNR also acknowledges that there have been recent exceedances of the assurance levels of the CSAPR NO_X Ozone Season Trading Program by Missouri EGUs. *See* 88 FR 36797–98. Consequently, the MoDNR developed a Step 3 analysis to address these so-called ''uncertainties'' (*i.e.,* proceeding from an assumption that Missouri is linked at Step 2) and conducted an analysis of potential emissions control opportunities to ensure that its ''good neighbor obligations are indeed satisfied.'' [76]

After reviewing the MoDNR's Step 3 analysis, the EPA finds several shortfalls in the MoDNR's analysis, including in its evaluation of improved emissions performance opportunities at EGUs with existing post-combustion controls, its evaluation of additional emissions control opportunities at EGUs, and its assessment of non-EGU emissions control opportunities, including its use of a ''weighted'' approach to identifying significant contribution applying a dollar-per-ppb (or ''$/ppb'') metric.

In general, the EPA observes that in the Good Neighbor Plan, the EPA as statutorily required pursuant to CAA section 110(c), and based on extensive record evidence, defined the amount of emissions that constitutes significant contribution from Missouri for purposes of the 2015 ozone NAAQS. In the Good Neighbor Plan, the EPA defined a level of emissions control under Step 3, based on strategies of optimizing existing post-combustion controls and installing or upgrading combustion and post-combustion control equipment on EGU sources as well as installing certain controls on impactful non-EGU sources, and then, at Step 4, established through regulations particular implementation methods to achieve that level of emissions control. The EPA has acknowledged and continues to acknowledge that States are free to develop a SIP to replace a Good Neighbor Plan FIP that adopts a different suite of control measures if they meet good neighbor obligations for the 2015 ozone NAAQS. *See* 88 FR 36838–43 (discussing options for States to replace the FIP with a SIP).

The MoDNR's submission pre-dates the final Good Neighbor Plan; however, in some respects, as discussed further below, the MoDNR modeled aspects of its analysis on the proposed Good Neighbor Plan. As noted further in this section, it is clear that the level of emissions control the MoDNR offers in the November 2022 Submission is less than the level of emissions control the EPA proposed and ultimately found necessary to meet good neighbor obligations in the final Good Neighbor Plan.[77] As such, the Submission is clearly not ''equivalent'' in achieving the elimination of an amount of emissions that the EPA determined constituted ''significant contribution'' in the Good Neighbor Plan. *See* 88 FR 36838–43 (discussing options for States to replace the FIP with a SIP). This is most clearly evident in the Submission's failure to include additional emissions control strategies for EGUs and non-EGUs that the EPA found warranted for those States that remain linked to one or more out-of-state receptors through 2026, which, as noted in the previous section, Missouri is.

The EPA finds that this aspect of the November 2022 Submission runs counter to the guidance the EPA has provided States in the proposed and final Good Neighbor Plan (and prior interstate transport rulemakings dating back to at least 2005) that the FIP establishes an ''important benchmark'' and that the EPA generally anticipates that SIP submissions that do not meet that benchmark are not likely to be approvable (see discussion in the Executive Summary of this document, section I.A.). However, recognizing that the MoDNR presented alternative arguments as to why its emissions reduction obligations to eliminate ''significant contribution'' should be less than what was finalized in the Good Neighbor Plan, and these arguments were developed before the EPA's final action issuing the Good Neighbor Plan, the EPA will evaluate additional aspects of the technical, policy, and legal merits of the alternative approaches the MoDNR put forward. In doing so, the EPA will highlight where relevant methodological choices the MoDNR made are not sufficiently technically justified, create inconsistencies or are not reconciled with the good neighbor obligations that the EPA has set for other States linked to shared receptors, and/or otherwise result in a plan submission that does not meet good neighbor obligations for the 2015 ozone NAAQS. In the following subsections, the EPA will evaluate important factors considered by the MoDNR and/or the EPA within the Step 3 multifactor test. These include evaluation of levels of emissions controls on EGUs and non-EGUs in Missouri, potential air quality resulting from these levels of controls, and the MoDNR's use of a ''dollar-per-ppb'' metric to assess cost effectiveness of controls.

1. Evaluation of Potential Level of Emissions Controls on Missouri EGUs

In Missouri's November 2022 SIP Submission, the controls the State identified to eliminate significant contribution (from all sources in the State) is an ''optimized'' emissions rate of 0.12 lb/mmBtu for application to certain specifically-named coal-fired EGUs with SCR post-combustion controls and a 0.18 lb/mmBtu rate for coal-fired EGUs with SNCR post-combustion controls already installed. Optimization of existing post-combustion controls on coal-fired EGUs is a well-established strategy that the EPA has recently applied in multiple good neighbor rulemakings, including the CSAPR Update, the Revised CSAPR Update, and the Good Neighbor Plan. However, in the Good Neighbor Plan, the EPA identified that on an ozone-season average, fleetwide basis, sources with existing SCR controls are generally capable of achieving an emissions rate around 0.08 lb/mmBtu. *See* 88 FR 36721.

To understand this discrepancy, the EPA evaluated the level of EGU

[76] November 2022 Submission at 18.

[77] The effectiveness of the Good Neighbor Plan in Missouri is currently administratively stayed by the EPA to comply with preliminary orders staying the EPA's separate Disapproval Action, 88 FR 9336, pending judicial review. 88 FR 49295 (July 31, 2023). On June 27, 2024, the Supreme Court granted stay applications of the Good Neighbor Plan, *Ohio et al.* v. *EPA,* Nos. 23A349, 23A350, 23A351 and 23A384, 603 U.S. __ (2024). However, the Good Neighbor Plan remains the EPA's final determination of Missouri's and 22 other states' interstate transport obligations for the 2015 ozone NAAQS. Neither the Good Neighbor Plan nor the Disapproval Action have been vacated by any court, and at this time merits litigation is proceeding while the Good Neighbor Plan's application in Missouri is stayed.

emissions controls identified by the MoDNR as well as several alternatives based on emissions control opportunities evaluated in the final Good Neighbor Plan. The emissions control opportunities evaluated in the Good Neighbor Plan included optimizing existing SCR and SNCR post-combustion NO_X controls at units that currently have this technology and installing state of the art combustion controls (SOA CC) at units that currently lack them and retrofitting of SCR post-combustion controls at units that currently do not have those controls installed.

The EPA first evaluated the 0.12 lb/mmBtu rate identified by the MoDNR for coal-fired EGUs with SCR. Similar to the methodology described in the EPA's NO_X Mitigation Strategies Final Rule TSD, the EPA focused on the third-lowest ozone season emissions rate for the coal-fired EGUs with SCR systems in Missouri, and calculated a third best average rate, which it determined to be 0.086 lb/mmBtu specific to these units. This value is well below the 0.12 lb/mmBtu rate the MoDNR ultimately determined was appropriate for these units. The EPA then examined the third best average rate; however, the EPA did so for all units across the United States with cyclone boilers with SCR (similar to those in Missouri where the 0.12 lb/mmBtu rate would apply) and found a value of 0.073 lb/mmBtu. This value is also well below the 0.12 lb/mmBtu rate identified by the MoDNR.

Next, going beyond fleetwide average emissions rates, the EPA examined the historical operation of each individual unit for which the MoDNR proposed to apply the 0.12 lb/mmBtu rate to identify whether there was a justifiable reason for selecting an ''optimized'' rate well above the identified third best average rates (either using the sources included in the EPA's evaluation, or the subset of sources in Missouri that the MoDNR used). The EPA found that essentially all units have achieved emissions rates well below 0.12 lb/mmBtu, and in almost all cases below at least 0.08 lb/mmBtu on a monthly or seasonal basis.[78] Thus, in general, the emissions rate the MoDNR identified for these sources is roughly 33 percent less stringent than appears to be achievable based on the relevant data.

To investigate the source of this discrepancy further, the EPA revisited its assessment of all coal-fired EGUs with SCR for potential optimization completed for the Good Neighbor Plan. The EPA examined costs for full operation of SCR controls for units that already have this technology installed.[79] This includes the cost of catalyst replacement and disposal, the costs of reagent, and the cost for returning a partially operating SCR to full operation. The EPA evaluated nationwide coal-fired EGU NO_X ozone season emissions data from 2009 through 2021 and calculated an average NO_X ozone season emissions rate across the fleet of coal-fired EGUs with SCR for each of these thirteen years and considered the third best average emissions rate. The EPA did not consider the lowest or second-lowest NO_X emissions rates since these may reflect SCR systems that have all new components and therefore not representative of ongoing achievable NO_X emissions rates considering broken-in components and routine maintenance schedules. The units identified for control under Missouri's SIP submission are included in the subset used in the EPA analysis. The analysis, which includes the costs required to increase reagent and routine maintenance, resulted in an optimized rate of 0.08 lb/mmBtu. Based on the results of this assessment, we still do not find adequate justification for a 0.12 lb/mmBtu rate for these sources.

As discussed previously, the MoDNR initiated its analysis of Step 3 by focusing on improvements of existing SCR operation at certain coal-fired EGUs. The MoDNR follows an assessment similar to those developed by the EPA in evaluating optimization of SCRs at coal-fired EGUs in prior good neighbor rulemakings. In the development of its analysis to identify an emissions rate, however, the MoDNR excludes the best operating coal-fired units with SCRs in Missouri before considering the third best average emissions rate. In addition, in establishing the emissions rates in the Consent Agreements, the MoDNR added a 20 percent compliance margin, but the MoDNR's November 2022 Submission does not contain any analysis or data supporting this approach to allowing increased emissions far beyond the selected rate. Additionally, the Consent Agreements already include provisions addressing instances of variability from startup, shutdown, and malfunction of equipment. Thus, the identified emissions rate is inconsistent with a review of historical data for the subset of units the MoDNR considered for controls in the SIP Submission. The EPA's analysis of the data at the sources at which Missouri's November 2022 Submission proposes to apply the 0.12 lb/mmBtu limit shows that historical NO_X emissions rates ranging from 0.06–0.10 lb/mmBtu are attainable for these units.[80] Allowing increases above historical emissions rates by an additional 20–100 percent does not reflect an optimized emissions performance level for these coal-fired EGUs with SCR and in fact allows for degradation in emissions performance from observed achievable historical rates. The MoDNR provided no cost or feasibility information regarding why these rates that were previously achieved at these EGUs are not attainable at these EGUs going forward.

The MoDNR's analysis of near-term emissions control opportunities at EGUs was incomplete in certain other respects. The EPA agrees that Missouri EGUs do not have SOA CC potential upgrades available at this time.[81] However, the MoDNR did not evaluate additional SCR optimization at oil and/or gas fired EGUs. The EPA's analysis suggests that there may be additional emissions reductions through cost-effective optimization of combined cycle units in Missouri available in the short-term, which the MoDNR did not consider.[82] Finally, the Consent Agreements for Labadie and Sikeston include ozone season emissions rates of 0.12 lb/mmBtu and 0.13 lb/mmBtu, respectively. Historical ozone season emissions rates for Sikeston for the previous five years ranged from 0.10–0.12 lb/mmBtu and for Labadie was 0.09 lb/mmBtu for the same period.[83] While the MoDNR acknowledges in its submission that these rates would not necessarily achieve any reductions in emissions, instead serving as an assurance of the operation of controls at the units in these facilities, the emissions rates in the Consent Agreements actually represent an increase of their historical and consistently lower emissions rates.

Without adequate technical justification for applying the rates selected and included in the Consent

[78] The lowest monthly rate that Thomas Hill Energy Center, oris code 2168 unit MB2 has achieved is 0.083 lb/mmBtu.

[79] See ''EGU NO_X Mitigation Strategies Final Rule TSD'' in Docket ID No. EPA–HQ–OAR–2021–0668–1092, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[80] See ''Historical NO_X Seasonal Emission Rates for Units with SCR Final'' in Docket ID No. EPA–HQ–OAR–2021–0668–1106, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[81] *See* ''Appendix A: Final Rule State Emissions Budget Calculations and Engineering Analytics'' in Docket ID No. EPA–HQ–OAR–2021–0668–1080 and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[82] Id.

[83] *See* ''Historical NO_X Seasonal Emissions Rates for Units with SCR Final'' in Docket ID No. EPA–HQ–OAR–2021–0668–1106, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

Agreements, and with no additional emissions controls identified to eliminate a comparable amount of significant contribution in compensation for that reduced level of emissions control, the November 2022 Submission fails to eliminate the amount of emissions that the EPA has found achievable through near-term EGU control strategies and which comprises a portion of the amount of emissions that should be prohibited to eliminate significant contribution for the 2015 ozone NAAQS (as well as for the 2008 ozone NAAQS previously).

However, the EPA conducted further evaluation of the consequences of the application of this rate with respect to estimated total emissions reductions in the State and the air quality effects of those reductions at downwind receptors.

The EPA applied the emissions rates identified by the MoDNR as well as the emissions rates the Agency identified in the final Good Neighbor Plan to the suite of units each agency identified and calculated the resulting ozone season State-level EGU emissions for the State (including the emissions from units whose emissions rates remained unchanged) at various levels of stringency based on 2021 emissions.[84] The resulting state-wide ozone season emissions levels for various levels of stringency based on the EGU fleet in 2023 and 2026 is shown in table 6. For 2023, both the emissions levels under the MoDNR's emissions controls and the final Good Neighbor Plan represent a reduction in emissions from the base case. However, under the final Good Neighbor Plan an additional 784 tons are reduced beyond the emissions reductions identified by the MoDNR.

The difference is even more pronounced in 2026, with additional reductions accruing from emissions reductions commensurate with the installation of SCR controls under the Good Neighbor Plan. Such controls could achieve 4,518 additional tons of ozone-season emissions reductions, as under the final Good Neighbor Plan, beyond the level of reduction specified in the November 2022 Submission.

TABLE 6—2023 AND 2026 EGU OZONE SEASON NO_X EMISSIONS (TONS) AT VARIOUS LEVELS OF STRINGENCY

Year	Engineering analysis (EA) base case	Missouri consent Agreement NO_X limits (0.12–0.18 lb/mmBtu on existing units)	SNCR and SCR optimized (existing SCRs optimized at 0.08 lb/mmBtu rate)	New SCRs added and SCR optimized (existing SCRs and optimized to 0.08 lb/mmBtu rate)
2023	20,094	13,382	12,598	(not applicable)
2026	18,612	11,899	11,116	7,381

The EPA notes that these figures do not account for roughly an additional 2,065 tons of projected ozone-season NO_X emissions reductions that were identified in the Good Neighbor Plan associated with non-EGU emissions control strategies to eliminate significant contribution from the State of Missouri. The EPA addresses the non-EGU analysis provided in the Missouri SIP submission in section III.C.4.

Based on this evaluation, the EPA determines the information provided in the November 2022 Submission regarding the potential cost-effective emissions control strategies at EGU sources in Missouri is inadequate.

2. Evaluation of Projected NO_X Reductions on Downwind Linked Receptors

The effects of emissions control strategies on downwind receptors to which upwind States are linked is one of the important factors that States and the EPA typically assess at Step 3 for purposes of defining the amount of ''significant contribution.'' Further, while the EPA does not view achieving precisely the same degree of projected air quality improvement at receptors as its FIP achieves as necessarily required for a SIP to be approvable, the EPA considers the Good Neighbor Plan's evaluation of air quality improvement to supply an important benchmark that allows for a reasonable assessment of the sufficiency of alternative programs States may put forward. The MoDNR included data in their submission showing the projected effect of its chosen emissions control strategies on ozone levels at the downwind receptors. While this data indicates that the MoDNR's proposed approach achieves some improvement in ozone levels at the identified receptors to which Missouri is linked, this amount of air quality improvement is less than the degree of improvement that occurs with the application of the level of emissions control that the EPA had determined in the Good Neighbor Plan is necessary to eliminate Missouri's significant contribution. This finding supports the EPA's proposed conclusion that the November 2022 Submission is not adequate to address Missouri's good neighbor obligations for the 2015 ozone NAAQS.

The EPA evaluated the air quality analysis conducted by the MoDNR that used the Air Quality Assessment Tool, or AQAT, from the proposed Good Neighbor Plan. The MoDNR utilized the AQAT to estimate the air quality effects of Missouri's proposed emissions reductions on the receptors that the MoDNR identified as potential receptors in 2023. The EPA independently checked the emissions reductions projected to be achieved at the level of emissions control identified by the MoDNR and then using the same AQAT (from the proposed Good Neighbor Plan) confirmed that the MoDNR's results are accurate.

Next, since the final Good Neighbor Plan had updates to the air quality modeling that form the basis of the AQAT, we repeated the air quality analysis using the air quality modeling and AQAT from that rule. Starting with the 2021 emissions from the engineering analysis used in the final Good Neighbor Plan and applying the emissions rates identified by the MoDNR, we found slightly different emissions levels for 2023. We also found emissions levels for 2026, which included emissions changes due to retirements and/or other changes (see the Ozone Transport Policy Analysis Final Rule TSD from the final Good Neighbor Plan for details; also available in this docket). In addition to the emissions control level identified by the MoDNR, to ensure a thorough review, we evaluated several other emissions

[84] *See* ''Ozone Transport Policy Analysis Final Rule TSD'' in Docket ID No. EPA–HQ–OAR–2021–0668–1080, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

levels using the engineering analysis from the final Good Neighbor Plan (*i.e.,* optimization levels for existing SCR controls of 0.08 lb/mmBtu (or better) as well as optimization of existing SNCR controls).[85] Additionally, we evaluated the potential effects of installing SCR controls with rates of 0.05 lb/mmBtu on all coal-fired units that are greater than 100 MW. The resulting analysis allows for a comparison of reduction in ozone levels that the MoDNR's emissions reductions strategies for EGUs would achieve at downwind receptors as compared to what the final Good Neighbor Plan's emissions reduction strategies would achieve. The comparative estimated air quality contributions to each of the potential receptors resulting from these emissions stringency levels can be found in table 7.

We observe that the emissions reductions proposed by the MoDNR result in some air quality improvements for each receptor. However, we observe that for the stringency levels identified and selected to eliminate significant contribution in the final Good Neighbor Plan, there are more emissions reductions and that these emissions reductions result in more air quality improvements (through reductions in the amount of ozone to which Missouri's emissions contribute) at the downwind receptors relative to the stringency level that has been adopted by the MoDNR in its November 2022 Submission. Based on an extensive record, the EPA had found the emissions reductions called for in the Good Neighbor Plan broadly cost-effective on industry-wide bases through national-scale analysis in light of the large geographic scale and persistent nature of the interstate ozone transport problem for the 2015 ozone NAAQS. As discussed here and throughout section III.C., the MoDNR has not put forward an adequate technical justification explaining why Missouri's EGU and non-EGU sources should be subject to a substantially less stringent emissions control program delivering proportionately less air quality benefits to receptors in other States.

TABLE 7—2026 AIR QUALITY CONTRIBUTIONS (PPB) ESTIMATED USING AQAT TO EACH OF THE RECEPTORS TO WHICH MISSOURI CONTRIBUTES GREATER THAN OR EQUAL TO 0.70 PPB AT VARIOUS LEVELS OF EMISSIONS REDUCTIONS[86]

Receptor ID #	State	County	AQ Model Base Case	Engineering Analysis (EA) Base Case	SNCR and SCR optimized to proposed Missouri NO_X limits[a]	SNCR and SCR optimized[b]	New SCRs added and SCR optimized[c]	New SCRs added and SCR optimized with Non-EGU reductions[d e]
170317002	Illinois	Cook	1.258	1.316	1.242	1.233	1.192	1.169
550590019	Wisconsin	Kenosha	0.912	0.955	0.900	0.894	0.863	0.847
551010020	Wisconsin	Racine	1.061	1.125	1.043	1.033	0.988	0.963
551170006	Wisconsin	Sheboygan	1.689	1.778	1.664	1.650	1.587	1.552
260050003	Michigan	Allegan	1.969	2.068	1.942	1.927	1.857	1.818
261210039	Michigan	Muskegon	2.649	2.685	2.638	2.633	2.607	2.593
481211032	Texas	Denton	0.634	0.661	0.661	0.661	0.661	0.661
550590025	Wisconsin	Kenosha	1.381	1.449	1.362	1.352	1.303	1.276
550890008	Wisconsin	Ozaukee	1.479	1.551	1.459	1.448	1.397	1.369

[a] Proposed limit is 0.12 lb/mmBtu on existing units.
[b] Existing SCRs optimized at 0.08 lb/mmBtu rate.
[c] Existing SCRs optimized to 0.08 lb/mmBtu rate.
[d] Existing SCRs optimized to 0.08 lb/mmBtu rate.
[e] This is the stringency set by the Good Neighbor Plan.

3. Evaluation of the MoDNR's Use of a ''Dollar-per-ppb'' Metric

The EPA here evaluates the argument the MoDNR put forward as to why it did not believe any emissions reductions beyond the near-term EGU emissions control strategy it selected were needed using a ''dollar-per-ppb'' metric. Specifically, the MoDNR utilized a formula taking the estimated cost of emissions reductions from control technologies divided by the resulting air quality improvement to (implicitly) apportion responsibility between upwind States and to make assertions regarding whether particular controls are cost-effective on a dollar-per-unit-of-air quality-improvement basis. This approach would ''weight'' cost-effectiveness among States based on assumptions regarding the proportional amount of air quality benefit the same emissions control strategies would deliver as coming from one State rather than another at each particular receptor. This is substantially different from the approach the EPA has taken in all of its prior good neighbor rules for ozone. The Supreme Court in *EME Homer* upheld the EPA's decision not to allocate responsibility among upwind States proportionally to each State's contribution. 572 U.S. 489, 514–19. Nonetheless, the Disapproval Action explained the EPA's continuing openness to evaluating whether States could develop this or other alternative methods of allocating responsibility, though no other State has adopted this approach or demonstrated how it could be implemented in practice. 88 FR 9376. This experience accords with the EPA's previously expressed views that this approach to defining significant contribution would be highly analytically challenging and would require a highly-coordinated approach across multiple States to have a chance at being successful.

The EPA has previously evaluated Step 3 alternatives to the ''uniform approach'' the EPA has taken in the context of past good neighbor rulemakings, including an evaluation of methods similar to the ''cost per level of air quality improvement'' proposed by the MoDNR. The alternative methods, as well as potential issues that the Agency identified can be found in the ''Alternative Significant Contribution Approaches Evaluated TSD'' included in the CSAPR rulemaking docket,[87] and included in the docket for this action. In responding to comments in that rulemaking about similar cost per air

[85] *See* ''Ozone Transport Policy Analysis Final Rule TSD'' in Docket ID No. EPA–HQ–OAR–2021–0668–1080 and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[86] This table displays contributions from Missouri to each of the nine receptors to which Missouri is linked in 2023. Of these nine monitoring sites, the 2016v3 modeling indicates that only Sheboygan is projected to remain a receptor to which Missouri is linked in 2026. In this regard, the reduction in contributions in 2026 at sites other than the Sheboygan receptor represent incidental air quality benefits.

[87] Docket ID No. EPA–HQ–OAR–2009–0491–0077, also included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

quality improvement approaches,[88] the Agency identified concerns that included, but were not limited to, requirements of an ''extremely high level of accuracy in both the emissions modeling. . .and the air quality modeling'' and that ''finer-scale emissions data from all sectors....and fine-scale air quality modeling could be needed to resolve differences in cost per air quality impact.'' The EPA explained that ''these data and modeling techniques do not exist and/or are too computationally demanding to be operationally implemented.'' The EPA continued, ''A second challenge for this approach was to identify a single reduction requirement for a particular upwind State, since the reduction requirements relevant to different downwind receptors would vary significantly.''

The MoDNR has not presented a compelling argument to resolve these issues. Indeed, its own Step 3 analysis is internally inconsistent, since it only adopts a $/ppb metric in evaluating emissions control opportunities available by the year 2026 and does not apply that metric consistently in evaluating the near-term reductions it has selected. Nor did the MoDNR offer any analytical basis on which to establish a threshold based on $/ppb below which emissions reductions would be deemed cost-effective; in other words, the data provided in the Submission do not in themselves constitute a standard or definition of ''significant contribution.'' The MoDNR simply provided tables with these figures (without supporting analysis or technical justification) on pages 32 and 33 of the November 2022 Submission and claimed that these figures showed that the emissions reductions were not worth requiring. While the EPA uses a different Step 3 cost-effectiveness metric to inform ''significant contribution'' in the EPA's good neighbor rules ($/ton rather than $/ppb), the EPA notes that its level of emissions stringency identified as necessary to eliminate significant contribution is less (often far less) than what would achieve a full 1 ppb increment in ozone air quality improvement at downwind receptors. In other words, the dollar-based figures the MoDNR cites are effectively meaningless without further context. Thus, the MoDNR's presentation of this metric, without further technical justification, without coordination with other States that collectively contribute to the same receptors impacted by Missouri, and without identification of an appropriate $/ppb figure that could be consistently applied to define the amount of emissions that constitutes significant contribution, cannot be approved.

In addition to the fact that the use of this metric is inadequately supported on its own terms, the MoDNR has not conducted outreach or coordination with other States that have either primary responsibility for downwind receptor areas (*e.g.,* by virtue of being included in a designated nonattainment area), or with those upwind States that also contribute above threshold to those areas, with the goal of establishing a consistent methodology for defining significant contribution with respect to a shared ozone receptor. The need for regional consistency is critically important to ensure consistent decisions that achieve equity among States with responsibility for a shared ozone problem. 88 FR 9365; *see also* March 2018 Modeling Memo, Attachment A, at A–1 [89]). This is particularly the case where a State wishes to pursue a $/ppb approach to defining the good neighbor obligation. With this approach, States that perceive themselves to have less culpability on a ppb-impact basis for a receptor would evade emissions control requirements, purportedly under the theory that ppb improvements can be achieved more cost-effectively (on a $/ppb basis) by other States. However, the MoDNR's analysis failed to evaluate what the comparative $/ppb figures would be for other States linked to its receptors. The November 2022 Submission does not supply a sufficient basis to define what constitutes ''significant contribution'' using this metric.

The MoDNR also referenced cost-effectiveness values that it used in other programs (such as regional haze) as justification for why additional controls were not appropriate to apply in the context of good neighbor obligations for the 2015 ozone NAAQS. However, the MoDNR did not provide information on the derivation of the cost-effectiveness values or further analysis and justification for why those values would be appropriate for this purpose. The EPA has previously explained that application of cost-effectiveness determinations from other contexts must be analytically justified in relation to the specific CAA obligation in question. 88 FR 9359; *see also, e.g.,* 86 FR 23054, 23073–74 (April 30, 2021); 87 FR 9838, 9858 (February 22, 2022). Further, the EPA cannot determine from the Submission what level of control the MoDNR considered when calculating its cost-effectiveness values. For example, in the case of EGUs, use of new add-on control equipment would allow emissions rate levels well below the 0.12 lb/mmBtu levels in the Missouri Consent Agreements, which would lower the cost per ton of emissions reduced by accounting for the greater emissions reductions achieved by those controls.

4. Evaluation of Conclusions Regarding Potential Controls for Non-EGUs

As noted in section II.B., the MoDNR's submission included some information regarding potential control availability for non-EGU sources. The MoDNR's evaluation for non-EGUs is informed largely by the proposed Good Neighbor Plan, rather than its own comprehensive evaluation of non-EGU NO_X emissions sources within the State of Missouri, potential controls for those sources, or the air quality effects of such controls at receptors. In a supporting memorandum for the proposed Good Neighbor Plan titled ''Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026'' (the Screening Assessment), the EPA estimated potential facilities and emissions units located in Missouri in the cement and cement products manufacturing, glass and glass products manufacturing, and pipeline transportation of natural gas industries—as part of a larger analysis to identify industries and unit types for which the EPA proposed to establish emissions limits to eliminate significant contribution.[90] In its submission, the MoDNR provided some information about the current status of certain named, existing sources within the cement and cement products manufacturing and glass and glass products manufacturing industries but did not provide a like analysis concerning the pipeline transportation of natural gas industry's sources in Missouri, or inventory or conduct any further assessment of industrial sources in the State. Stating that the certain named, existing cement or glass sources it identified were already controlled or closing, the MoDNR concluded that no additional cost-effective controls were

[88] See page 743 of 3009 of the CSAPR ''Transport Rule Primary RTC'' document, Docket ID No. EPA–HQ–OAR–2009–0491–4513 and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[89] Included in the docket for this action, EPA–R07–OAR–2021–0851.

[90] The memorandum is available in the docket for this action, Docket ID No. EPA–R07–2021–0851. See ''Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026'' in EPA–HQ–OAR–0668–0150, also included in this docket, Docket ID No. EPA–R07–2021–0851.

available for its non-EGU industrial sources.

In determining whether any cost-effective reductions are available in the State, the EPA would expect, at a minimum, for the State to provide the EPA with a comprehensive inventory of point source emissions units, including non-EGUs. This is consistent with what the EPA indicated it would expect in a SIP submission in previous proposed disapproval actions (actions proposed prior to the SIP submission the EPA proposes action on here), where the EPA indicated that an effective evaluation of emissions deemed significant could be done, in general, through a statewide accounting of sources and other emissions activity and an assessment of potential, additional emissions reduction opportunities statewide, as well as an assessment of the downwind impact of those potential reductions (akin to the EPA's own Step 3 evaluation).[91] In this submission, the MoDNR has not provided such an assessment.[92]

Rather, in its assessment of non-EGU emissions reduction potential the MoDNR relied instead on the results of the EPA's Screening Assessment for the proposed Good Neighbor Plan. The EPA disagrees with this use of the Screening Assessment. The Screening Assessment reflected a multistate analysis of potential industries and emissions unit types that may have impactful, cost-effective emissions reduction opportunities. While the EPA finds the Screening Assessment was sufficient to inform the development of the EPA's Good Neighbor Plan, specifically to screen for potentially impactful industries and emissions unit types to focus on for further evaluation of cost-effective emissions control opportunities, the EPA does not find it appropriate in the context of developing a SIP to rely solely on the results of that Screening Assessment as the only source of data for a State to use in conducting an inventory of its own emissions sources.[93] In the proposed Good Neighbor Plan, the EPA explained that there may be facilities and emissions units identified in the Screening Assessment that are not ultimately subject to the proposed rule under the proposed applicability criteria, and possibly some facilities and emissions units not identified in the Screening Assessment that ultimately become subject to the proposed rule under the proposed applicability criteria. The final Good Neighbor Plan reaffirms this point—specific emissions units subject to the final rule emissions limits may be different than those estimated in its final rule technical memorandum. In general, the Good Neighbor Plan is a rulemaking of general applicability that, like all prior good neighbor FIPs, regulates units by their type and size, rather than by specific, named identification, and it includes both new and existing sources in the scope of its coverage.[94] See section III.D.3. below for further discussion. Therefore, without a fuller evaluation of its own emissions-source inventory information, it was inadequate for the MoDNR to rely solely on the Screening Assessment to limit the sources it needed to evaluate in its assessment of non-EGU emissions reduction potential.

In addition, where a State's SIP is not simply adopting the requirements of the Good Neighbor Plan or adopting emissions control measures that are otherwise equivalent, the EPA would expect the State to fully conduct its own Step 3 analysis using inventory data, analysis, and emissions control measures specific to that State's industrial sources, which may extend beyond sources in those industrial categories covered by the Good Neighbor Plan to ensure the State has put forward a sufficiently technically supported alternative approach to addressing their significant contribution not already identified in the Good Neighbor Plan. The MoDNR's SIP submission does not provide any such evaluation. For example, the MoDNR's evaluation of whether there are cost-effective controls in the pipeline transportation of natural gas industry only analyzed certain sources in the State, and, for the reasons described in section III.C.3. (identifying concerns with applying a dollar-per-ppb metric), was not adequately supported in dismissing emissions-control opportunities for that industry.

Without having completed a full assessment of emissions control opportunities for large, industrial sources in Missouri, the MoDNR has not provided the EPA with an adequate basis on which to conclude that existing emissions control measures are sufficient for the State to address its significant contribution. Indeed, the good neighbor provision is not limited even to large, industrial sources. *See* CAA section 110(a)(2)(D)(i) (calling for evaluation of ''*any* source *or other type of emissions activity*'' to ensure significant contribution is ''prohibited''). *See also* 88 FR 36680–81 (June 5, 2023).

Although the EPA acknowledges that the MoDNR submitted this SIP prior to the EPA finalizing the Good Neighbor Plan, the Submission would not be approvable at Step 3 for the reasons described above under any scenario, whether evaluated against the proposed Good Neighbor Plan, or the final version, or in the absence of the Good Neighbor Plan altogether. The State must establish that it has evaluated its emissions sources comprehensively and has identified those emissions that constitute significant contribution. Here, the State has not met that burden. The EPA's evaluation at Step 3 identifies multiple unexplained discrepancies between the conclusions the MoDNR has reached and the evidence that is available to the State and the EPA regarding potential, cost-effective emissions control opportunities in Missouri at both EGUs and non-EGUs (*e.g.,* the MoDNR's use of a ''dollar-per-ppb'' metric to reason out of control requirements for the pipeline transportation of natural gas industry and dismissal of post-combustion retrofit opportunities at several of its EGU sources. The EPA's evaluation of the MoDNR's use of this metric is further explained in section III.C.3). The State is by no means prohibited from regulating differently, including regulating different sources, than how the EPA has chosen to regulate in the Good Neighbor Plan. However, the extensive record the EPA developed for that rulemaking establishes an important benchmark to aid in the EPA's evaluation, one on which the MoDNR itself purported to rely. The November 2022 Submission's analysis of what emissions from the State constitute ''significant contribution'' is

[91] *See, e.g.,* ''Air Plan Disapproval; Missouri Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,'' 87 FR 9533, 9544.

[92] The EPA provided comment on the MoDNR's draft SIP submission regarding the scope of sources evaluated by the State that questioned the approvability of the draft submission. The EPA encouraged the State to consider potential emissions reductions beyond the subset of EGU sources already equipped with SCRs. While we acknowledge that the scope of sources analyzed in its final submission was expanded, this concern has not been fully resolved, as described in this section. See ''EPA Comments on Missouri State Implementation Plan Revision Addressing Interstate Transport for the 2015 Ozone Standard,'' at 3.

[93] See ''Non-EGU Applicability Requirements versus Results from Non-EGU Screening Assessment for 2026'' and the EPA's ''Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026,'' at 3, available in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

[94] See ''Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs,'' at 8, available in Docket ID No. EPA–R07–OAR–2021–0851.

not a choice to regulate differently than the FIP, but an attempt to regulate substantially less stringently without adequate technical justification. As such, it is inadequate to meet the requirements of the Act and cannot be approved.

D. Evaluation of Information Provided by Missouri Regarding Step 4

To meet the CAA's requirement that SIPs ''contain'' ''adequate provisions'' to ''prohibit'' significant contribution to nonattainment or interference with maintenance of the NAAQS, Step 4 of the 4-step interstate transport framework calls for the development of permanent and enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3. These control measures must be contained in the State's SIP; *i.e.,* the State must revise its SIP to include these measures, such that if the EPA approves these measures into the SIP, they will become enforceable as a matter of Federal law. *See generally* CAA sections 110(a)(2)(A)–(E), 113, and 304. The MoDNR's November 2022 Submission includes Consent Agreements with six power plants, covering a total of thirteen EGUs. None of the Consent Agreements require the installation of new or additional control technologies. Rather, the Consent Agreements establish emissions-rate limits based on the operation of existing SCR controls at six units, the operation of existing SNCR controls at two units, and the operation of existing combustion-controls at five units. The Submission purports to incorporate these Consent Agreements into Missouri's SIP as a SIP revision and provides that these Consent Agreements will become effective and enforceable only if the EPA fully approves the Submission.

This section will address why, in addition to the November 2022 Submission's failure to adequately identify significant contribution at Step 3, the November 2022 Submission also fails to prohibit Missouri's significant contribution at Step 4, even with respect to those reductions Missouri's submission purports to require.

1. Evaluation of the Consent Agreements

There are several independent reasons why the Consent Agreements with certain power plants are not adequate at Step 4. The terms of these Agreements make clear that the emissions-control requirements they identify are neither permanent nor enforceable. They have not been codified into the law of the State and contain provisions that allow for the State and the affected sources to modify them without following the statutorily-mandated process for SIP revisions and without requisite analysis by the EPA under CAA section 110(l). *See* CAA section 110(a)(2)(D); 110(i); 110(l). While the EPA will allow for consent agreements or permitting requirements to be incorporated by reference into a State's SIP to meet SIP requirements (50 CFR part 51, appendix V, para. 2.1(b)), it is important that the State provides that to the extent such provisions are approved and incorporated into the State's SIP, such provisions, as approved, cannot be modified by later changes made to the underlying agreements or permits outside of the SIP revision process. Once approved by the EPA into the SIP as meeting the applicable SIP requirements, only changes made through the statutory SIP revision process may modify the approved requirements of the State's SIP. In this instance, the terms of the Consent Agreements explicitly authorize the State and the affected sources to cancel the agreements in toto and without the EPA's approval of such a modification, which would in effect negate the emissions limitations in their entirety. This is antithetical to the requirement that SIP provisions be permanent and enforceable, and not changed except pursuant to the statutory and regulatory processes for SIP revisions.

The EPA commented extensively during the State level public comment period on the draft SIP submission and noted several issues with the Consent Agreements related to permanence and enforceability.[95] The EPA commented that all of the Consent Agreements contain a provision that would allow the sources to terminate the Agreement upon mutual written agreement of the MoDNR and the source.[96] In its Response to Comments, the MoDNR states that ''Paragraph 5 of the Consent Agreements clearly state that after EPA approves the good neighbor SIP that includes the consent agreements, any future changes to the consent agreements will require EPA approval before going into effect. Should EPA approve the SIP revision that includes these consent agreements, and the agreements are not terminated pursuant to paragraph 13 of the agreements, then the requirements will become permanent, federally enforceable, and applicable until a revision to the SIP is submitted and approved by EPA.''

However, there remain multiple problematic provisions of the Consent Agreements that render them non-permanent and unenforceable, and these are not addressed by the MoDNR's assertion above. It is this language in the Agreements themselves, rather than the possibility of a future modification to them, that renders them not approvable as a SIP revision addressing good neighbor obligations for the 2015 ozone NAAQS.

First, the Agreements are not yet even in effect. Paragraph 1 of the Agreements says that ''the effective date of the approval of this Consent Agreement by EPA as a revision to the Missouri SIP'' is the date from which the covered sources will begin complying with the Agreement. This is not approvable. The statute is clear that good neighbor obligations must be implemented as expeditiously as practicable and no later than the next attainment date. *See Wisconsin,* 938 F.3d at 313–20; *Maryland,* 958 F.3d at 1203–04. The next attainment date at the time the MoDNR developed and submitted its submission, and presently, is the August 3, 2024, Moderate area attainment date, and thus the relevant analytical year is 2023, and emissions requirements to eliminate significant contribution should be implemented no later than the 2023 ozone season. *See* Final Disapproval, 88 FR 9340–41. The control requirements under the Consent Agreements are premised on better operating existing installed emissions controls. The EPA has consistently found that such emissions control strategies are capable of being implemented in a matter of weeks (*e.g.,* 88 FR 36720–22; 86 FR 23088–89; 81 FR 74561). Thus, the MoDNR, in identifying these controls as necessary to eliminate its significant contribution or interference with maintenance, was obligated by the good neighbor provision to require these emissions reductions by the start of the 2023 ozone season. It did not do so, and it did not justify why it did not do so based on any analysis of necessity or impossibility. *See Wisconsin,* 938 F.3d at 320. Instead, the MoDNR tied the effectiveness of these emissions reductions to an event that is irrelevant to substantive compliance with the good neighbor provision, *i.e.,* the effective date of any final action by the EPA to approve the Consent Agreements into Missouri's SIP. This was improper; as a result of this provision, even at this point in time, Missouri has not yet imposed enforceable emissions control requirements that should have been in place by the 2023 ozone season and,

[95] See ''Comments on Missouri State Implementation Plan Revision Addressing Interstate Transport for the 2015 Ozone Standard'' (August 18, 2022), available in the docket for this action.

[96] See November 2022 Submission, appendices A–F, paragraph 12.

under the plain terms of the Consent Agreements, to this day the covered sources are under no obligation to comply with them.

This appears to be the sources' understanding of these Consent Agreements as well; otherwise, at least one source appears to have been in violation of its Agreement in 2023. The EPA analyzed the 2023 ozone season emissions for all coal-fired units with SCR control systems in Missouri.[97] Several units, including some from facilities subject to the Consent Agreements with the State, reached a NO_X rate of 0.05–0.08 lb/mmBtu. This range was also achieved on an average facility-wide level. Some units, however, did not achieve the emissions rate specified in the Consent Agreements. One facility did not achieve the emissions rate specified in the Consent Agreements, both at the unit level and on a facility-wide average basis. The EPA views this data as confirming its understanding that the Consent Agreements are not currently in effect or constitute binding and enforceable provisions of State law; otherwise, all sources would have presumably complied with the Agreements rather than risk committing a violation.

Further, the EPA is not in a position to take the triggering action (*i.e.,* approval) necessary to bring these agreements into effect, and it was improper for the State to attempt to place that onus on the Agency rather than comply with the attainment schedule of the CAA for itself. First, as explained elsewhere in this document, this November 2022 Submission is not fully approvable for multiple reasons. Second, for the reasons explained in the following paragraph, anything less than a full approval would, per the terms of the Consent Agreements, render them unenforceable.

The Consent Agreements include termination clauses that render them unenforceable depending on the nature of the action the EPA takes. For example, paragraph 13 contains four circumstances in which the sources could choose, unilaterally, to terminate the Agreements, each being a circumstance in which the EPA does not issue a ''full approval'' of the SIP revision or upon the effective date of a FIP for Missouri. Under Paragraph 13, if the EPA issues only a partial approval/disapproval or a limited approval, or issues a SIP Call, or upon the effective date of a FIP, then the sources can unilaterally withdraw from the Consent Agreements.

These provisions place the EPA in a position that leaves it no choice but to propose to disapprove the November 2022 Submission in full. For the reasons explained elsewhere in section III. of this document, the EPA finds multiple grounds why it cannot fully approve this SIP submission. Even if the EPA could have explored the possibility of a limited or partial approval of this submission, it is not able to do this if doing so would render the emissions control measures established through the Consent Agreements unenforceable, by triggering the sources' ability to unilaterally withdraw from the Agreements. Nor does the EPA have discretion to partially approve the SIP submission by not including within its approval those provisions of the Consent Agreements such as Paragraph 13 (and others discussed later in this section) that are not approvable. To do so would be to render the SIP revision more stringent than the State intended, which the EPA is not authorized to do. *See Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984). In effect, Paragraph 13 leaves the EPA with this choice: either approve the November 2022 Submission in full and never bring the Good Neighbor Plan into effect for Missouri—which, for the reasons explained elsewhere in this document would fail to adequately address Missouri's good neighbor obligations for the 2015 ozone NAAQS—or disapprove the November 2022 Submission in full, so that the Good Neighbor Plan can be brought into effect for Missouri and fill the gap in Missouri's SIP. *See Ass'n of Irritated Residents* v. *U.S. EPA,* 686 F.3d 668, 675–76 (9th Cir. 2012); *Virginia* v. *EPA,* 108 F.3d 1397, 1408 (D.C. Cir. 1997). The EPA is obligated under the CAA to follow the latter course.

Further, the MoDNR did not make any revisions to Paragraph 12 of the Consent Agreements in response to the EPA's pre-submission comments. This provision allows for termination of the Agreement upon ''mutual written agreement of'' the source and the MoDNR. This provision violates the Act's prohibition on modification of SIPs outside of authorized SIP revision processes. See CAA section 110(i) and (l). SIP provisions cannot authorize a State to make changes in the EPA-approved and federally enforceable SIP requirements applicable to sources without going through the statutorily required SIP-revision process. The EPA refers to SIP provisions that purport to authorize States to make unilateral changes to existing SIP requirements as impermissible ''director's discretion'' provisions. *See, e.g.,* 86 FR 15104, 15116 (March 22, 2021). However, the EPA interprets the CAA to allow two types of such provisions: (1) where the provision provides director's discretion for the State to make changes, but specifies that such changes have no effect for purposes of Federal law or alter SIP requirements unless and until the EPA approves the changes through a SIP revision pursuant to CAA requirements; or (2) where the provision provides director's discretion that is adequately bounded, such that at the time the EPA approves the SIP provision the Agency can evaluate it for compliance with applicable CAA requirements and evaluate the potential impacts of the State's exercise of that discretion. The EPA interprets CAA section 110(l) to allow SIP provisions with director's discretion of either type. In the case of an adequately bounded provision, the EPA considers such provisions consistent with section 110(l) because, at the time of initial approval into the SIP, the Agency will already have evaluated the provision for compliance with applicable requirements and evaluated the potential impacts from exercise of the discretion. *E.g.,* 86 FR 15116.

In *Environ. Comm. Fl. Elec. Power* v. *EPA,* 94 F.4th 77 (D.C. Cir. 2024), the D.C. Circuit held that the EPA impermissibly issued a SIP call, under CAA section 110(k)(5), in its 2015 SSM SIP Action [98] for certain SIP provisions applicable to emissions during SSM events, including certain director's discretion type provisions that the EPA had previously approved. However, the Court did not foreclose that some director's discretion provisions may be so unbounded as to interfere with the Agency's ability to predict the impact on compliance with the CAA's requirements. *Id.* At 111. Further, *Enviro. Comm. Fl. Elec. Power* concerns the EPA's authority to issue a SIP call for certain provisions that it previously approved and not the EPA's authority to approve or disapprove a SIP submission in the first instance. *Compare* CAA section 110(k)(3) with (k)(5).

Here, Paragraph 12 of the Consent Agreements in effect provides unbounded discretion to the State to eliminate the requirements, even though the MoDNR has submitted these Consent Agreements as necessary to address Missouri's good neighbor obligations under CAA section 110(a)(2)(D)(i) for the 2015 ozone NAAQS. The EPA has explained the need for emissions reductions on each day of the ozone season, reflecting the

[97] See ''Missouri EGU Units 2023 Ozone Season Data,'' available in docket ID No. EPA–R07–OAR –2021–0851.

[98] *See* 80 FR 33840.

daily, but unpredictably recurring, nature of the air pollution problem, and it is important that emissions control programs will be in operation in a continuous manner to eliminate each upwind State's ''significant contribution'' throughout each day of each ozone season in perpetuity. *See* 88 FR 36676, 36686–87, 36752. Thus, Paragraph 12, which allows this upwind State and its sources to agree between themselves to terminate these emissions control requirements at any time for any reason, is unacceptably too unbounded to meet good neighbor obligations for the 2015 ozone NAAQS. Likewise, the EPA finds Paragraph 12 to be inconsistent with CAA section 110(i) and (l) because it permits the State not merely discretion to modify some provision within the overall operation of a broader regulatory scheme, but the ability to terminate the Agreements completely—*i.e.,* the entirety of the emissions control program the State has put forward—at will. The EPA agrees that emissions controls on these sources are necessary (albeit not sufficient, see section III.) for Missouri to meet its good neighbor obligations and it would be inappropriate for the EPA to approve as SIP provisions these Consent Agreements that the State could eliminate without undertaking the necessary SIP revision process mandated by the Act.

Despite the MoDNR's unenforceable assurances in the narrative portion of its Submission that it would not modify the Consent Agreements themselves without the EPA's approval, the operative language in the Agreements remains the same. Paragraph 12 remains an unambiguous statement authorizing termination of the Agreements upon agreement of the parties to them.[99] Therefore, the EPA concludes that if the source and the MoDNR chose to exercise their rights in Paragraph 12, the Consent Agreements would be terminated without review or approval from the EPA and the source would no longer be under any obligation to comply.

Further, Paragraph 12 violates the anti-backsliding provisions of section 110(l) of the CAA, which requires that the EPA shall not approve any revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress. 42 U.S.C. 7410(*l*). The termination provision would allow a unilateral amendment to the SIP, potentially removing emissions and pollution control limits without an evaluation of whether the removal would be appropriate under the good neighbor provision, would interfere with attainment or reasonable further progress, or would interfere with any other applicable requirement of the Act.

Because the SIP submission is otherwise not approvable, the EPA need not further evaluate the SSM, regulatory safety valve, or the force majeure provisions of the Consent Agreements for compliance with the Act. Due to the identified flaws in the Consent Agreements as described above, the EPA proposes that it cannot approve these Agreements as a revision to Missouri's SIP.

2. Evaluation of Approach of Regulating Named Sources

The Consent Agreements only cover several specific identified sources. In all of the EPA's prior good neighbor rules, beginning with the NO_X SIP Call in 1998, to ensure a robust and durable remedy to the problem of interstate pollution, the EPA has regulated sources on industry-wide bases and has regulated all existing and new sources meeting applicability criteria within the covered industries. *See* 88 FR 36685 (discussing *Appalachian Power* v. *EPA,* 249 F.3d 1032, 1057–58 (D.C. Cir. 2001)); 40 CFR 51.121(f). The EPA continued this approach with the Good Neighbor Plan. By covering all new and existing emissions units meeting defined applicability criteria on an industry-wide basis, the EPA ensures against the risk of production (and thus, emissions) shifting from covered to uncovered units. 88 FR 36746–47; *see also* 70 FR 25261. In *EME Homer City,* the Supreme Court upheld the EPA's approach of applying a uniform level of emissions control stringency across all units in a given industry (there, power plants), because this approach brings all sources in covered States up to a standard level of emissions control, thus avoiding free riding and inequitable outcomes among States linked to the same downwind air quality problems. 572 U.S. 489, 519.

For example, the Group 3 trading program established for EGUs in the Good Neighbor Plan, as with all of the EPA's good neighbor rules covering EGUs, applies to all fossil-fuel fired EGUs over a certain size threshold. The EPA recognizes that certain units that were not identified in its Step 3 analysis, such as certain simple cycle combustion turbines, may have cost-effective emissions reduction opportunities while also being sources to which production and thus emissions could shift. These units are included in the emissions trading program and therefore, as in prior transport rules, the Good Neighbor Plan program continues to subject them to an allowance holding requirement which will likely incentivize any available cost-effective NO_X reductions from these EGUs while forestalling the risk of mere emissions shifting rather than prohibition of significant contribution. 88 FR 36732.

While the EPA does not require States to follow its 4-step framework if an alternative approach can be shown to meet the statutory requirement to eliminate significant contribution, the EPA has consistently explained that SIPs seeking to demonstrate equivalency in eliminating significant contribution from power plants would need to be evaluated based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the state-wide emissions reductions found to be necessary to eliminate significant contribution will be achieved. To address the applicable CAA requirements, the EPA has explained that for all EGUs in a State, the SIP revision should include the following general elements: (1) a comprehensive baseline 2023 statewide NO_X emissions inventory (which includes existing control requirements), which should be consistent with the 2023 emissions inventory that the EPA used to calculate the required State budget in this final rule (unless the State can explain the discrepancy); (2) a list and description of control measures to satisfy the State emissions reduction obligation and a demonstration showing when each measure would be implemented to meet the 2023 and successive control periods; (3) fully-adopted State rules providing for such NO_X controls during the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (see 40 CFR part 51, subpart K (''source surveillance'' requirements)); and (5) a projected inventory demonstrating that State measures along with Federal measures will achieve the necessary emissions reductions in time to meet the 2023 and successive compliance deadlines (*e.g.,* enforceable reductions commensurate with installation of SCR on coal-fired EGUs by the 2027 ozone season). *See* 88 FR 36841–42. *See also* 76 FR 48326.

In this case, the MoDNR's approach of regulating only a subset of specific,

[99] The courts would also likely interpret this language similarly to the EPA. *See, e.g., New York* v. *U.S. EPA,* 525 F.Supp.3d 340, 356 (N.D.N.Y. 2021) (''[T]the scope of a consent decree must be discerned within its four corners . . . .'') (quoting *Firefighters Local Union No. 1784* v. *Stotts,* 467 U.S. 561, 574 (1984)).

named EGU facilities at Step 4 (rather than regulating all EGUs in the State on an industry-wide basis) fails to include a sufficient analysis of the factors identified above to demonstrate that these measures effectively and durably prohibit the ''amount'' of emissions that is necessary to eliminate significant contribution from ''any source or other type of emissions activity within'' the State of Missouri. CAA section 110(a)(2)(D).

Therefore, the EPA proposes to find that the Consent Agreements included in the State SIP are not permanent and enforceable and do not constitute ''adequate provisions'' to ensure that emissions constituting ''significant contribution'' from Missouri have been ''prohibited.'' CAA section 110(a)(2)(D).

IV. Proposed Action

The EPA is proposing to disapprove the November 2022 Submission from Missouri pertaining to interstate transport of air pollution that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other States. The EPA has already disapproved Missouri's first submission related to these requirements. See 88 FR 9336 (Feb. 13, 2023). That action is currently stayed as to Missouri pending judicial review. Missouri's November 2022 Submission presents a new analysis of Missouri's understanding of what the good neighbor provision requires for purposes of the 2015 ozone NAAQS. For the reasons explained in this proposed action, the EPA has identified numerous shortcomings in the State's analysis with respect to these mandatory obligations under the Act, and so the EPA is proposing to disapprove the Submission. Under CAA section 110(c)(1)(B), this disapproval, if finalized, would establish a 2-year deadline for the EPA to promulgate a FIP for Missouri to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 ozone NAAQS in other States, unless the EPA first approves a SIP that meets these requirements. *See Ass'n of Irritated Residents* v. *U.S. EPA,* 686 F.3d 668, 675–76 (9th Cir. 2012). Accordingly, if the EPA finalizes a disapproval of Missouri's November 2022 Submission, the EPA's obligation to promulgate a FIP pursuant to CAA section 110(c) could be satisfied through requirements like those in the Good Neighbor Plan for Missouri or other appropriate action, which would be the subject of additional rulemaking action. Disapproval does not start a mandatory sanctions clock for Missouri.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The MoDNR did not evaluate EJ considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.
- This action does not have Tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

Determinations Under CAA section 307(b)(1) and (d): Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (1) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (2) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion to decide whether to invoke the exception in (2).[100]

[100] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

If the EPA finalizes this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action, which would be locally or regionally applicable, is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. This proposal, if finalized, would be based on several determinations of nationwide scope or effect, each of which has the purpose of ensuring consistency and equity in implementing the good neighbor provision for ozone across all States, including: (1) the determination that use of the same 2023 and 2026 analytical year air quality modeling and monitoring analytics (including the use of the violating-monitor receptor identification methodology) that were used in the Disapproval Action and the Good Neighbor Plan are appropriate for purposes of evaluating Missouri's November 2022 Submission; (2) the determination that 1 percent of NAAQS is the appropriate contribution threshold at Step 2 of the four-step framework nationwide; and (3) the determination that the MoDNR's Step 3 analysis and Step 4 implementation approach are inconsistent with and not adequate to replace the EPA's nationwide findings and the emissions control programs in the Good Neighbor Plan for sources in Missouri and 19 other similarly situated States that remain linked through the 2026 analytic year.

These determinations would provide important bases for the action, if finalized, and are needed to ensure consistency and equity in the treatment of all States in addressing the multistate problem of interstate ozone pollution under the good neighbor provision for the 2015 ozone NAAQS. Missouri seeks by its November 2022 Submission to avoid the implementation of the Good Neighbor Plan in Missouri, through a set of emissions control requirements that are demonstrably and substantially less stringent than what the EPA determined was needed to eliminate ''significant contribution'' for the 2015 ozone NAAQS in the Good Neighbor Plan. The Good Neighbor Plan is designed as a ''collective approach'' to effectively address the nationwide problem of interstate ozone transport in an equitable and consistent manner across the covered States. *See Kentucky Energy and Environment Cabinet* v. *EPA,* No. 23–3605 (6th Cir. Nov. 9, 2023), Order at 8. The determinations underlying this proposed disapproval would, if finalized, have nationwide scope and effect, among other reasons, because they would ensure that the Good Neighbor Plan (until replaced by SIPs meeting the statutory requirements) may be implemented on a consistent basis for all covered States, including Missouri, and may deliver the full amount of relief from upwind emissions that the EPA has found downwind jurisdictions are due.[101] For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1).[102]

This action is subject to the provisions of CAA section 307(d). CAA section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to ''such other actions as the administrator may determine.'' Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Michael S. Regan,

Administrator.

[FR Doc. 2024–15826 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

[101] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[102] If the EPA takes a consolidated, single final action on this and any other proposed SIP actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS, that action may be nationally applicable, and the EPA would also anticipate that in that instance, in the alternative, the Administrator would make and publish a finding that such final action is based on a determination of nationwide scope or effect.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2023–0182; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BF92

Endangered and Threatened Wildlife and Plants; Endangered Status for the Eastern Regal Fritillary, and Threatened Status With Section 4(d) Rule for the Western Regal Fritillary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the eastern regal fritillary (*Argynnis idalia idalia*) as an endangered species and to list the western regal fritillary (*A. i. occidentalis*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the regal fritillary, as these two subspecies make up the entire species. After a review of the best available scientific and commercial information, we find that listing both subspecies is warranted. Accordingly, we propose to list the eastern subspecies as endangered and the western subspecies as threatened with protective regulations issued under section 4(d) of the Act (a ''4(d) rule''). We find that designation of critical habitat for both subspecies is not determinable at this time.

DATES: We will accept comments received or postmarked on or before October 7, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 20, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R6–ES–2023–0182, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R6–ES–2023–0182, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2023–0182.

FOR FURTHER INFORMATION CONTACT:

For the eastern regal fritillary—Sonja Jahrsdoerfer, Project Leader, Pennsylvania Ecological Services Field Office, 110 Radnor Road, Suite 101, State College, PA 16801; telephone 814–206–7474.

For the western regal fritillary—Chris Swanson, Field Supervisor, North and South Dakota Ecological Services Field Offices, 420 South Garfield Avenue, Suite 400, Pierre, SD 57501; telephone 605–222–0228. 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. Please see Docket No. FWS–R6–ES–2023–0182 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), the term ''species'' includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. A subspecies warrants listing under the Act if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a subspecies warrants listing, we must list the subspecies promptly and designate the subspecies' critical habitat to the maximum extent prudent and determinable. We have determined that the eastern regal fritillary (eastern subspecies) meets the Act's definition of an endangered species and that the western regal fritillary (western subspecies) meets the Act's definition of a threatened species; therefore, we are proposing to list them as such. Listing a subspecies as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the eastern regal fritillary as an endangered species and to list the western regal fritillary as a threatened species with a 4(d) rule. As explained later in this document, we conclude that the designation of critical habitat for these subspecies is not determinable at this time.

The basis for our action. Under the Act, we may determine that a subspecies is an endangered or threatened species because of any of five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the eastern regal fritillary is endangered due to the loss and fragmentation of its remaining grassland habitats from invasive plants and woody encroachment (Factor A) and periodic disturbances, such as fire, military operations, and other management activities if they are too large, frequent, or intense (Factor A). These threats are exacerbated by the ongoing effects of drought and climate change (Factors A and E).

We have determined that the western regal fritillary is threatened due to the expected continued loss and fragmentation of large, intact native grasslands through conversion by agriculture and development (Factor A); invasive plants and woody vegetation (Factor A); the reduction of violets and nectar sources from the broadcast application of herbicides (Factor A); and periodic disturbances from fire, mowing, and haying that are too large, frequent, or intense (Factor A). These threats are all exacerbated by the ongoing and expected effects of drought and climate change (Factors A and E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The subspecies' biology, range, and population trends, including:

(a) Current ranges, including distribution patterns and the locations of any additional populations of the subspecies;

(b) Current population levels, and current and projected trends; and

(c) Past and ongoing conservation measures for the subspecies, their habitats, or both.

(2) Threats and conservation actions affecting the subspecies, including:

(a) Factors that may be affecting the continued existence of the subspecies, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Relevant data concerning any threats (or lack thereof) to the subspecies; and

(c) Existing regulations or conservation actions that may be addressing threats to these subspecies.

(3) Additional information concerning the current status of the subspecies.

(4) Information to assist with applying or issuing protective regulations under section 4(d) of the Act that may be

necessary and advisable to provide for the conservation of the western regal fritillary.

(a) In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule; or

(b) whether we should consider any additional or different exceptions from the prohibitions in the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, 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. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period as well as any relevant information that becomes available after this proposal is published. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the eastern subspecies is threatened instead of endangered or that the western subspecies is endangered instead of threatened, or we may conclude that one or both of the subspecies do not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the protective regulations under section 4(d) for the western regal fritillary if appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the western regal fritillary. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the western subspecies. In our final rule, we will clearly explain our rationale and the basis for our final decisions, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We designated the regal fritillary as a Category 2 candidate in the May 22, 1984, Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664). We defined Category 2 candidates as taxa for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. The species remained so designated in subsequent annual candidate notices of review (CNORs) (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the regal fritillary was no longer a candidate species.

On April 19, 2013, we received a petition from WildEarth Guardians to list the regal fritillary under the Act. On September 18, 2015, we published in the **Federal Register** (80 FR 56423) a substantial 90-day finding for the regal fritillary. The eastern and western subspecies are the only two subspecies of the regal fritillary species, so this document constitutes our 12-month warranted petition finding and our proposed listing rule for the regal fritillary.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the eastern and western subspecies of regal fritillary. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of both subspecies, including the impacts of past, present, and future factors (both negative and beneficial) affecting the subspecies.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report for the eastern and western subspecies. We sent the SSA report to 14 appropriate and independent peer reviewers and received 5 responses. Results of this structured peer review process can be found at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2023–0182 and at *https://fws.gov/library/categories/peer-review-plans.* In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from five peer reviewers on the draft SSA report. We reviewed all comments from the peer reviewers for substantive issues and new information regarding the contents of the SSA report. The peer reviewers concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions, including corrections on wingspan measurements, suggestions for additional relationships between nodes on our conceptual models, potential uncertainty associated with geospatial landcover and climate

models, and other editorial suggestions. We updated the SSA report accordingly. No substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and we addressed all peer reviewer comments in version 1.0 of the SSA report (Service 2023, entire).

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the regal fritillary, including both the eastern and western subspecies, is presented in the SSA report (Service 2023, pp. 44–68, 180–194). We use the term ''species'' to refer to the regal fritillary and any information describing or relating to the species applies to both the eastern and western subspecies, unless specified otherwise.

The regal fritillary is a large, nonmigratory butterfly found in the grassland habitats of the Fort Indiantown Gap (FTIG) National Guard Training Center in Pennsylvania (the eastern subspecies) and portions of 14 States, from Indiana to Colorado and from North Dakota to Oklahoma (the western subspecies). Adults have dorsal orange forewings and dark hindwings that feature black bars, fine white markings, and two rows of large spots at the base of the wings. Adults are similar in size to the monarch butterfly (*Danaus plexippus*), with wingspans ranging from approximately 6.8 to 10.5 centimeters (cm) (2.67 to 4.13 inches (in)) (Selby 2007, p. 14); however, the regal fritillary's predominately orange forewings and dark hindwings distinguish it from other butterflies (Service 2023, p. 44).

The regal fritillary has one generation per year. In the late summer and early fall, females lay eggs that hatch into larvae within 2 to 3 weeks. The larvae overwinter in nearby grassland vegetation before emerging in early spring to search for violets (*Viola* spp.), their only food source (Royer and Marrone 1992, p. 21; Kopper et al. 2000, pp. 661, 663). In late May through mid-July, the larvae pupate in the leaf litter of warm season grasses (Selby 2007, p. 32; Ferster and Vulinec 2010, p. 7) and emerge as adults beginning in June (Service 2023, pp. 49, 50). Adults rely on nectar sources for food, and reproductive rates improve when nectar plants are abundant and high-quality (Wagner et al. 1997, p. 268; Selby 2007, p. 33). Adult males live for approximately 4 to 6 weeks and begin to die off in mid-July; adult females live for 8 to 12 weeks and may survive into late October (Wagner et al. 1997, p. 266; Kopper et al. 2001, pp. 174–175; Service 2023, pp. 4, 49).

Regal fritillary adults are strong and rapid flyers and may move long distances in search of nectar (Schweitzer 1989, p. 135; Selby 2007, p. 26; Service 2023, p. 50). Adults, particularly females, can move significant distances, up to 161 kilometers (100 miles), during their several-months-long lifespan to access suitable habitats on the landscape (Hammond 2021, pers. comm.; Service 2023, p. 50). Individuals may disperse to avoid localized threats and poor habitat conditions, which allows the species to respond to changing environmental conditions and to recolonize suitable habitats, but dispersal depends on the availability of nectar and the connectivity and size of the available habitats (Schweitzer 1989, p. 135; Selby 2007, p. 26; Hammond 2021, pers. comm.; Service 2023, pp. 50, 192). Recolonization may fail if source populations are too far away or if habitat patches are too small, isolated, disconnected, or degraded (Hammond 2021, pers. comm.; Service 2023, p. 50).

The regal fritillary is a landscape-level species that needs large, intact grasslands at a landscape scale, and depends on a shifting mosaic of large, well-connected, diverse grasslands with violets for larvae; nectar sources for adults; and warm season, native bunchgrasses for shelter at all life stages (Ferster and Vulinec 2010, p. 39; Caven et al. 2017, p. 199; Service 2023, pp. 51, 55). The grasslands need to be large and contiguous, generally more than 3.86 square miles (1,000 hectares), and be maintained by periodic disturbances. Such disturbances, which include fire, mowing, and military operations for the eastern subspecies, and fire, haying, and grazing for the western subspecies, help maintain the grasslands by reducing woody plants and encroachment (Service 2023, pp. 4, 8, 69–85).

However, large, intense or frequent, or permanent disturbances can also cause negative individual- or population-level effects, particularly during the sedentary, early life stages of the butterfly (Service 2023, p. 4). The regal fritillary cannot survive in altered landscapes, including row crop fields, nonnative pastures, developed areas surrounding prairie remnants (Selby 2007, p. 3), or forests (Service 2023, p. 51). As a result, the regal fritillary is considered a grassland specialist (Swengel 1996, p. 76) and an indicator of the health of native prairie (Royer and Marrone 1992, p. 4; Service 2023, p. 51).

The regal fritillary is also a ''boom-and-bust'' species, which means that when environmental conditions and habitat characteristics are favorable, significant increases in annual population abundance and distribution may occur (Service 2023, pp. 4, 280, 284). When conditions are unfavorable, individuals become scarce, and local extirpations may occur in areas that may be recolonized when and if conditions improve. The ability to disperse over relatively long distances and the boom-and-bust dynamic helps the species withstand stochastic events, catastrophic events, and environmental change. However, the loss and fragmentation of grassland habitats can interfere with the boom-and-bust pattern by isolating populations, contributing to local extirpations, and limiting recolonizations.

The largest and most resilient regal fritillary populations occupy large, diverse, contiguous grasslands at a landscape scale. These large populations better withstand stochastic events and function as source populations for the species to recolonize nearby areas when favorable conditions return. Assemblages of regal fritillary populations create a metapopulation, which for the regal fritillary includes at least three or more populations separated by 32 to 160 kilometers (20 to 100 miles) that are linked by infrequent dispersal, are spread over multiple habitats and breeding sites, and have some local areas remaining occupied despite losses of individual populations. This metapopulation structure provides reliable habitat refugia during adverse conditions and source populations for recolonizations during favorable conditions (Schweitzer 1989, p. 135; Royer and Marrone 1992, p. 26; Service 2023, p. 55). Metapopulation-level processes, supported by the species' dispersal ability and boom-and-bust dynamic, appear to be critical to the long-term persistence of the regal fritillary. However, the fragmentation of prairie grasslands across the species' overall range, largely the result of conversion to other land uses for the western subspecies and woody encroachment for the eastern subspecies, has resulted in smaller, more widely separated populations with genetic exchange occurring at reduced rates from historical levels. As a result, the metapopulation structure is currently absent for the eastern subspecies and limited for the western subspecies, particularly in the Midwest (Schweitzer 1993, p. 9; Service 2023, p. 55).

Historically, the regal fritillary was considered common among prairie and grassland butterflies in the United States, particularly in tallgrass prairie habitats (Hammond and McCorkle

1983(84), p. 219), with an overall historical range across 32 States (Selby 2007, pp. 10, 14; Service 2023, p. 56). But, beginning in the 1930s and continuing through the 1990s, the species' overall range contracted substantially, most severely in the East and Midwest (Wagner et al. 1997, pp. 261, 262; Selby 2007, p. 17). Following this decline, the eastern subspecies now occupies a small portion of Pennsylvania at FTIG, and the western subspecies occupies portions of 14 States (Service 2023, p. 57). After 2009, when the last eastern individual was observed in Virginia (Chazal 2014, p. 2), FTIG in Pennsylvania became the sole remaining site in the East with a known population (Service 2023, p. 57). Several factors may have contributed to the rapid decline of the species in the East, including land use changes, development, forest succession, pesticide use, and other activities or events that resulted in the collapse of the metapopulation processes (Williams 1999, p. 3; Schweitzer 1993, p. 9). In the West, the loss of native prairie grasslands since the 1800s via conversion to agriculture and development had the most significant impact on the regal fritillary (Service 2023, pp. 5, 57).

Taxonomists previously classified the regal fritillary as *Speyeria idalia,* but now classify the species as *Argynnis idalia,* in the subgenus *Speyeria.* The eastern and western subspecies are genetically and morphologically different and are currently separated by approximately 869 kilometers (540 miles), from Pennsylvania to Indiana, so genetic exchange between the two subspecies is highly unlikely (Service 2023, pp. 34, 46). The best available scientific information indicates that there are two valid subspecies of regal fritillary: the eastern subspecies (*A. i. idalia*) and the western subspecies (*A. i. occidentalis*) (Williams 2001b, entire; Williams et al. 2003, p. 17; Keyghobadi et al. 2013, p. 235; Rutins et al. 2022, p. 4; Service 2023, pp. 182–186). We discuss the distribution and trends for each subspecies below, with additional information provided in our SSA report (Service 2023, entire).

Eastern Regal Fritillary: Distribution and Trends

The eastern subspecies is currently found as a single population located on FTIG. Moisture levels are more mesic (moderately moist) in the East than in the West. The eastern subspecies has distinct haplotypes that are not present in any other known extant regal fritillary population (Williams 2001, pp. 146, 151; Service 2023, pp. 34, 64). Currently, there are approximately 800 individuals in the population at FTIG, and the population exhibits signs of restricted gene flow (Keyghobadi et al. 2006, p. 3; Rutins et al. 2022, p. 4; Service 2023, pp. 64–65).

Established in 1931, FTIG has been used continuously for military training exercises that periodically disturb the ground and open grassland patches, and incidentally help maintain remnant grassland patches as an old field, successional stage (Ferster et al. 2008, p. 142). Without these activities, the remaining grassland habitats for the eastern regal fritillary would have converted to forests like the surrounding ecoregions (Ferster et al. 2008, p. 142). FTIG also uses prescribed burns and mechanical treatments, such as mowing and tree cutting, specifically to maintain and improve the eastern subspecies' remaining grassland habitats (Ferster and Vulinec 2010, pp. 39, 40; Service 2023, p. 52). As a result, the eastern subspecies is found in the remaining grasslands at FTIG on approximately 457 acres (185 hectares) that are the result of military and other activities that maintain open areas and promote regal fritillary presence (Zercher et al. 2002, p. 13; Service 2023, p. 61). FTIG has monitored the eastern subspecies since 1997 (Ferster and Vulinec 2010, p. 31) and conducts surveys annually to monitor the population and habitats (Zercher et al. 2002, pp. M–6–M–8; Pennsylvania Department of Military and Veterans Affairs (PADMVA) 2021, entire; Zografou et al. 2021, p. 10; Rutins et al. 2022, p. 2). Conservation activities to benefit the eastern subspecies at FTIG are conducted through an integrated natural resources management plan (INRMP); however, the activities at FTIG that benefit the eastern subspecies could change at any time depending on funding and priorities (PADMVA 2021, pp. 20, 31; Swartz 2022, pers. comm.).

Western Regal Fritillary: Distribution and Trends

The western subspecies currently occupies portions of 14 States: Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Wisconsin, and Wyoming. The western subspecies historically occupied a much larger portion of the overall species' range than the eastern subspecies. Thus, while the eastern subspecies was nearly eliminated with the east-to-west contraction in the subspecies' range, populations of the western subspecies remain where large grasslands are unconverted, intact, and contiguous. However, the western subspecies is generally considered to have a declining population trend, largely a result of land conversion to agriculture and development. Habitat fragmentation generally decreases east to west across the western subspecies' range, and as the size and number of suitable prairie remnants increases, there is a corresponding increase in size, number, and long-term viability of the western subspecies' populations (Selby 2007, p. 18).

The western subspecies occurs in 21 populations, or analytical units, as described in the SSA report (Service 2023, pp. 65–67), and 3 representation units: the Midwest, Northern Great Plains, and Central Great Plains. In the Midwest, across Arkansas, Illinois, Indiana, Iowa, Minnesota, Missouri, and Wisconsin, western regal fritillary populations are now restricted to small, isolated patches of prairie remnants that are generally less than 98.9 acres (40 hectares) in size (Robertson et al. 1997 in Panzer and Schwartz 2000, p. 363), scattered across a landscape primarily dominated by agriculture. To the west, the Northern and Central Great Plains are the remaining strongholds for the western subspecies, as large, intact grasslands remain. Western regal fritillary populations within Kansas, Nebraska, North Dakota, and South Dakota are relatively larger and more numerous, due to the less fragmented suitable grassland patches compared to those in the Midwest (Selby 2007, p. 20). Approximately 84 percent of the western regal fritillary's gross, overall range (the outer boundary of all 21 populations) is privately owned (Service 2023, p. 66). Approximately 7 percent of this gross, overall range is Tribal, 4 percent is State, 2 percent is managed by the Bureau of Land Management, 2 percent is managed by the U.S. Forest Service, and less than 1 percent each is managed by the Service, the Department of Defense, and the National Park Service (Service 2023, p. 66).

The Northern Great Plains and Central Great Plains representation units currently support relatively more intact and better-connected grasslands, primarily used for livestock grazing or haying, than the Midwest unit, but the plains units are drier, are more prone to drought, and have fewer tallgrass species comprising the grasslands, which may reduce the quality of the habitats for the western regal fritillary. The Northern Great Plains representation unit experiences shorter growing seasons and colder weather patterns than those in the Central Great Plains, which may also reduce the quality of the habitats for the western

regal fritillary. Habitats in the Midwest representation unit are primarily small, isolated patches in an agriculturally dominated landscape, and many sites exist as conservation preserves, *i.e.,* small remnants of the once-vast tallgrass prairie, which may be less than suitable for the western regal fritillary (Service 2023, p. 130).

At the western extent of the western subspecies' overall range, grasslands are drier and classified as shortgrass prairie rather than tallgrass or mixed grass, which may provide lower quality habitat for the western subspecies. As a result, populations tend to be small and isolated. Scattered occurrences in the western part of the western subspecies' overall range generally occur in riparian zones or other moist habitats where nectar sources and violets are available (Selby 2007, p. 14). The States on both the western and southern fringes of the regal fritillary's range, including Arkansas, Colorado, Oklahoma, and Wyoming, are sparsely occupied by the western subspecies, with individuals occurring only in the portions of those States that border adjacent occupied areas in other States, including Kansas and Nebraska. Western regal fritillary individuals have been observed in Montana, but there are no known populations (Service 2023, p. 56).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, we issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 24300). On the same day, we published a final rule revising our protections for endangered species and threatened species at 50 CFR 17 (89 FR 23919). These final rules are now in effect and are incorporated into the current regulations.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; ''M-Opinion,'' available online at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf*). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the viability of the eastern and western subspecies of regal fritillary, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years);

redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the subspecies' ecological requirements for survival and reproduction at the individual, population, and subspecies levels, and described the beneficial and risk factors influencing the subspecies' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the subspecies' life-history needs. The next stage involved an assessment of the historical and current conditions of the subspecies' demographics and habitat characteristics, including an explanation of how each subspecies arrived at its current condition. The final stage of the SSA involved making projections about the subspecies' responses to positive and negative environmental and anthropogenic influences. Throughout these stages, we used the best available information to characterize viability as the ability of a subspecies to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R6–ES–2023–0182 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the eastern and western regal fritillary and their resources, and the threats that influence each subspecies' current and future condition, in order to assess each subspecies' overall viability and the risks to that viability. We analyze these factors both individually and cumulatively to determine the current condition of each of the subspecies and project the future condition of each subspecies under several plausible future scenarios. We begin with a summary of the species' needs and risk factors, which are generally similar for both subspecies, followed by a summary of conditions first for the eastern subspecies and then the western subspecies.

Species Needs

Eastern and western regal fritillary individuals share many of the same needs, including large, contiguous blocks of native grasslands, violets to support larvae, warm season bunchgrasses for shelter, and nectar sources for adults (Service 2023, pp. 5–8, 69–85), so this discussion applies to both the eastern and western subspecies. In general, regal fritillary individuals need an adequate abundance of violets and nectar sources, appropriate grassland conditions (including litter, tall or shrubby cover), warm season bunchgrass tussocks, and adequate moisture and ambient temperatures in order to breed, feed, and shelter. Grasses are generally native species (indigenous to the particular area), and are either tallgrasses or mixed grasses, although the eastern regal fritillary may be more tolerant of nonnative grasses with similar bunchgrass structure. Ambient temperatures need to be suitable, generally between 75 to 105 °F (24 to 41°C) during the appropriate season for larvae to grow and for adults to survive (McCorkle and Hammond 1988, p. 192; Selby 2007, p. 36; Nail 2016, pp. 4, 9, 13, 15; Klockmann and Fischer 2017, p. 10872; Service 2023, p. 76). The grasslands need to be sufficiently large and contiguous (Kelly and Debinski 1998, p. 272; Schweitzer 1989, p. 134), ideally more than 2,471 acres (1,000 hectares) in size, and be maintained by periodic disturbances (Service 2023, pp. 8, 70–86).

The regal fritillary is a landscape-scale (spatially heterogeneous geographic areas characterized by diverse interacting patches or ecosystems) species, so large, contiguous blocks of native grasslands are the species' primary resource need (Service 2023, pp. 4, 55, 81–86). Large, contiguous grasslands tend to have more variable site conditions that support more diverse plant life; their greater area encompasses more habitat overall, and they are more likely to exhibit the shifting mosaics of heterogeneous habitats that favor sufficiently resilient regal fritillary populations. Generally, the larger the grassland patch, the better it supports abundant and adequately resilient regal fritillary populations, as long as the patch is also maintained with periodic disturbance.

Individuals do not appear to prefer small habitat patches (Schweitzer 1989, p. 134), which do not support the required shifting resources and disturbance regimes that maintain grassland habitats and sufficiently resilient regal fritillary populations. For the western subspecies, small habitat patches may be as small as 400 acres (162 hectares) in size (Hammond 2021, pers. comm; Service 2023, pp. 82–84). Small grassland tracts containing regal fritillary colonies may be more vulnerable to extirpation than larger blocks of native grasslands, but multiple colonies on small patches that are close to one another and occur as part of a collectively larger group of habitats may function together as a population. When adults in colonies can move across the matrix to reach other suitable habitat patches, the collective occupied habitats may exhibit diverse conditions that can better support the species' life-history needs.

To be sufficiently resilient, regal fritillary populations need to be of adequate size, with at least 200 to 500 adults or more to maintain genetic diversity and withstand stochastic events (Service 2023, p. 89). For redundancy and representation, the species needs metapopulation processes supported by an adequate number and distribution of sufficiently connected, large populations across the large, contiguous grasslands to withstand catastrophic events and adapt to environmental change (Service 2023, pp. 7–8, 89–91).

Risk Factors for the Eastern and Western Subspecies

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be affecting the eastern and western subspecies of regal fritillary (Service 2023, pp. 8–11, 93–120, 215–277). Here, we discuss only those risk factors in detail that we considered drivers of resiliency, or those that could meaningfully affect the status of either subspecies. Many of the threats and risk factors are the same or similar for both subspecies, so where the effects are expected to be similar, we present one summary that applies to both subspecies. Where the threats and their effects may be unique to one subspecies, we address those specifically.

Both subspecies are vulnerable to fragmentation and isolation when habitats are degraded or lost. The primary risk factors (*i.e.,* threats) affecting the status of the eastern subspecies are invasive plants, particularly woody encroachment that results in forest succession; drought; climate change factors; and periodic disturbances from large or intense fire or other activities. The eastern subspecies is vulnerable to woody encroachment, and periodic disturbances are necessary to ensure the grasslands do not become reforested, but these disturbances may

also present a risk if they are too frequent or intense.

The primary risk factors (*i.e.,* threats) affecting the status of the western subspecies are grassland conversion, primarily due to agriculture; herbicides that are applied broadly (often aerially); drought; invasive grasses and woody vegetation; periodic disturbances from fire, haying, and grazing; and climate change factors (Service 2023, pp. 10, 119–120). Although disease, predation, parasitism, competition and hybridization with sympatric butterflies, and collection may affect individuals, we did not find these risk factors to be current or future threats to either subspecies. We summarize these risk factors below, with additional detail and analysis provided in our SSA report (Service 2023, pp. 8–11, 93–120, 215–277).

Grassland Conversion: Agriculture and Development

This risk factor applies only to the western subspecies. An estimated 400 million acres (162 million hectares) of native prairie historically existed in North America prior to European settlement in the 1800s; these biomes have since been converted primarily to agriculture, resulting in as much as a 99.9 percent reduction in native prairie ecosystems, with the most severe declines among former tallgrass habitats (Samson and Knopf 1994, p. 418; Service 2023, p. 97). Conversion of grasslands to other uses, such as for agriculture and development, reduces the amount, availability, connectedness, size, and quality of the native grasslands needed by the regal fritillary (Hammond and McCorkle 1983(84), p. 218; Davis et al. 2007, p. 1342; Powell et al. 2007, p. 124; Selby 2007, p. 3; Sims 2017, p. 1; Swengel and Swengel 2017, p. 2; Marschalek 2020, p. 891; Niemuth et al. 2021, p. 2). While agriculture is the dominant activity that has reduced North American grasslands, any development activity that removes native prairie sod, such as road construction, road maintenance, gravel mining, housing and commercial developments, and energy projects, may reduce and fragment western regal fritillary habitat (Selby 2007, p. 3; Service 2023, pp. 98–100).

The majority of tallgrass prairie that remains today, particularly in the Midwest, is limited to small, isolated remnant tracts that are fractions of their former size and extent. Farther west, mixed-grass prairie has also been impacted by conversion and other uses; mixed-grass prairie has been reduced to 30 percent of historical amounts (World Rangeland Learning Experience 2021, entire). Much of the mixed-grass prairie is also fragmented and isolated due to grassland conversion. Shortgrass prairies at the western edge of the western subspecies' range are the most intact, but western regal fritillary populations may not occur there and may instead be found as small, ephemeral colonies in scattered moist habitats within these relatively dry grasslands (Selby 2007, p. 24).

Conversion of grasslands to agriculture reduces and fragments western regal fritillary habitats and isolates populations, which, when they are reduced to small, isolated remnant habitat patches, are vulnerable to local extirpations. Remaining grassland patches may be too small to support the violets, grasses, and nectar sources needed by individuals, and the patches are often surrounded by an unsuitable matrix of agriculture and development. Conversion to agriculture and development present a barrier to dispersal and gene flow by preventing individuals from either attempting to disperse or reducing the likelihood that dispersals will result in successful recolonization. When dispersals are less successful, recolonizations become less likely, genetic diversity declines, inbreeding may suppress population expansion, populations are less able to adapt to their changing environment, and local extirpations may begin to outpace recolonizations (Service 2023, p. 98).

Agricultural conversion of grasslands occurs at a rate of more than 1 million acres (404,685 hectares) per year, with projected conversion ''hotspots'' projected in western regal fritillary habitats in North Dakota, South Dakota, Iowa, and Missouri (Lark et al. 2020, p. 3). This risk factor to the western regal fritillary is ongoing and projected to increase in the future (Service 2023, pp. 96–99, 134, 142, 245–255).

Broad Application of Herbicides

This risk factor applies only to the western subspecies. Herbicides are chemicals that may be used at least once in a growing season to control broadleaf weeds or grasses in crop fields. Herbicides are also commonly used to control woody vegetation and weeds in both public and private grasslands, including native prairie. If not used carefully, herbicides can indirectly impact regal fritillary populations by eliminating or reducing nectar and foodplants, especially if applied during critical periods of the western regal fritillary's lifecycle. Adverse effects can occur when herbicides are applied within regal fritillary habitat or nearby, where they can drift into western regal fritillary habitat (Dana 1997, p. 3; Stark et al. 2012, pp. 25, 27; Cordova et al. 2020, p. 5; Service 2023, p. 101). The effects of herbicide use may be especially problematic in areas where violets and nectar food sources are already limited, such as in small, isolated grassland patches. Additionally, herbicide drift from adjacent croplands into regal fritillary habitats may have limited and temporary effects to individuals and habitats by temporarily reducing the availability of violets and nectar sources. Active and inert ingredients in herbicides may also be toxic to western regal fritillary individuals.

The application of herbicides is most detrimental to the western regal fritillary when it is applied, often aerially, across large areas of native grasslands specifically to reduce native forbs, including violets, so that more grasses are available to graze livestock. This practice dramatically reduces the quantity of violets and nectar sources available to the western regal fritillary (Service 2023, pp. 101–102). This practice of broad herbicide application to reduce native forbs is ongoing, particularly on private lands in eastern South Dakota, the Flint Hills of Kansas, and Oklahoma (Service 2023, pp. 101–102). Unlike the potentially limited or temporary effects to habitats and individuals from herbicide drift, this practice directly exposes native grasslands to herbicides and could dramatically reduce the numbers of violets and nectar sources. The reduction and removal of violets and nectar sources in native grasslands may extirpate local colonies (Selby 2007, p. 36) and, if more widespread, could also decrease population abundance and resiliency. This risk factor is ongoing and is likely to increase in the future.

Invasive and Woody Plants and Encroachment

This risk factor applies to both the eastern and western subspecies. Invasive, nonnative (exotic) plants and woody vegetation may degrade the quality and quantity of native grasslands needed by both the eastern and western regal fritillary. These nonnative plants may spread into native habitats from purposefully planted areas to form self-perpetuating populations (Fulbright et al. 2013, p. 505). The invading plant species of concern and the magnitude, scope, and exposure to the eastern and western subspecies vary by location. Invasive grass species include Kentucky bluegrass (*Poa patrensis*) and smooth brome (*Bromus inermus*), which are the two primary species invading the Midwestern and Northern Great Plains

prairies (Royer and Marrone 1992, p. 28; Selby 2007, p. 33; Gaskin et al. 2021, p. 236–237; Service 2023, pp. 104–105, 256). Woody plant species may include eastern red cedar (*Juniperus virginiana*) for the western subspecies and a variety of woody species from the surrounding forested habitat at FITG for the eastern subspecies, (Swartz 2021, pers. comm.; Service 2023 pp. 105–107; 256). Conservation efforts that target invasive plants, which may include fire, grazing, or mechanical or chemical controls, may reduce the stressor. However, invasive grasses and woody plant encroachment are challenging to control and known to degrade native grassland quality and quantity and may become more widespread, and potentially problematic, in the future.

Although an issue for both subspecies, woody encroachment is a primary risk factor for the eastern subspecies, where forested ecosystems are more prevalent and contributed to the historical decline of the eastern subspecies' grassland habitats. At FTIG, prescribed fire, mowing, and targeted brush cutting are used frequently to suppress shrub and tree sprouts, and without this important vegetation management, habitat for the eastern subspecies would be rapidly reforested and rendered unsuitable (Service 2023, p. 105). As with invasive grasses, over time, the continued degradation due to woody encroachment is likely to increasingly fragment and isolate habitats and is a risk factor to both the eastern and western subspecies.

Periodic Disturbances: Fire, Haying, Mowing

This risk factor applies to both the eastern and western subspecies, with fire a risk factor for the eastern subspecies and fire, haying, and mowing a risk factor for the western subspecies. Fire, haying, mowing, and other activities, such as the manual or chemical removal of weeds or woody vegetation, are common disturbances in grasslands and are necessary to conserve these habitats, but they may negatively impact both the eastern and western subspecies (Selby 2007, p. 3). Unmanaged grasslands may become overgrown, invaded by woody vegetation or exotic species, or covered in thatch that inhibits floral diversity and suppresses violets and nectar sources. Although beneficial at the appropriate frequency, magnitude, and intensity, periodic disturbances can trample, crush, burn, or poison individuals, and temporarily or permanently remove important resource needs. When these periodic disturbances occur in large, contiguous native grassland landscapes, mortality typically does not result in population losses, as individuals may disperse to adjacent areas and affected habitats may eventually be recolonized.

However, periodic disturbances on smaller, more-isolated patches of grasslands, which are now the dominant patch size available for both subspecies, may extirpate local populations, and without nearby refugia, these disturbances can potentially preclude recolonization or cause population impacts lasting several years (Swengel 1996, p. 73). Timing and intensity can also determine the level of impact. For example, moderate-to-light grazing that maintains native grasslands and removes excessive thatch, controls invasive species, and stimulates native plant growth, is generally considered beneficial to the regal fritillary, but heavy grazing that does not promote native grasslands is not (Royer and Marrone 1992, p. 28; Service 2023, p. 110); fires on a 3- to 5-year rotation (Henderson et al. 2018, p. 41; McCullough et al. 2019, p. 9) may be beneficial, while shorter or longer intervals between burns are more detrimental (McCullough et al. 2019, p. 9), although annual burns may still provide some benefits to habitat compared to no burning (Henderson et al. 2018, p. 41). When applied on a landscape scale appropriately (proper timing, extent, intensity, frequency), these disturbances can minimize regal fritillary mortality while creating a shifting mosaic of habitats in various successional stages that provide a net benefit to the species' resiliency. However, when applied inappropriately, they pose a threat to both regal fritillary individuals and populations, particularly those that are already at risk due to other factors, such as their small size and isolation.

Currently, the Midwest populations of the western subspecies, because they occur in small, isolated patches, are vulnerable to the negative impacts of improperly applied periodic disturbances. Many populations in the Great Plains are also small, but the landscape is less fragmented; thus, disturbed sites are more easily recolonized when favorable vegetative conditions return. However, this could change in the future as more conversion and drought reduce and fragment habitats. At FTIG, the INRMP guides the periodic disturbances to benefit the eastern subspecies, but should these periodic disturbance activities stop, the resiliency of the eastern subspecies could decline significantly (Service 2023, p. 110).

Drought

This risk factor applies to both the eastern and western subspecies. By reducing precipitation, drought can significantly reduce violet and nectar sources, so drought is a risk factor for both the eastern and western subspecies. The regal fritillary is sensitive to prolonged, dry periods from drought, and population extirpations may occur, particularly in small, isolated habitats that lack heterogeneity (Service 2023, p. 106). With their long flight period and relatively long lifespan, adult regal fritillaries, particularly females, require a nearly continuous supply of nectar during summer and fall to survive and reproduce (Wagner et al. 1997, p. 266). Drought may decrease the availability of the needed flowering nectar plants (Royer and Marrone 1992, p. 25), so drought may increase an adult's risk of starvation, reduce breeding success, and increase risks associated with forced emigration in search of food. Spring droughts may reduce the availability of violets, so larvae may starve or their growth may be stunted (Service 2023, p. 106). Therefore, prolonged and extended dryness associated with drought during any season is a risk factor for regal fritillary individuals of all life stages. At FTIG in Pennsylvania, there is generally more moisture than in the West, so the eastern regal fritillary may be less vulnerable to drought than the western subspecies.

Climate Change

Specific impacts of climate change on pollinators are not well understood; however, expected changes forecasted for terrestrial species and communities include increased ambient temperature, changes to annual and seasonal precipitation patterns, increased frequency of extreme events, and changes to hydrologic regimes (Staudinger et al. 2013, p. 466). These climate changes may lead to decreased resource availability (due to mismatches in temporal and spatial co-occurrences), decreased availability and suitability of larval habitat (due to increased flooding or storms), and increased stress from overheating (due to higher temperatures) (Cohen et al. 2018, p. 226; Zografou et al. 2021, p. 3283). Based on the known biology and life history of the species, increasingly warmer temperatures may have effects such as interruption of winter diapause, which would result in energy expenditure and potentially reduced first instar survival; alteration of violet and/or nectar plant phenology, availability, or abundance, which would impact food resources for

larval and adult stages; unusual post-winter diapause cold periods, which would impact larval survival; and direct mortality of regal fritillaries at all life stages due to excessive heat, drought, or severe storms. Despite having a wide climatic tolerance based on its range, the regal fritillary experiences very large fluctuations in annual numbers—even in populations with stable to increasing trends—suggesting that extreme weather can negatively impact regal fritillary abundance (Swengel and Swengel 2017, p. 19). Several populations in western Iowa, for example, were extirpated during extreme drought in the mid-2010s, with no perceived recovery as of the summer of 2021 (Hammond 2021, pers. comm.).

Climate variability may lead to shifts in geographic range, as has been reported for regal fritillary populations in Wisconsin and North Dakota (Swengel and Swengel 2017, p. 19), as well as decoupling pollinators from matching both host plant and nectar plant phenologies (Memmott et al. 2007, p. 712), as demonstrated in other butterfly species (Forister et al. 2010, pp. 2088–2089; Hickling et al. 2006, p. 452). Spring larval emergence may rely on suitable temperatures, photo period, or a combination of both, leading to larvae emerging when violets are older and less palatable. Drier summers could force regal fritillaries to leave otherwise suitable habitat in search of nectar sources. Other potential effects from climate change include increased flooding and storm events, which may directly reduce available larval habitat suitability (*e.g.,* violet abundance) (Goulson et al. 2015, p. 4). Finally, effects from climate change may increase stress on regal fritillaries in the future, further compounding pressures from other factors, including pathogens, nonnative species, and habitat loss (Goulson et al. 2015, pp. 4–5; Kerr et al. 2015, pp. 178–179; Williams and Osborne 2009, p. 371).

Summary of Risk Factors for the Eastern and Western Regal Fritillary

Our analysis of the past, current, and future influences on the needs of the eastern regal fritillary for long-term viability revealed that invasive plants, woody encroachment, and periodic disturbances from fire or other activities pose the greatest impact on the eastern subspecies' current and future viability. Drought and associated effects of climate change may also influence the viability of the eastern regal fritillary. For the western regal fritillary, grassland conversion, primarily due to agriculture; herbicides that are applied broadly (often aerially); drought; invasives grasses and woody vegetation; incompatible periodic disturbances from fire, haying, and mowing; and climate change factors pose the greatest impact on the western subspecies' current and future viability.

Conservation Efforts and Regulatory Mechanisms

The State of Pennsylvania does not consider invertebrates for its State threatened and endangered species programs, so does not confer State-level protections to the eastern regal fritillary. A variety of conservation efforts have been and are implemented to benefit the eastern regal fritillary at FTIG. Since 2011, a regal fritillary captive-rearing program has attempted to reintroduce the eastern regal fritillary into suitable habitats off FTIG, although the attempts to establish a population have not yet been successful (Service 2023, p. 113). The INRMP, developed under the Sikes Act, helps guide conservation objectives and activities at FTIG specifically for the eastern regal fritillary, including increasing or maintaining population levels, nectar sources, and larval host plants. Conservation actions include extensive seasonal monitoring; habitat management using burning, mowing, and brush removal; and reintroduction efforts. Additionally, FTIG completed a candidate conservation agreement (CCA) to append to the INRMP that helps formally document regal fritillary butterfly conservation intentions at the military installation (FITG and Service 2024, entire). These conservation efforts have helped maintain grassland habitats at FTIG for the eastern subspecies. However, these conservation actions in the INRMP and draft CCA are not regulatory or binding and could stop with changing funding or priorities (PADMVA 2021, pp. 20, 31; Swartz 2022, pers. comm; FITG and Service 2024, entire). As a result, there are no binding and enforceable regulatory mechanisms that address threats to the eastern regal fritillary.

The States of Indiana and Wisconsin have assigned the western regal fritillary State-level protections as an endangered species and the State of Illinois recognizes the species as a threatened species (Service 2023, p. 179). The States of Iowa, Minnesota and Wyoming identify the western regal fritillary as a species of concern (Service 2023, p. 179. These designations may allow State agencies to develop programs to manage and conserve nongame and endangered species, but they do not provide binding and enforceable regulatory mechanisms that may reduce threats to the western regal fritillary. Additionally, conservation measures and actions may occur locally in many areas to benefit the western regal fritillary, but most are likely to be voluntary and may not be able to ameliorate or mitigate the identified threats to the species (Service 2023, pp. 116–117). These actions often depend on limited sources of funding and may not necessarily conducted with the needs and life history of the regal fritillary in mind and may or may not be beneficial to the subspecies (Service 2023, pp. 116–117). Appropriate haying, grazing, and burning are generally known to be beneficial to regal fritillaries by promoting native grassland habitats, and these actions do occur under all types of land ownership. However, land use activities conducted without knowledge or consideration for the subspecies' life-history and habitat needs can be detrimental to individuals and populations, particularly on small, isolated habitat patches. Additionally, activities are not typically conducted in a coordinated manner among landowners or on a scale large enough to improve the resiliency, redundancy, or representation of the western subspecies.

Current Condition of the Eastern Regal Fritillary

To evaluate resiliency for the eastern regal fritillary, we evaluated the current condition of several habitat factors (native grasslands, riparian and wetland areas, ambient temperature, precipitation) and two demographic factors (population trend and abundance) (Service 2023, pp. 120–131). Currently, the eastern regal fritillary is found in one population, and based on our evaluation of the habitat and demographic factors, that single population currently has low resiliency and provides the subspecies' redundancy and representation. The single population is found on FTIG military base in Pennsylvania, where ongoing management activities to benefit the subspecies are conducted through an INRMP on approximately 457 acres (185 hectares). These management activities have helped maintain grassland habitats for the eastern regal fritillary, such that many of the available habitats are in good condition. FITG has monitored the eastern regal fritillary on the military base since 1992 (Ferster 2005, p. 8). The population peaked in 2014 with approximately 5,400 individuals, but declined starting in 2017 to approximately 800 individuals, and the population size has never rebounded to its high numbers from 2014 (Swartz 2022, pers. comm.; Service 2023, p. 64). As a result, the abundance and growth trend are currently both in very low

condition, so the eastern subspecies has low resiliency (Service 2023, pp. 123, 126–128). Additionally, military activities and periodic disturbance activities such as fire, which can benefit the eastern subspecies by reducing woody encroachment, may also present a risk to the subspecies if they are discontinued or if they are too frequent, intense, or catastrophic. Active military exercises and other activities occur without consideration of the subspecies elsewhere in grassland habitats at FTIG. The eastern subspecies' resiliency and redundancy are limited by the condition of the subspecies' small, narrowly distributed habitats and depend on the reduction of its primary threat, woody encroachment, through management and other voluntary activities. The eastern subspecies is different genetically and morphologically than the western subspecies, and the east representative unit provides a unique, more mesic, ecological type. The eastern regal fritillary's small population size, narrow distribution, and limited ecological and genetic diversity indicate that the eastern subspecies is currently vulnerable to stochastic events, catastrophes, and environmental change.

Current Condition of the Western Regal Fritillary

To evaluate resiliency for the western regal fritillary, we evaluated the current condition of several habitat factors (native grasslands, riparian and wetland areas, ambient temperature, precipitation) and two demographic factors (population trend and abundance) (Service 2023, pp. 120–131). Currently, the western subspecies has 21 populations, or analytical units in the SSA, distributed across 3 representation units, which feature a diversity of climates, habitats, and genetics. Based on our evaluation of the habitat and demographic factors, of the 21 populations, 3 currently have high resiliency, 7 have medium resiliency, 10 have low resiliency, and 1 is currently functionally extirpated with no resiliency, although it supports habitats and has recent observations (Service 2023, pp. 16, 124–126). Populations with high resiliency have better habitat and demographic conditions than populations with medium or low resiliency, so are better able to withstand stochastic events. Populations with medium resiliency are about as likely as not to withstand a stochastic event, those with low resiliency are less likely to withstand a stochastic event, and those with no resiliency are considered functionally extirpated, so unlikely to withstand a stochastic event. The three populations with high resiliency are in the Northern and Central Great Plains representation units, and no populations currently have very high or very low resiliency (Service 2023, pp. 16, 128). All the populations in the Midwest representation units currently have low resiliency because of generally poor habitat conditions following the conversion of these areas to agriculture and other development. Additionally, populations in the Midwest exhibit relatively less genetic diversity than those in the Northern Great Plains or Central Great Plains, an indication of their fragmentation and isolation (Service 2023, pp. 21, 129). However, across the entire Northern and Central Great Plains representation units, based on genetics, the western regal fritillary is considered one, large population with high gene flow over hundreds of kilometers (Williams et al. 2003, pp. 13, 14). The 21 populations are distributed across portions of 14 States. As a result, the western subspecies currently has levels of resiliency, redundancy, and representation that make it less vulnerable to extinction.

Future Conditions

As part of the SSA, we developed three future condition scenarios to capture the range of uncertainties regarding future threats to and the projected responses of the eastern and western subspecies of regal fritillary. Our scenarios included a continuation scenario, which incorporated the current risk factors continuing on the same trajectory as they are now. We also evaluated two future scenarios that incorporated varying levels of increasing risk factors with elevated negative effects on populations of the eastern and western subspecies. However, because we determined that the current condition of the eastern subspecies is consistent with an endangered subspecies (see *Eastern Subspecies: Determination of Status,* below), we are not presenting the results of our future conditions analysis for the eastern subspecies in this proposed rule. Please refer to the SSA report (Service 2023, pp. 132–152) for the full analysis of future conditions for both subspecies.

We projected the future condition of the western subspecies of regal fritillary under three plausible future scenarios across the next 50 years, to approximately 2075. This 50-year timeframe for our future projections accounts for approximately 50 annual regal fritillary generations and is an adequate time period to assess the response of populations to stressors and conservation efforts, given that the historical range of the eastern subspecies contracted to its current distribution within approximately 50 years. It is also a time period for which we can reasonably project climate conditions based on the best available climate models across the range of the western subspecies.

The future scenarios described in the SSA report represent three possible future conditions based on projected climate conditions and plausible states of the threats for the western regal fritillary, as summarized in *Risk Factors for the Eastern and Western Subspecies,* above. The future scenarios project the threats into the future and consider the impacts those threats could have on the viability of the western subspecies. We apply the concepts of resiliency, redundancy, and representation to the future scenarios to describe the range of plausible future conditions of the western subspecies. Uncertainty is inherent in any projection of future condition, so we must consider plausible scenarios to make our determinations. When assessing the future, viability is not a specific state, but rather a continuous measure of the likelihood that the subspecies will sustain populations over time.

We included climate change impacts in our future scenarios as a factor that would add to the negative effects of the primary threats to the western subspecies and its habitat. Climate change is expected to increase ambient temperatures, reduce precipitation, and increase the frequency and duration of drought across the overall range of the western subspecies. Warmer ambient temperatures may interrupt winter diapause, which would result in energy expenditure and potentially reduced first instar survival; alter violet and nectar plant phenology, availability, or abundance, which would impact food resources for larvae and adults; result in unusual post-winter diapause cold periods, which would impact larval survival; and direct mortality of regal fritillaries at all life stages due to excessive heat, drought, or severe storms. Increased frequency and duration of drought may reduce the availability of violets and nectar sources. We used the best available climate data and models, including representative concentration pathways (RCPs) 4.5 and 8.5 and underlying temperature and precipitation models, to project the plausible outcomes for these factors, which were incorporated into our three future scenarios (Service 2023, pp. 133–136, 141–143). We summarize the results of our future conditions analysis for the western regal fritillary below.

Our future scenarios analysis for the western regal fritillary revealed that in 50 years, stressors will increase at their current rates of increase, or will increase moderately or significantly more than their current rates of increase. When stressors continue at their current rates, we projected that grassland habitats will continue to become smaller, more fragmented, and isolated, such that resiliency declines for at least four of the populations in 50 years (Service 2023, pp. 141–152). Although the number, distribution, and diversity of western subspecies populations decline only slightly under this future scenario, the scenario still represents increased risk for the western subspecies with the declines in resiliency. With a moderate future increase in stressors, the quality and quantity of habitats decline further such that resiliency declines for up to 11 populations, with drops from medium to low resiliency, and some to very low resiliency (Service 2023, pp. 141–152). Finally, with the most significant projected increase in stressors, 10 of the 21 populations lose resiliency and become extirpated, 7 populations have very low resiliency, 1 population has low resiliency, and only 3 have medium resiliency (Service 2023, pp. 141–152). This future scenario represents a large decline in resiliency, redundancy, and representation for the western subspecies in 50 years, with a corresponding decline in viability. Across all of our plausible future scenarios, our analysis revealed that the western regal fritillary is at a greater risk of extinction in the future.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but the degree to which the factors collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Determination of Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the eastern and western regal fritillary and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that both subspecies have declined in overall abundance and distribution. Historically, populations of the regal fritillary functioned on a vast, metapopulation scale and were abundant and broadly distributed, particularly in the Midwest and Great Plains. Millions of individuals likely occupied the North American prairies prior to establishment of European agriculture in the 1800s (Hammond and McCorkle 1983(84), p. 219). Natural disturbance processes including climate, grazing, and fire maintained the open grassland habitats, and there were enough violet and nectar components for the regal fritillary. This vast range may have facilitated an eastward range expansion, perhaps via coastal grasslands, where the regal fritillary opportunistically moved into inland habitats created and maintained by human activities (Service 2023, p. 131).

Today, grassland patches of adequate size, diversity, and connectivity are significantly reduced, both in number and proximity, interrupting the landscape-level scales at which the regal fritillary historically functioned. Accessibility to suitable habitats has become increasingly restrictive for the eastern and western regal fritillary, as many remaining suitable grassland patches are small and isolated, primarily the result of conversion in the West and woody encroachment in the East. The eastern subspecies is extirpated from nearly every formerly known occupied eastern location and is confined to one small population that is extremely vulnerable to environmental and demographic stochasticity. For the western subspecies, a small fraction, less than one percent, of the historically vast tallgrass prairies of the Midwest remains today, mostly as grassland remnants that are severely fragmented and isolated (Samson and Knopf 1994, p. 418, Service 2023, p. 97). Conditions at the westernmost extent of the western subspecies' overall range are currently not as severe, as large mixed-grass prairies remain, but much of these grasslands have been or could be converted to agriculture and other development. In the future, the climate in the West is projected to be drier and warmer, and important resource needs, such as violets and native grasses, may become limited. Without large, intact, contiguous grasslands, dispersals of individuals from occupied habitats are often already dead ends, as individuals move into a matrix that may be composed of unsuitable agricultural fields where they are unable to find the resources they need to survive and establish the next annual generation. For both the eastern and western subspecies, the risk of genetic collapses increases without regular successful dispersal events, and the eastern regal fritillary has already experienced restricted gene flow. The western regal fritillary has reduced genetic diversity in the Midwest. Natural periodic disturbances that historically maintained the shifting mosaic of habitats on the landscape scale have been replaced with permanent land use changes and land use management regimes that, when applied inappropriately, have reduced or eliminated regal fritillary populations. As a result, both subspecies are increasingly vulnerable to stochastic events and synergistic processes that have significantly greater potential to cause population extirpations that may outpace recolonization rates.

Eastern Subspecies: Status Throughout All of Its Range

The eastern regal fritillary has declined significantly in overall distribution and abundance since the 1930s. Once broadly distributed across the eastern United States, the eastern subspecies is now found only in one population on approximately 457 acres (185 hectares) of remnant grasslands on FTIG in Pennsylvania. Due to the small size of the occupied habitats and the single population, the eastern regal fritillary currently has low resiliency, limited redundancy, and reduced ecological and genetic diversity (representation). As a result, the eastern subspecies is vulnerable to stochastic and catastrophic events, such as hot and dry summers, long and cold winters, and destructive fires. The eastern

subspecies' low level of resiliency, coupled with its limited redundancy and representation and ongoing and immediate threats currently results in a high risk of extinction for the eastern regal fritillary.

The remaining eastern subspecies' grassland habitats at FTIG depend on the ongoing reduction of woody encroachment through active management. These activities are critical to the viability of the eastern regal fritillary and have helped ensure that the eastern subspecies remains in this area in contrast to its historical extirpation throughout much of its overall range. Active management at FTIG, whether intentional or unintentional, has reduced and continues to reduce habitat loss and fragmentation from woody encroachment, such that FTIG is now the lone site where the eastern subspecies is still found. Although conservation activities at FTIG are ongoing and have benefited the eastern subspecies by maintaining grassland habitats, they are implemented only in specific areas and could stop or change at any time depending on funding and priorities, thus increasing the subspecies' vulnerability. Military activities and periodic disturbance activities such as fire, which can benefit the eastern subspecies by reducing woody encroachment, may also present a risk to the subspecies if they are discontinued or if they are too frequent, intense, or catastrophic. As a result, the eastern regal fritillary is vulnerable to extinction, not only because of its limited abundance, distribution, and diversity, but also by its complete reliance on important and effective land management activities that are not guaranteed to continue.

Our analysis of the eastern subspecies' current condition, as well as the conservation efforts discussed above, show that the eastern regal fritillary is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting its single population (see *Risk Factors for the Eastern and Western Subspecies,* above). The single population is isolated, has limited potential for natural recolonization, and has a high risk of extirpation from stochastic and catastrophic events, so the risk of extinction for the eastern regal fritillary is high; therefore, the species meets the definition of an endangered species and is not a threatened species.

Eastern Subspecies: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a subspecies may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the eastern subspecies of regal fritillary is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the eastern subspecies of regal fritillary warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), which vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578, July 1, 2014) that provided that if the Service had determined that a species was threatened throughout all of its range, the Service would not analyze whether the species was endangered in a significant portion of its range.

Eastern Subspecies: Determination of Status

Our review of the best available scientific and commercial information indicates that the eastern regal fritillary meets the Act's definition of an endangered species. Therefore, we propose to list the eastern regal fritillary as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Western Subspecies: Status Throughout All of Its Range

Currently, the western regal fritillary has 21 populations distributed across portions of 14 States and 3 representation units, which feature a diversity of climates, habitats, and genetics. Three populations have high resiliency, 7 have medium resiliency, 10 have low resiliency, and 1 has no resiliency. All the populations in the Midwest representative unit currently have low resiliency following the conversion of grasslands to agriculture and development. Populations in North and South Dakota, eastern Montana, eastern Wyoming, the Sandhills in west-central Nebraska, and the Flint Hills in eastern Kansas, currently have high resiliency, because of the high-quality condition of their habitat and demographic factors. Genetic exchange occurs across much of the Northern and Central Great Plains, indicating that enough suitable habitats currently remain such that dispersals and recolonizations help maintain the landscape-level metapopulation structure for the western regal fritillary.

We considered whether the western regal fritillary is presently in danger of extinction throughout all of its range and determined that it is not. The current conditions as assessed in our SSA report show that there are three populations with high resiliency and seven populations with medium resiliency distributed broadly across two large representation units. There are an additional eight populations in the Midwest representation unit with low resiliency and reduced ecological and genetic diversity, so although this area contributes less to the overall viability of the western subspecies, it still provides some resiliency and redundancy for the subspecies. Across all three representation units, there are multiple, sufficiently resilient populations distributed across a large, ecologically diverse area. As a result, the western regal fritillary currently has sufficient resiliency, redundancy, and representation to withstand stochastic and catastrophic events and environmental change. Although threats are currently acting on the western subspecies and many of those threats are expected to continue into the future, we did not find that the subspecies is currently in danger of extinction throughout all of its range.

In the future, as stressors, such as conversion to agriculture, invasive plants, and drought, continue to reduce the quality and quantity of native grasslands, we expect western regal fritillary populations to be at an increased risk of extirpation. We project the least amount of decline in the western subspecies' viability if the stressors continue at their current rates and the greatest decline if stressors increase significantly. Across all of our future projections, fewer populations will have high and medium resiliency, with increases in the number and distribution of populations with low, very low, or no resiliency (extirpation). With increasing threats in the future, grassland habitats will become smaller, more isolated, and more fragmented, and individuals will be less able to disperse and recolonize, so we project overall declines in the resiliency, redundancy, and representation of the western subspecies in 50 years. As a result, we expect that, in the foreseeable future, the western regal fritillary will be at an increased risk of extirpation.

According to our assessment of plausible future scenarios in the SSA

report, the western subspecies is likely to become an endangered subspecies within the foreseeable future of 50 years throughout all of its range. Our future scenarios help address future uncertainty by describing plausible outcomes for the primary risk factors to the western subspecies. Fifty years encompasses 50 annual generations of the western regal fritillary and a time period when stressors are reasonably expected to change and we can make reasonably reliable predictions about the threats and the western regal fritillary's responses to those threats. In the foreseeable future, we expect more grasslands to be converted to agriculture and development and to become drier, as ambient temperatures increase and droughts increase in intensity, magnitude, and frequency. We expect increases in invasive plants, broad herbicide application, and periodic disturbances. As a result, we expect additional reductions in the size and distribution of large, intact blocks of grasslands and the underlying resources needed by the western regal fritillary, including violets, bunch grasses, and nectar sources. Violets and nectar sources become more scarce as herbicides are broadly applied to reduce forbs in the remaining tracts of grasslands. Climate change could further exacerbate the effects of drought. As habitats become smaller and more isolated, metapopulation processes could fail, with subsequent declines in the resiliency of the remaining populations of the western subspecies, as well as the redundancy and representation of the subspecies, and we expect the western regal fritillary to become more vulnerable to stochastic and catastrophic events and environmental change. Therefore, the western regal fritillary is likely to become an endangered subspecies within the foreseeable future throughout all of its range.

After evaluating threats to the western subspecies and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the viability of the western subspecies will continue to decline in the next 50 years so that the subspecies is likely to become in danger of extinction within the foreseeable future throughout all of its range due to the projected loss and fragmentation of grassland habitats from conversion to agriculture and development, drought, invasive and woody plants, the broad application of herbicides, and the synergistic effects of these threats with climate change. Thus, after assessing the best available information, we conclude that the western subspecies of regal fritillary is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Western Subspecies: Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578, July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the western subspecies is endangered in a significant portion of its range—that is, whether there is any portion of the western subspecies' range for which both (1) the portion is significant; and (2) the subspecies is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the subspecies' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the western subspecies' range where the subspecies is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the western regal fritillary, we choose to address the status question first—we consider information pertaining to the geographic distribution of the western subspecies and the threats that it faces to identify portions of the range where the western regal fritillary may be endangered.

We evaluated the range of the western regal fritillary to determine if the subspecies is in danger of extinction now in any portion of its range. The range of a subspecies can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the western subspecies' range that may be in danger of extinction (*i.e.,* meet the Act's definition of an endangered species). For the western regal fritillary, we considered whether the threats or their effects on the subspecies are greater in any biologically meaningful portion of the subspecies' range than in other portions, such that the subspecies is in danger of extinction now in that portion.

We examined the range of the western subspecies for biologically meaningful portions that may be at a higher risk of extirpation, as reflected by current resiliency of the 21 populations. Currently, 10 of the 21 populations have low resiliency, so they are at a greater risk of extirpation than the populations with more resiliency. These 10 populations are geographically concentrated along the eastern edge of the western subspecies' overall range. Eight of these populations with low resiliency make up the Midwest representation unit, which was historically dominated by vast tallgrass prairies, but today is an agriculturally dominated landscape with prairie remnants existing primarily as small, isolated patches. The other two populations currently with low resiliency, the Lake Agassiz Plain and Ozark Highlands populations, immediately adjoin the Midwest representation unit, so were included in our potential portion.

We then considered whether this biologically meaningful portion of 10 populations with low resiliency may be at a higher risk of extirpation. We examined the following threats, for the reasons described above: grassland conversion, invasive plants, broad application of herbicides, periodic disturbances, drought, climate change, and cumulative effects. We concluded that although the populations in this portion have low resiliency, largely the result of low and very low conditions of the large, contiguous blocks of native grasslands, reproduction and recolonization still occurs with abundance and growth trends ranging from low to medium conditions (Service 2023, p. 125). Additionally, the portion has sufficient redundancy and representation across the 10 populations such that it is not currently in danger of extinction. The 10 populations cover a wide geographic area that spans portions of 6 States across a variety of climatic and habitat types from north-to-south and east-to-west, such that there is no stochastic or catastrophic event that would extirpate the portion in the near term. Therefore, we conclude that the portion does not have a different status from the remainder of the western subspecies' range. Because we

determined that this portion does not have a different status, we did not need to assess its potential significance. As a result, we found no portion of the western subspecies' range where the biological condition of the subspecies differs from its condition elsewhere in its range such that the status of the subspecies in that portion differs from any other portion of the subspecies' range.

Therefore, no portion of the western subspecies' range provides a basis for determining that the subspecies is in danger of extinction in a significant portion of its range, and we determine that the western regal fritillary is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Western Subspecies: Determination of Status

Our review of the best available scientific and commercial information indicates that the western subspecies of regal fritillary meets the Act's definition of a threatened species. Therefore, we propose to list the western subspecies of regal fritillary as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Pennsylvania or South Dakota Ecological Services Field Offices (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these subspecies are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Pennsylvania would be eligible for Federal funds to implement management actions that promote the protection or recovery of the eastern regal fritillary. The States of Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Wisconsin, and Wyoming would be eligible for Federal funds to implement management actions that promote the protection or recovery of the western regal fritillary. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the eastern and western regal fritillary are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these subspecies. Additionally, we invite you to submit any new information on these subspecies whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled, ''Interagency Cooperation'' and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (see 50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical

habitat. At the end of a formal consultation, the Service issues a biological opinion containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which *is likely* to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the eastern and western regal fritillary that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the Natural Resources Conservation Service, the Bureau of Land Management, the National Park Service, and the Department of Defense, as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service's implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following: (1) import endangered wildlife into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) endangered wildlife within the United States or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

II. Protective Regulations Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions for a given species.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this species' proposed protective regulations under section 4(d) of the Act are one of the many tools that we would use to promote the conservation of the western regal fritillary. Nothing in 4(d) rules change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the western regal fritillary. As mentioned previously in Available Conservation Measures, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, even before the listing of any species or the designation of its critical habitat is finalized, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat

proposed to be designated for such species. These requirements are the same for a threatened species regardless of what is included in its 4(d) rule.

Section 7 consultation is required for Federal actions that ''may affect'' a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule (''blanket rule'' or species-specific 4(d) rule). A 4(d) rule does not change the process and criteria for informal or formal consultations and does not alter the analytical process used for biological opinions or concurrence letters. For example, as with an endangered species, if a Federal agency determines that an action is ''not likely to adversely affect'' a threatened species, this will require the Service's written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determinates that an action is ''likely to adversely affect'' a threatened species, the action will require formal consultation with the Service and the formulation of a biological opinion (50 CFR 402.14(a)). Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and inter-Agency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but that still require consultation). These tools may include consultation guidance, Information for Planning and Consultation effects determination keys, template language for biological opinions, or programmatic consultations.

Provisions of the Proposed 4(d) Rule for the Western Regal Fritillary

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the western subspecies' conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the western regal fritillary is likely to become in danger of extinction within the foreseeable future primarily due to the loss and fragmentation of grasslands through conversion by agriculture and development, the broadcast application of herbicides, invasive and woody plants, periodic disturbances, drought, and the synergistic effects of climate change. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We are not required to make a ''necessary and advisable'' determination when we apply or do not apply specific section 9 prohibitions to a threatened species (In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmtys. for a Great Or.* v. *Babbitt,* 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds,* 515 U.S. 687 (1995))). Nevertheless, even though we are not required to make such a determination, we have chosen to be as transparent as possible and explain below why we find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the western regal fritillary.

The protective regulations we are proposing for the western regal fritillary incorporate prohibitions from section 9(a)(1) of the Act to address the threats to the subspecies. The prohibitions of section 9(a)(1) of the Act, and implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. This protective regulation includes all of these prohibitions because the western regal fritillary is at risk of extinction within the foreseeable future and putting these prohibitions in place will help to conserve the subspecies' remaining populations, slow its rate of decline, and decrease synergistic, negative effects from other stressors.

In particular, this proposed 4(d) rule would provide for the conservation of the western regal fritillary by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help preserve the subspecies' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors. Therefore, we propose to prohibit take of the western regal fritillary, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include all of the general exceptions to the prohibition on take of endangered wildlife, as set forth in 50 CFR 17.21 and additional exceptions, as described below. Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

In addition, to further the conservation of the species, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, a State conservation agency, or a federally recognized Tribe, who is designated by their agency or Tribe for such purposes, may, when acting in the course of their official duties, take threatened wildlife without a permit if such action is necessary to: (i) Aid a sick, injured, or orphaned specimen; or (ii) Dispose of a dead specimen; or (iii) Salvage a dead specimen that may be useful for scientific study; or (iv) Remove specimens that constitute a demonstrable but nonimmediate threat

to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed, in an appropriate area.

We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the western regal fritillary that may result in otherwise prohibited take without additional authorization.

The proposed 4(d) rule would also provide for the conservation of the western subspecies by excepting otherwise prohibited take associated with several activities either intended to incentivize conservation actions or that, while they may have some minimal level of take of the western regal fritillary, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the western subspecies' conservation. We propose to except incidental take associated with routine livestock operations, livestock grazing, noxious weed control, annual haying and mowing, prescribed fire, brush control, and mowing section line rights-of-way and recreational trails; we describe each in more detail below. These activities are expected to have negligible impacts to the western regal fritillary and its habitat.

(1) Routine Livestock Operations

Incidental take caused by the routine livestock ranching activities that are described below and that are implemented on private, State, or Tribal lands or on other lands not under Federal jurisdiction (*e.g.,* lands owned by county or local governments) would not be prohibited, as long as those activities are otherwise legal and conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations. For the purposes of this proposed 4(d) rule, routine livestock ranching activities include (as described below) the construction and maintenance of fences, the gathering and management of livestock, and the development and maintenance of watering facilities for livestock.

(a) Fence Construction and Maintenance

Fences are an essential tool for livestock and ranch management. In addition, the strategic distribution of fencing is also necessary to implement multicell rotational grazing systems, which may be necessary to improve grazing management and provide a conservation benefit to the western regal fritillary's habitat. Therefore, incidental take associated with the construction and maintenance of fencing to manage livestock and ranches will be excepted.

(b) Livestock Gathering and Management

The installation and maintenance of corrals, loading chutes, and other livestock working facilities are critical to ranch operations. These activities may be carried out with only minimal impacts to the western regal fritillary. Therefore, incidental take associated with livestock gathering and management activities will be excepted.

(c) Development and Maintenance of Livestock Watering Facilities

Without a suitable water source in a pasture, livestock ranching is impossible. The proper distribution of livestock watering sources is also a prerequisite to implementing improved grazing management via the use of multicell rotational grazing systems that may be necessary to conserve western regal fritillary habitat and to provide a conservation benefit to the subspecies on grazed sites. This activity includes both the initial development of water sources and their maintenance. Dugout ponds, for example, typically require a cleanout after 15 to 20 years.

(2) Livestock Grazing

Incidental take of the western regal fritillary that may result from livestock grazing on private, State, or Tribal land would be excepted from the take prohibitions of section 9 of the Act. By excepting take of the western regal fritillary caused by livestock grazing, we acknowledge the positive role that some ranchers have played in conserving the western regal fritillary and that grazing can be compatible with maintaining remaining native grasslands. Grazing and browsing by livestock may improve and maintain regal fritillary habitat by removing herbaceous vegetation that shades and competes with violets and results in earlier successional stages within the grasslands, contributing to the landscape-level mosaic of habitats used by the western regal fritillary. Best management practices to make grazing compatible with regal fritillary conservation may include light-to-moderate grazing intensities in the late fall and early spring, patch burn grazing methods to maintain a shifting mosaic of habitats and prevent woodland encroachment, and avoiding the broadcast spraying of herbicides across large areas to kill plants that compete with grasses. Recovery of the western regal fritillary will depend on the protection and restoration of high-quality habitats supporting violets and nectar sources on private lands and on public lands that are grazed by private individuals under lease or other agreements. Therefore, incidental take associated with livestock grazing on private, State, or Tribal lands, including light-to-moderate grazing intensities in the late fall and early spring, and patch burn grazing methods that may help maintain an annually shifting mosaic of fire and grazing across a landscape to increase the diversity and structure of vegetation will be excepted.

(3) Noxious Weed Control

State and county laws require landowners to control noxious weeds on their property, and the timing of control actions is usually dependent on the growth stage of the weed species. Control of noxious weeds may also be important to protecting western regal fritillary habitat because native plant diversity declines when nonnative plant species invade and become established in prairies (Boettcher *et al.* 1993, p. 35). Spot spraying, hand pulling, or mechanical treatment of noxious weeds would be excepted from the take prohibitions and may occur at any time during the year. Incidental take that occurs as a result of mowing that is carried out for the purpose of controlling one or more noxious weed species will also be excepted.

Broadcast application of herbicides, however, may result in significant deterioration of native plant diversity in prairies (Smart et al. 2011, p. 184). Therefore, we would not except incidental take of the western regal fritillary that may result from broadcast spraying of herbicides, which we define as the application of herbicides, often aerially or by vehicles, evenly, widely, and indiscriminately across the entire

application area, unless the application area is dominated by noxious weeds.

(4) Haying and Mowing

Haying and mowing of native grasslands can improve western regal fritillary habitats by removing vegetation that outcompetes violets for light, nutrients, and water; stimulating the growth of native nectar sources; and improving the mosaic of diverse successional stages. Therefore, we will except incidental take associated with annual haying and mowing in western regal fritillary habitats.

(5) Prescribed Fire

Prescribed fire is a key grassland management tool that can preserve native grassland habitat by controlling woody encroachment and introduced species and stimulating growth of native vegetation. When used with other grassland management techniques and best management practices, the periodic disturbance caused by prescribed fire helps maintain suitable regal fritillary habitat on the landscape. We acknowledge that fire is also a stressor to the western subspecies. Adverse effects to individuals may occur if burning occurs in occupied habitats, and local population-level impacts are possible if suitable occupied habitats are burned extensively without retaining refugia or if such sites are lacking adjacent proximal occupied habitats that could serve as recolonization sources. However, these effects can be controlled to maximize the benefits to the western regal fritillary. Therefore, we will except incidental take associated with prescribed fire if the following conditions are met to reduce adverse effects:

(a) Prescribed fire burn units must be established to avoid burning the majority of suitable habitat at the landscape scale and to allow for refugia; and

(b) The return interval for prescribed fire on a particular unit is 3 to 5 years.

(6) Brush Control

If allowed to become too dense, woody vegetation can crowd out native grassland habitat. Consequently, brush control would be excepted from the take prohibitions and may occur at any time during the year. Brush control methods may include mechanical means, burning, grazing, or spot use of herbicides if in compliance with the other excepted activities in the 4(d) rule. If mechanical means such as brush hogs are used, the blade must be set to 20 cm (8 in) or higher above the ground. If herbicides are used, an appropriate systemic herbicide to prevent regrowth must be directly applied to cut stems. Broadcast spraying in western regal fritillary habitat would not be excepted because it may remove all violet and nectar plants for the western subspecies.

(7) Mowing Section Line Rights-of-Way and Recreational Trails

Section line rights-of-way and some recreational trails need to be mowed several times during the growing season to ensure that snow will not catch and block vehicle access and to ensure access and safety for hiking and other intended recreational activities, respectively. Section line rights-of-way typically have disturbed soil that has been contoured for a roadway and are likely to contain only small proportions of western regal fritillary habitat at any affected site. Recreational trails are travel ways established either through construction or use that are intended for and passable by at least one or more of the following: foot traffic, bicycles, in-line skates, wheelchairs, or cross-country skis. Such trails are typically narrower than roads. Therefore, impacts to western regal fritillary individuals and populations are likely to be minimal, and any incidental take that results from mowing section line rights-of-way and recreational trails will be excepted.

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat

designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act for the eastern subspecies or the 4(d) rule for the western subspecies. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Critical Habitat Determinability

We have determined that critical habitat is prudent, but not presently determinable, for both the eastern and western subspecies of regal fritillary. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We have reviewed the available information pertaining to the biological needs of the regal fritillary and habitat characteristics where each subspecies is located. Careful assessments of the economic and environmental impacts that may occur due to a critical habitat designation are not yet complete, and we are working to acquire the complex information needed to perform those assessments. At this time, the information needed to perform the required analysis of the impacts of the designation is lacking for both subspecies. Therefore, we conclude that the designation of critical habitat for both the eastern and western subspecies of regal fritillary is not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. The eastern subspecies does not occur on Tribal lands. For the western subspecies, we solicited information from the Tribes within the subspecies' range to inform the development of our SSA report, but we did not receive any responses. We will continue to coordinate with affected Tribes throughout the listing process, as appropriate.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the South Dakota Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the South Dakota and Pennsylvania Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding entries for ''Fritillary, eastern regal'' and ''Fritillary, western regal'' in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* *
INSECTS				
*	*	*	*	* *
Fritillary, eastern regal	*Argynnis idalia idalia*	Wherever found	E	[**Federal Register** citation when published as a final rule].
Fritillary, western regal	*Argynnis idalia occidentalis.*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.47(i).[4d]
*	*	*	*	* *

■ 3. Amend § 17.47 by adding paragraph (i) to read as follows:

§ 17.47 Special rules—insects.

* * * * *

(i) Western regal fritillary (*Argynnis idalia occidentalis*). (1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the western regal fritillary. Except as provided under paragraph (i)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this subspecies:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this subspecies, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Routine livestock ranching activities on private, State, or Tribal lands, or any other lands not under Federal jurisdiction, including:

(*1*) The construction and maintenance of fences to manage livestock and ranches;

(*2*) The installation and maintenance of livestock gathering and management features, such as corrals, loading chutes, and other livestock working and ranching facilities; and

(*3*) The development of new livestock watering sources and facilities and the maintenance of existing livestock watering facilities.

(B) Livestock grazing on private, State, or Tribal lands, including light-to-moderate grazing intensities in the late fall and early spring, and patch burn grazing methods that may help maintain an annually shifting mosaic of fire and grazing across a landscape to increase the diversity and structure of vegetation.

(C) Noxious weed control efforts, including spot spraying, hand pulling, and mechanical treatments (such as mowing) in all areas.

(D) Haying and mowing in western regal fritillary habitats.

(E) Prescribed fire that:

(*1*) Incorporates established burn units to avoid burning a majority of the western regal fritillary habitat on the landscape and maintains refugia for the western regal fritillary; and

(*2*) Operates on 3- to 5-year return intervals for the burn units.

(F) Brush control of woody vegetation, that:

(*1*) If conducted using mechanical methods, uses blades set at 20 centimeters (8 inches) or more above the ground; and

(*2*) If conducted using chemical treatments, uses appropriate, systemic herbicides to prevent regrowth applied directly to cut stems.

(G) Mowing section line rights-of-way and recreation trails.

Gary Frazer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–16982 Filed 8–5–24; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 89, No. 151
Tuesday, August 6, 2024

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

Food and Nutrition Service

Agency Information Collection Activities: Commodity Supplemental Food Program Participant Characteristics and Program Operations Study

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new information collection request in which FNS seeks a description of Commodity Supplemental Food Program (CSFP) participant characteristics and program operations. CSFP provides free groceries to approximately 700,000 low-income seniors each month and is administered by 60 State agencies, approximately 250 local agencies, and approximately 9,000 distribution sites.

DATES: Written comments must be received on or before October 4, 2024.

ADDRESSES: Comments may be sent to Rachel Zack, Office of Policy Support, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to *Rachel.Zack@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Alexander Bush at *Alexander.Bush@usda.gov* or by phone 202–302–4693.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Commodity Supplemental Food Program Participant Characteristics and Program Operations (CSFP PCPO) Study.

Form Number: Not applicable.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: Administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS), the Commodity Supplemental Food Program (CSFP) provides USDA Foods to income-eligible seniors aged 60 years and older. This will be the first comprehensive nationally representative study of CSFP participant characteristics and program operations.

The CSFP Participant Characteristics and Program Operations (CSFP PCPO) study will provide nationally representative information on CSFP participants and local program operations. Through this study, FNS aims to better understand who is participating in the program, how the program is operated, and successes and challenges in implementing CSFP. Findings from the study will help to identify program needs and inform decisions at the Federal, State, and local levels about program administration and potential policy decisions.

The objectives of this study are to: (1) provide a sociodemographic and health profile of CSFP participants; (2) describe CSFP participants' use of the program and its contribution to their food supply; (3) provide descriptive information on key aspects of CSFP operations at the State and local agency level; and (4) describe the participants' experience with, and perceptions of, CSFP.

The study will consist of surveys with three populations: (a) all CSFP State agencies, (b) all CSFP local agencies, and (c) a sample of CSFP participants from a nationally representative sample of CSFP distribution sites. We define distribution sites as any location that distributes CSFP food packages directly to CSFP participants. The study will also request administrative data from local agencies with information on their distribution site characteristics, which will be used for sampling for the participant survey, as well as de-identified data on participant demographics and program use if available.

Affected Public: Members of the public affected by the data collection include State, Tribal, and Local Government; not for profit organizations; and individuals. Respondent groups identified include: (1) CSFP State agency directors, (2) CSFP local agency managers, (3) CSFP distribution site staff, and (4) CSFP participants.

Estimated Number of Respondents: The total estimated number of unique respondents, which includes everyone contacted for data collection regardless of whether they participate, is 8,032—which includes 1,657 respondents and 6,375 non-respondents. The respondents are composed of 60 CSFP State agency staff, 250 local agency staff, 222 CSFP distribution site staff, and 7,500 CSFP participants. 7,500 CSFP participants will be recruited to complete the survey, but we estimate that only 15%, or 1,125 will complete the survey.

Estimated Number of Responses per Respondent: All respondents will be asked to respond to each specific data collection activity only once. CSFP State agency staff, CSFP local agency staff, and CSFP participants will each be asked to complete one survey. CSFP local agency staff will also be asked once for a set of administrative data on their distribution sites and deidentified information on participant attendance patterns. CSFP distribution site staff will be asked to help recruit CSFP participants at their distribution site,

which will involve a planning conversation between the distribution site and the study contractor, distribution of recruitment materials to CSFP participants, and distribution of surveys to CSFP participants when they receive their food package.

Estimated Total Annual Responses: The estimated number of total annual responses is 8,282; this includes 1,907 responses from 1,657 respondents and 6,375 responses from 6,375 non-respondents.

Estimated Time per Response: For respondents, the estimated time of response varies from 45 minutes to 4 hours depending on the data collection activity, as shown in the table below.

Estimated Total Annual Burden on Respondents: 3,139 hours; this includes 2,820 hours for respondents and 319 hours for non-respondents. See the table below for estimated total annual burden for each type of respondent and data collection activity.

TOTAL ESTIMATED ANNUALIZED PUBLIC BURDEN HOURS [1]

Respondent	Data collection activity	Estimated number of respondents	Total number of responses per respondent	Total annual responses	Average burden hours per response	Total annual burden hours
CSFP State Agency Staff ...	State Agency Survey	60	1	60	1.00	60.00
CSFP Local Agency Staff ...	Local Agency Survey	250	1	250	1.00	250.00
	Local Agency Administrative Data Submission.	250	1	250	4.00	1,000.00
CSFP Distribution Site Staff	Assisting with Recruitment for Participant Survey.	222	1	222	3.00	666.00
CSFP Participants	CSFP Participant Survey (Respondents).	1,125	1	1,125	0.75	843.75
	CSFP Participant Survey (Non-Respondents).	6,375	1	6,375	0.05	318.75
Total:	.....	8,032	1	8,282	0.38	3,138.50

[1] The total burden hours presented here provide information assuming the maximum number of respondents for State agency surveys, local agency surveys, and outreach to distribution sites for help with recruiting CSFP participants.

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–17341 Filed 8–5–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Modoc Resource Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Modoc National Forest within Modoc County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on August 21, 2024, at 3 p.m. until 7 p.m. (Pacific Daylight Time).

Written and Oral Comments: Anyone wishing to provide in-person and virtual oral comments must pre-register by 11:59 p.m. (Pacific Daylight Time) on August 16, 2024. Written public comments will be accepted by 11:59 p.m. (Pacific Daylight Time) on August 16, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: This meeting will be held in-person at the Modoc National Forest Supervisor's Office Conference Room, located at 225 West 8th Street Alturas, California 96101. The public may also join virtually via webcast, teleconference, videoconference, or Homeland Security Information Network virtual meeting. Committee information and meeting details can be found at the following website: *www.fs.usda.gov/main/modoc/workingtogether/advisorycommittees or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written Comments: Written comments must be sent by email to *samantha.jager@usda.gov or* via mail (postmarked) to *Resource Advisory Committee Coordinator, 225 West 8*th Street, Alturas, California, 96101. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PDT, August 16, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *samantha.jager@usda.gov* or via mail (postmarked) to Forest Service Resource Advisory Committee Coordinator, 225 West 8th Street, Alturas, California, 96101.

FOR FURTHER INFORMATION CONTACT: Chris Christofferson, Designated Federal Officer, by phone at 530–233–5811 or email at *chris.christofferson@usda.gov;* or Samantha Jager, Resource Advisory Committee Coordinator, by phone at 530–708–7291 or email at *samantha.jager@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss any old business from last year;
2. Hear from Title II project proponents and discuss Title II project proposals;
3. Make funding recommendations on Title II projects;
4. Discuss committee vacancies;
5. Approve meeting minutes;
6. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of

three minutes or less. to be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202–720–2600 (voice and TTY) or USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: July 30, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–17122 Filed 8–5–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Housing Service

Rural Business-Cooperative Service

[Docket No. RUS–24–Agency–0023]

Notice of Adoption of Department of Energy Categorical Exclusions Under the National Environmental Policy Act

AGENCY: Rural Utilities Service, Rural Housing Service and Rural Business-Cooperative Service, Rural Development, USDA.

ACTION: Notice.

SUMMARY: Rural Development (RD), a mission area within the United States Department of Agriculture (USDA) announces its intention to adopt three Categorical Exclusions (CEs) from the United States Department of Energy (DOE) under the National Environmental Policy Act (NEPA) to use in RD programs and funding opportunities. This notice describes the categories of proposed actions for which RD intends to use the DOE CEs and describes the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Alan Hachey, Environmental Protection Specialist, Environmental and Historic Preservation Division, Rural Utilities Service, 1400 Independence Avenue SW, Mail Stop 1548, Room 4004, Phone: (202) 205–5381; Email: *alan.hachey@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

RD's mission is to increase economic opportunity and improve the quality of life for all rural Americans. This mission is met by providing loans, grants, loan guarantees, and technical assistance through a multitude of programs aimed at creating and improving infrastructure, businesses, and housing throughout rural America. RD is divided into three agencies, the Rural Utilities Service, Rural Business-Cooperative Service and Rural Housing Service, each with unique programs that play an important role in helping RD reach its goals.

RD's programs must comply with NEPA, 42 U.S.C. 4321 *et seq.,* which requires Federal agencies to consider the environmental effects of their proposed actions in their decision-making processes and inform and engage the public in those processes. Congress enacted NEPA to establish a national policy for the environment, provide for the establishment of the Council on Environmental Quality (CEQ), and for other purposes as detailed on *NEPA.gov* (*https://ceq.doe.gov/*). CEQ issued regulations implementing NEPA, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review of any major Federal action—an environmental impact statement (EIS), environmental assessment (EA), or CE. It is the agency's responsibility, in accordance with NEPA and the CEQ regulations, to prepare documentation that supports their level of review.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt and use another agency's CEs for a category of proposed agency actions (42 U.S.C. 4336c). To use another agency's CEs under section 109, the adopting agency must identify the relevant CEs listed in another agency's (''establishing agency'') NEPA procedures that cover the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the adopting agency plans to use for its proposed actions; and document adoption of the CE. 40 CFR 1501.4(e)(2024). This notice documents RD's adoption of three DOE CEs under section 109 of NEPA for future use in RD programs and funding opportunities.

II. Identification of the Categorical Exclusions and Additional Conditions for Application

RD provides loans, grants and technical assistance to build critical infrastructure like electric, broadband, water systems, and hospitals. The programs expand access to electric, telecommunications, and transportation infrastructure, and support business growth, healthcare, education, housing, and other community essentials.

RD has identified the following CEs for adoption, which are listed in DOE's NEPA procedures as CEs B5.4, B5.5, and B5.23 of 10 CFR part 1021, subpart D, appendix B. These CEs were established April 24, 1992 (57 FR 15144), and October 13, 2011 (76 FR 63787). The DOE text of each CE has been included

in quotations following each identified CE. RD intends to apply these CEs to projects undertaken directly by RD, requiring an approval by RD, or financed in whole or in part through Federal funds made available by RD programs.

RD will review each action to ensure the following: (1) Compliance with the DOE's NEPA procedures at 10 CFR 1021 subpart D, appendix B which require an evaluation of ''integral elements''; (2) Compliance with RD's NEPA procedures at 7 CFR 1970.52 which address extraordinary circumstances; and (3) Confirmation the action has not been segmented as required by DOE's NEPA procedures at 10 CFR 1021.410(b)(3). The evaluation of integral elements and segmentation is further described in this section. The evaluation of extraordinary circumstances is further described in Section III.

B5.4 Repair or replacement of pipelines. ''Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.''

RD intends to apply this CE in a manner consistent with DOE's application—to the same types of actions (being located in existing rights of way, in accordance with applicable requirements, and conveying the same types of materials identified by the DOE CE such as natural gas). An example of a project type where this CE could be applied by RD includes, but is not limited to, the repair or replacement of a gas transmission pipeline in an existing utility or transportation right-of-way that provides natural gas to an existing power plant operated by a utility cooperative.

RD's existing CE pertaining to gas lines (and water and wastewater), 7 CFR 1970.54(b)(2), applies to ''Improvement and expansion of existing water, wastewater, and gas utility systems: (i) Within one mile of currently served areas irrespective of the percent of increase in new capacity, or (ii) increasing capacity not more than 30 percent of the existing user population.'' RD's CE applies only to projects occurring within one mile of currently served areas or to projects that increase capacity by no more than 30 percent of the existing user population. DOE's CE would provide flexibility to RD's program in that it does not limit the proximity of the pipelines to the area serviced and does not have a limit on increased capacity, but instead limits the covered projects through the requirements to remain within existing rights-of-way and to comply with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Additionally, RD's CE is limited to water, wastewater, and gas utility systems, while DOE's CE applies more broadly to pipelines of different kinds.

B5.5 Short pipeline segments. ''Construction and subsequent operation of short (generally less than 20 miles in length) pipeline segments conveying materials (such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water) between existing source facilities and existing receiving facilities (such as facilities for use, reuse, transportation, storage, and refining), provided that the pipeline segments are within previously disturbed or developed rights-of-way.''

RD intends to apply this CE in a manner consistent with DOE's application—to the same types of actions (which have included pipeline segments which are constructed and operated within previously disturbed or developed rights-of-way and conveying the same types of materials identified by the DOE CE such as natural gas). An example of a project type where this CE could be applied by RD includes, but is not limited to, the construction of a short pipeline segment alone in an existing utility or transportation right-of-way to provide natural gas to an existing power plant operated by a rural utility cooperative.

RD does not have an existing CE that addresses new construction of pipeline segments other than for water and wastewater. DOE's CE does not limit the type of gases and liquids a pipeline can convey. RD is seeing an increase in applicants retrofitting existing generation plants with lower carbon emitting resources, such as natural gas. Modifications underway include the conversion from coal to co-firing natural gas plants. The DOE CE would address the action of constructing new natural gas pipeline segments for such plant modifications.

B5.23 Electric vehicle charging stations. ''The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.'' The CE will be applied in a manner consistent with DOE's application—to the same types of actions (which have included a wide variety of locations on and off Federal property, differences in local conditions, various numbers of EV charging stations per action, and different types of equipment and technologies including Level 1, Level 2, and DC Fast Charging stations).

RD intends to apply this CE towards the construction of electric vehicle charging stations proposed by applicants in previously disturbed or developed areas including, but not limited to, existing facilities such as headquarters, warehouses, and other support buildings used by electric utility cooperatives and other applicant types. As applicants increasingly focus on green energy and long-term sustainability goals, RD anticipates those efforts will also include the replacement of applicants' fleets from gas powered to electric vehicles. RD will review the action for integral elements, extraordinary circumstances and segmentation to ensure that the CE is still applicable. Reducing the Department's reliance on fossil fuels and reducing emissions will improve sustainability in accordance with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad.* RD does not currently have a CE for this application.

Additional conditions applicable to DOE's CEs: When analyzing ''Previously disturbed or developed area,'' RD will use DOE's definition of ''land that has been changed such that its functioning ecological processes have been and remain altered by human activity.'' DOE further clarifies that ''[t]he phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available'' (10 CFR 1021.410(g)(1)). DOE's definition of ''Previously disturbed or developed area'' is substantially the same as the definition RD uses. RD defines ''[p]reviously disturbed or developed area'' as ''[l]and that has been changed such that its functioning ecological processes have been and remain altered by human activity,'' which ''encompasses areas that have been

transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available'' (7 CFR 1970.6(a)).

The DOE CEs include additional conditions referred to as integral elements (10 CFR part 1021 Subpart D, Appendix B). In order to apply the CEs, RD will ensure the action must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of USDA or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation, and Liability Act—excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands;

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), ''Farmland Protection Policy Act: Definitions,'' or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

The CEs being adopted apply to classes of action that RD has determined would not individually or cumulatively have a significant effect on the human environment. RD will ensure in its review of each action that it has not been segmented as required by DOE's NEPA procedures at 10 CFR 1021.410(b)(3) and the appropriate level of environmental review is being applied to the action as required by the CEQ regulations at 40 CFR 1501.3(b).

III. Consideration of Extraordinary Circumstances

DOE's implementing procedures for extraordinary circumstances at 10 CFR 1021.410(b)(2) will be used when evaluating projects where the adopted CEs will be applied. RD's definition of extraordinary circumstances includes DOE's definition in its entirety, but also includes additional details that address considerations relevant to RD's programs; therefore, RD will also rely on the language found in RD's implementing procedures when evaluating the applicability of an adopted CE to a proposal.

IV. Consultation With DOE and Determination of Appropriateness

RD and the DOE Office of NEPA Policy and Compliance consulted on the appropriateness of RD's adoption of the CEs in February and April of 2024. RD and DOE's consultation included a review of DOE's experience developing and applying the CEs, the types of actions for which RD plans to utilize the CEs, and consideration of extraordinary circumstances. These RD actions are similar to the type of projects that DOE undertakes or funds and therefore the effects of RD projects will be similar to the effects of DOE projects, which are not significant, absent the existence of extraordinary circumstances that could involve potentially significant effects. Therefore, RD has determined that its proposed use of the CEs as described in this notice would be appropriate.

V. Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document RD's adoption of DOE's CEs for the repair or replacement of pipelines, short pipeline segments, and electric vehicle charging stations. The notice identifies the types of actions to which RD will apply the CE, as well as the considerations that RD will use in determining whether an action is within the scope of the CE.

Issued under authority delegated in 7 CFR 2.17.

Basil I. Gooden,

Under Secretary for Rural Development, U.S. Department of Agriculture.

[FR Doc. 2024–17272 Filed 8–5–24; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Business Meeting of the Alabama Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a business meeting on Thursday, August 15, 2024 at 10:00 a.m. Central time. The Committee will review Committee processes to discuss civil rights topics.

DATES: The business meeting will take place on Thursday August 15, 2024, at 10:00 a.m. Central Time.

Public Call Information: Dial: 833–435–1820, Confirmation Code: 160 893 5218#.

Join from the meeting link: *https://www.zoomgov.com/meeting/register/vJItf-CrqzkrEmusbaIKYVweOMU4ZT9UAtg.*

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Chair's Comments
III. Committee Discussion
IV. Next steps
V. Public comment
VI. Adjournment

Dated: July 31, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–17288 Filed 8–5–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Emergency Economic Information Collections

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 29, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Generic Clearance for Emergency Economic Information Collections.

OMB Control Number: 0607–1019.

Form Number(s): Various.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 300,000.

Average Hours Per Response: 10 minutes.

Burden Hours: 50,000.

Needs and Uses: The U.S. Census Bureau plans to request a 3-year extension of the Office of Management and Budget (OMB) approval for the Generic Clearance for Emergency Economic Information Collections (EEIC). The EEIC provides the quick turn-around necessary for conducting emergency economic information collections in response to unanticipated international, national, or regional declared emergencies or events of national interest arising as a direct result of declared emergencies having a significant economic impact on U.S. businesses and/or state or local governments. The purpose of the collections is to gauge and monitor the economic impact of such events on U.S. businesses or organizations and state or local governments.

Emergencies, once declared by the authorized state or federal official or entity, that could trigger the need for an EEIC may have global, national, or regional impact on U.S. businesses and governments, and include the following examples:

—Pandemic or other health emergency
—Natural or manmade disaster
—Acts of war or terrorism
—Civil unrest or insurrection

Other events of national interest arising as a direct result of declared emergencies may also have a significant impact on U.S. businesses or governments. General categories of national interest events arising as a direct result of declared emergencies which could trigger the need for an EEIC are:

—Economic crises
—Financial crises
—International geo-political instabilities
—Resource shortages
—Cyberterrorism
—New legislation passed as a direct result of a declared emergency

EEIC questions may be included as supplemental questions on existing Census Bureau surveys or conducted as new special-purpose surveys. The data will be collected by paper or electronic instruments, depending on the survey or program.

EEIC questions will be chosen from a pretested Question Bank. For some subjects, the Question Bank includes specific questionnaire content. In other cases, the Question Bank includes topics which will then be addressed with questions designed to meet data needs that arise during a future unknown event. Some questions have been cognitively tested and should be considered final; some may require testing for final wording. Questions that may require testing and refinement are annotated in the Question Bank. As the Question Bank matures with new or revised content, the Census Bureau will resubmit the bank for review.

Prior to adding EEIC questions to any survey, the Census Bureau will consult with OMB and submit a request for approval, allowing between 3 and 10 business days for OMB action. Over the existing period of clearance, the EEIC Generic Clearance was used to clear supplemental questions which were added to existing surveys, responsive to

both recession conditions resulting from the COVID 19 Pandemic and various severe weather events which occurred in 2022.

As data collections will be tailored to the emergency, users of the data may vary, but may include: federal, state, or local officials charged with decision-making during the emergency; business leaders and policymakers wishing to develop plans to ameliorate the effects of the emergency; academics and members of the press wishing to study and disseminate information about the emergency; and the public. The data collected will help us understand how and why data we collect in our ongoing surveys may be affected by the emergency, as well as allow us to disseminate data as part of existing releases, new releases, or experimental releases.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131, 161 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1019.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–17290 Filed 8–5–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic for Funding Opportunity Announcements and Related Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 07, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Office of the Secretary, Department of Commerce.

Title: Generic for Funding Opportunity Announcements and Related Forms.

OMB Control Number: Not yet issued. This is a new information collection.

Form Number(s): Varies or None.

Type of Request: Regular submission.

Number of Respondents: 10,000.

Average Hours per Response: Varies.

Burden Hours: 100,000.

Needs and Uses: Some program offices may use some form of electronic collection. This could include web pages, email or other online data management systems. Recipients may be required to enter and retrieve information pertinent to their awards through electronic forms closely resembling the paper forms (*i.e.,* fillable PDFs or tailored online data management systems). Such technology support is expected to improve standardization and timeliness of recipient reporting and to ease further analyses of reported data.

Affected Public: Individuals or households; Private Sector; Not-for-profit institutions; State, Local, or Tribal government.

Frequency: Varies.

Respondent's Obligation: Voluntary or Mandatory.

This information collection request may be viewed at *https://www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–17311 Filed 8–5–24; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–137–2024]

Foreign-Trade Zone 154; Application for Subzone; Willow Glen Terminal LLC; Saint Gabriel, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Greater Baton Rouge, grantee of FTZ 154, requesting subzone status for the facility of Willow Glen Terminal LLC, located in Saint Gabriel, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 1, 2024.

The proposed subzone (50 acres) is located at 2605 Highway 75, Saint Gabriel, Louisiana. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 154.

In accordance with the FTZ Board's regulations, Kolade Osho of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 16, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 30, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kolade Osho at *Kolade.Osho@trade.gov.*

Dated: August 1, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–17349 Filed 8–5–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Meeting of the Multistakeholder Forum for the National Spectrum Strategy Band Studies

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting for providing input to spectrum band studies directed by the National Spectrum Strategy and National Spectrum Strategy Implementation Plan, which instructed the National Telecommunications and Information Administration (NTIA) to establish a multistakeholder forum for non-Federal stakeholders to engage with the Federal agencies conducting the studies. This is the first of what NTIA expects will be a series of public multistakeholder meetings held approximately every other month.

In this meeting, the objectives, processes, timelines, and deliverables for obtaining input from the public will be discussed, with particular focus on the study of the 3.1–3.45 GHz and 7.125–8.4 GHz bands. In this meeting and in future meetings, NTIA will solicit targeted information from the public, including industry and academia, on spectrum use cases, coexistence scenarios, existing technology solutions, and technical inputs.

DATES: The meeting will be held on August 23, 2024, from 10:00 a.m. to Noon, Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at the Herbert C. Hoover Federal Building Auditorium, Washington, DC. Use the entrance on 14th Street NW, between Constitution Ave. and Pennsylvania Ave.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to *adavenport@ntia.gov,* indicating ''Lower 3 and 7/8 GHz Public Multistakeholder Meeting'' in the subject line, or if by mail, address inquiries to National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. By telephone, contact Ashley Davenport at 240–961–1937. Please direct media inquiries to Charles Meisch, (202) 482–7002, or NTIA's Office of Public Affairs, *press@ntia.gov.*

SUPPLEMENTARY INFORMATION:

Background: The White House issued the National Spectrum Strategy on November 13, 2023, laying out a blueprint for American innovation, competition, and security in advanced wireless technologies. *See* National Spectrum Strategy at *https://www.ntia.gov/sites/default/files/publications/national_spectrum_strategy_final.pdf.* The National Spectrum Strategy directed detailed studies of certain spectrum bands to determine whether they may be repurposed for expanded or more efficient uses. To that end, NTIA and other Federal agencies are engaging in studies of the 3.1–3.45 GHz, the 7.125–8.4 GHz, and other spectrum bands. This series of meetings will ensure that the public can provide input to the spectrum band studies.

Matters To Be Considered: The planned meeting for August 23, 2024, will include discussion of the objectives, processes, timelines, and deliverables for obtaining input from the public.

Time and Date: The meeting will be held on August 23, 2024, from 10:00 a.m. to Noon, Eastern Standard Time (EST). The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *http://www.ntia.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Herbert C. Hoover Federal Building Auditorium, Washington, DC. Individuals who wish to attend must register no later than one week in advance at *adavenport@ntia.gov.* Individuals requiring accommodations are asked to notify Ashley Davenport at 240–961–1937 or *adavenport@ntia.gov* at least ten (10) business days before the meeting. Attendees are encouraged to arrive early to permit sufficient time to complete security procedures.

Status: Interested parties are invited to attend the meeting. Attendance is restricted to U.S. citizens.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above.

Sean Conway,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2024–17302 Filed 8–5–24; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Renewal of the Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of renewal.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is publishing this notice to announce the renewal of the Agricultural Advisory Committee (AAC). The Commission has determined that the renewal of the AAC is necessary and in the public's interest, and the CFTC has consulted with the General Services Administration's Committee Management Secretariat regarding the AAC's renewal.

FOR FURTHER INFORMATION CONTACT: John Dunfee, Chief Counsel, Office of the Chairman, at 202–418–5396 or *JDunfee@cftc.gov.*

SUPPLEMENTARY INFORMATION: The CFTC's advisory committees were created to provide input and make recommendations to the Commission on a variety of regulatory and market issues that affect the integrity and competitiveness of U.S. derivatives markets. The committees facilitate communication between the Commission and U.S. derivatives markets, trading firms, market participants, and end users. The AAC is one of five CFTC advisory committees. The AAC's objectives and scope of activities are to provide the Commission with advice and recommendations on issues affecting agricultural producers; consumers; processors; lenders; other major market participants, including derivatives intermediaries, buy-side representatives, and exchanges; regulators; and others interested in or affected by the agricultural derivatives markets through public meetings. The AAC will operate for two years from the date of renewal unless the Commission directs that the AAC terminate on an earlier date. A copy of the AAC renewal charter has been filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat. A copy of the renewal charter will be posted on the CFTC's website at *www.cftc.gov.*

Dated: August 1, 2024.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2024–17356 Filed 8–5–24; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–52]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–52, Policy Justification, and Sensitivity of Technology.

Dated: August 1, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

OCT 0 6 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-52, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $3.00 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001–FR–C

Transmittal No. 22–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$1.75 billion
Other	$1.25 billion
TOTAL	$3.00 billion

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Kuwait has requested to buy the National Advanced Surface-To-Air Missile System (NASAMS), Medium Range Air Defense System (MRADS) solution comprised of:

Major Defense Equipment (MDE):

Seven (7) AN/MPQ–64FI Sentinel Radars with Associated Support Equipment

Sixty-three (63) AIM–120C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

Sixty-three (63) AMRAAM-Extended Range (AMRAAM–ER) Missiles

Two (2) AIM–120–C–8 AMRAAM Guidance Sections

Sixty-three (63) AIM–9X Sidewinder Block II Tactical Missiles

Six (6) AIM–9X Block II Tactical Missile Guidance Units

Twelve (12) Multifunctional Information Distribution Systems—Low Volume Terminal (MIDS LVT) Block Upgrade 2

Twelve (12) MIDS LVT Cryptographic Modules (LCM)

Non-MDE:

Also included are Fire Distribution Centers (FDC); Canister Launcher Systems (CLS); Tactical Control Center (TCC) Systems; FDC Indoor Training Simulator; Radar Communication Nodes; MIDS LVT BU2 Link 16-capable radios; IPS–250X High Assurance internet Protocol Encryptions (HAIPE); KIV–77 Identification Friend-or-Foe (IFF) Crypto Applique to provide Mode 5 and Mode S capability (must be compatible with Model 5800 IFF); AN/PSN–13 Defense Advanced Global Positioning System (OPS) Receivers (DAGR) with Selective Availability Anti-Spoofing Module (SAASM); AN/PYQ–10 Simple Key Loaders (SKL), Code Loaders and Cable Sets to allow crypto keying capability for each IFF, OPS, and MIDS radio; AIM–120 control sections and containers; AMRAAM and AMRAAM–ER Captive Air Training Missiles (CATMs); weapon system support and support equipment; spare parts, consumables, accessories and repair/return support; classified software; classified and unclassified publications and technical documentation; studies and surveys; Maintenance Support Shelters, NASAMS U.S. Government and Contractor Technical Support; Technical Assistance Support; Software Integration Support; Construction/Facilities Requirements; communications equipment; tool kits; test equipment; range and test programs; support equipment; prime movers; wheeled vehicles and organizational equipment; spare and repair parts; generators; technical documentation; computer based training equipment; training simulators; spare parts; training; facility construction (radar berms, communication towers, ammunition storage, training facilities, and maintenance facilities); Infrastructure improvements; U.S. Government and contractor technical support; engineering and logistics support services; warranty services; Systems Integration and Checkout (SICO); field office support; and other related elements of logistics and program support.

(iv) *Military Department:* Army (KU–B–UYG); Air Force (KU–D–YAG); Navy (KU–P–ABP, KU–P–LDI); National Security Agency (KU–M–GAR)

(v) *Prior Related Cases, if any:* KU–P–ABI, KU–P–ABO, KU–D–YAC, KU–D–YAD

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* October 6, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—National Advanced Surface-to-Air Missile System (NASAMS), Medium Range Air Defense System (MRADS)

The Government of Kuwait has requested to buy the National Advanced Surface-To-Air Missile System (NASAMS), Medium Range Air Defense System (MRADS) solution comprised of: seven (7) AN/MPQ–64FI Sentinel radars with associated support equipment; sixty-three (63) AIM–120C–8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); sixty-three (63) AMRAAM-Extended Range (AMRAAM–ER) missiles; two (2) AIM–120–C–8 AMRAAM Guidance Sections; sixty-three (63) AIM–9X Sidewinder Block II tactical missiles; six (6) AIM–9X Block II tactical missile Guidance Units; twelve (12) Multifunctional Information Distribution Systems—Low Volume Terminal (MIDS LVT) Block Upgrade 2; and twelve (12) MIDS LVT Cryptographic Modules (LCM). Also included are Fire Distribution Centers (FDC); Canister Launcher Systems (CLS); Tactical Control Center (TCC) Systems; FDC Indoor Training Simulator; Radar Communication Nodes; MIDS LVT BU2 Link 16-capable radios; IPS–250X High Assurance internet Protocol Encryptions (HAIPE); KIV–77 Identification Friend-or-Foe (IFF) Crypto Applique to provide Mode 5 and Mode S capability (must be compatible with Model 5800 IFF); AN/PSN–13 Defense Advanced Global Positioning System (OPS) Receivers (DAGR) with Selective Availability Anti-Spoofing Module (SAASM); AN/PYQ–10 Simple Key Loaders (SKL), Code Loaders and Cable Sets to allow crypto keying capability for each IFF, OPS, and MIDS radio; AIM–120 control sections and containers; AMRAAM and AMRAAM–ER Captive Air Training Missiles (CATMs); weapon system support and support equipment; spare parts, consumables, accessories and repair/return support; classified software; classified and unclassified publications and technical documentation; studies and surveys; Maintenance Support Shelters, NASAMS U.S. Government and Contractor Technical Support; Technical Assistance Support; Software Integration Support; Construction/Facilities Requirements; communications equipment; tool kits; test equipment; range and test programs; support equipment; prime movers; wheeled vehicles and organizational equipment; spare and repair parts; generators; technical documentation; computer based training equipment; training simulators; spare parts; training; facility construction (radar berms, communication towers, ammunition storage, training facilities, and maintenance facilities); Infrastructure improvements; U.S. Government and contractor technical support; engineering and logistics support services; warranty services; Systems Integration and Checkout (SICO); field office support; and other related elements of logistics and

program support. The total estimated cost is $3 billion.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that has been an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Kuwait's capability to meet current and future threats by enhancing the ability to defend itself against regional malign actors and improve interoperability with systems operated by U.S. forces and other Gulf countries. Kuwait's continued investment in its defensive capabilities is crucial to protecting its borders, energy infrastructure, and its residents, including over 4,000 U.S. citizens and military personnel living and working in the country. Kuwait will have no difficulty absorbing this capability into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles and Defense, Tucson, AZ. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require the assignment of three (3) U.S. Government and five (5) contractor representatives to Kuwait to support delivery of the NASAMS and provide support and equipment familiarization. Six (6) contractors would be deployed to Kuwait for approximately three (3) years for follow-on support of equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 22–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. National Advanced Surface-to-Air Missile System (NASAMS) Medium Range Air Defense System (MRADS) Description. This is a System of Systems (SOS) consisting of the Sentinel Radar, the Fire Distribution Center (FDC), the AIM–120 Advanced Medium Range Air-to-Air Missile (AMRAAM), the AIM–120 Extended Range Missile (AMRAAM–ER), and the AIM–9X Missile. The NASAMS MRADS is designed for mid-range air defense and can be deployed to engage fixed wing and rotary wing aircraft, cruise missiles, and unmanned aerial vehicles (UAVs). The NASAMS MRADS is not a Program of Record (POR) for the U.S. Department of Defense, but the SOS architecture does consist of several PORs: the U.S. Army's AN/MPQ–64 Sentinel radar, the U.S. Air Force's AIM–120 AMRAAM missile, and the U.S. Navy's AIM–9X Missile. The NASAMS is comprised of both U.S.- and Norwegian-manufactured components. Norwegian components will be procured by the Raytheon Company. Norwegian involvement will be managed by Raytheon using export authorizations received from the U.S. Department of State.

2. NASAMS Fire Unit (FU). Consists of one fire distribution center (FDC), one AN/MPQ–64F1 surveillance, acquisition, and tracking radar, 3 truck-mounted Canister Launchers (LCHR), and the High Mobility Launcher (HML) with 6 AMRAAM missiles each.

3. Fire Distribution Center (FDC). The command & control entity, FDC, is the major operator interface in NASAMS. It provides all command-and-control functionality necessary to effectively conduct Air Defense missions; both in a stand-alone (autonomous) configuration as well as in a netted configuration integrated to other units. The FDC interfaces and controls the MPQ–64F1 Sentinel radar and the Canister and High Mobility-Launchers. The FDC also interfaces (voice and data) to the national command and control structure.

4. AN/MPQ–64F1 Sentinel Radar. This is the organic mobile Air Defense acquisition and tracking sensor for the United States Army. Sentinel provides persistent air surveillance and fire control quality data through command-and-control systems to defeat Unmanned Aerial System (UAS), cruise missiles, and fixed-wind and rotary-wing aircraft threats.

5. AIM–120C–8 Advanced Medium Range Air-to-Air Missile (AMRAAM). This is a supersonic, air-launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. State-of-the-art technology is used in the missile to provide it with beyond-visual-range capability. Although designed as an air-to-air missile, the AMRAAM can also be employed in a surface-launch mode when integrated on systems such as NASAMS.

- The AIM–120C–8 AMRAAM-Extended Range (ER) has the same capability as the AMRAAM, but with a larger rocket motor and control section to allow it to travel further.
- The potential sale will include Captive Air Training Missiles (CATM) and AMRAAM Guidance Sections.

6. Canister Launcher (CLS). Purpose is to transport, aim, and fire the U.S. Air Force AMRAAM, AMRAAM–ER, and the US Navy AIM–9X Sidewinder missiles. Under the remote control of the Fire Distribution Center (FDC), the launcher permits rapid launching of one or more missiles against single or multiple targets and can support 6 engagements simultaneously. The launcher provides 360-degree, all weather, day and night, missile launch capability.

7. AIM 9X Sidewinder Block II Tactical Missiles. The missile includes a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System.

8. Multifunction Information Distribution System—Low Volume Terminal Block Upgrade 2 (MIDS LVT BU2). The MIDS LVT BU2 is a secure data and voice communication network using the Link-16 architecture; the MIDS LVT Cryptographic Modules (LCM) are the Communications Security (COMSEC) portion of the MIDS LVT BU2 system. The system provides enhanced situational awareness, positive identification of participants within the network, and secure voice capability. The system provides the critical ground link for simultaneous coordination of air, land, and maritime forces.

9. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

10. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

11. A determination has been made that the Government of Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

12. All defense articles and services listed in this transmittal have been

authorized for release and export to the Government of Kuwait.

[FR Doc. 2024–17367 Filed 8–5–24; 8:45 am]
BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–33]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–33 and Policy Justification.

Dated: August 1, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

SEP 2 7 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 22-33 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $250 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001–FR–C

Transmittal No. 22–33

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$250 million
TOTAL	$250 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Cartridge M80 Ball/M62 Tracer 7.62mm 4/1 linked; Cartridge MK211 4 Armor Piercing Incendiary (APIT) .50 Cal 4/1 linked; Cartridge M903/M962 Saboted Light Armor Penetrator-Tracer (SLAP–T) .50 Cal 4/1 linked; Cartridge KE–W A1 Armor-Piercing, Fin-Stabilized, Discarding Sabot-Tracer (APFSDS–T) 120mm; Cartridge, Insensitive Munition High Explosive Tracer (IM–HE–T) 120mm; Grenade, Screening-Smoke; containers; munitions; support and test equipment; integration and test support; spare and repair parts; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Army (KU–B–UZC)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* September 27, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—M1A2K Tank Operational and Training Ammunition

The Government of Kuwait has requested to buy Cartridge M80 Ball/M62 Tracer 7.62mm 4/1 linked; Cartridge MK211 4 Armor Piercing Incendiary (APIT) .50 Cal 4/1 linked; Cartridge M903/M962 Saboted Light Armor Penetrator-Tracer (SLAP–T) .50 Cal 4/1 linked; Cartridge KE–W A1 Armor-Piercing, Fin-Stabilized, Discarding Sabot-Tracer (APFSDS–T) 120mm; Cartridge, Insensitive Munition High Explosive Tracer (IM–HE–T) 120mm; Grenade, Screening-Smoke; containers; munitions; support and test equipment; integration and test support; spare and repair parts; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated cost is $250 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that has been an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Kuwait's ability to meet current and future regional threats by enabling continued employment of the M1A2 Abrams main battle tank and supporting modernization of the country's tank fleet. This sale will provide an effective ability to deter and defend against land-based threats, enhancing Kuwait's ability to protect border regions and key land-based infrastructure. Kuwait will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be General Dynamics, York, PA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this propose sale.

[FR Doc. 2024–17365 Filed 8–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0I]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–0I.

Dated: August 1, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

SEP 2 7 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 22-0I. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 20-19 of December 29, 2020.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001–FR–C

Transmittal No. 22–0I

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of Kuwait

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 20–19

Date: December 29, 2020

Military Department: Army

Funding Source: National Funds

(iii) *Description:* On December 29, 2020, Congress was notified by Congressional certification transmittal number 20–19, of the possible sale under Section 36(b)(1) of the Arms Export Control Act of eight (8) AH–64E Apache Longbow Attack Helicopters and the remanufacture sixteen (16) of their AH–64D Apache Longbow Attack Helicopters to the AH–64E configuration consisting of: eight (8) AH–64E Apache Helicopters (new procurement); sixteen (16) AH–64E Apache Helicopters (remanufacture); twenty-two (22) T700–GE 701D engines; thirty-six (36) remanufactured T700–GE 701D engines; twenty-seven (27) AN/AAR–57 Counter Missile Warning Systems (CMWS); eighteen (18) Embedded Global Position Systems with Inertial Navigation (EGI) with Multi-Mode Receiver (MMR); thirty-six (36) remanufactured EGIs with MMR; eight (8) AN/ASQ–170(V) Modernized Target Acquisition and Designation Sight/AN/AAQ–11 Pilot Night Vision Sensor (MTADS/PNVS); seventeen (17) AN/APG–78 Longbow Fire Control Radars

(FCR) with Radar Electronics Units (REU); seventeen (17) APR–48B Modernized Radar Frequency Interferometers (M–RFI); eighteen (18) M299 AGM–114 Hellfire Missile Launchers; four (4) remanufactured M299 AGM–114 Hellfire Missile Launchers; eighteen (18) Hydra 70 (70mm) 2.75 Inch Rocket M260 Rocket Launchers; four (4) remanufactured Hydra 70 (70mm) 2.75 Inch Rocket M260 Rocket Launchers; nine (9) M230El 30mm Chain Gun M139 Area Weapons System (AWS) Guns; two (2) remanufactured M230El 30mm Chain Gun M139 AWS Guns; one (1) Longbow Crew Trainer (LCT); and one (1) remanufactured LCT. Also included were fifty-four (54) AN/ARC 201 non-COMSEC Very-High Frequency/Frequency Modulation (VHF/FM) radios; fifty-four (54) Ultra High Frequency (UHF) radios (AN/ARC 231 or MXF 4027); twenty-eight (28) Identify Friend or Foe Transponders (APX 123 or APX 119); twenty-seven (27) IDM 401 (Improved Data Modem); twenty-seven (27) Link 16 Datalinks; twenty-seven (27) AN/APR–39D (V)2 Radar Warning Receivers; twenty-seven (27) AN/AVR–2 Laser Warning Receivers; twenty-seven (27) Infrared Countermeasures Dispensers (2 flares, 1 chaff); nine (9) AN/ASN–157 Doppler Radar Velocity Sensors; nine (9) AN/ARN–149(V)3 Automatic Direction Finders (ADF); sixteen (16) remanufactured AN/ARN–149(V)3 ADFs; nine (9) AN/APN–209 Radar Altimeters; twenty-seven (27) AN/ARN–153 Tactical Airborne Navigation (TACAN) systems; sixteen (16) Manned-Unmanned Teaming International (MUM-Ti) (UPR) Air-to-Air-to Ground Data Link Systems; twenty-four (24) MUM-Ti (Ground) Air-to-Air-to-Ground Data Link Systems; twenty-four (24) 100 gallon Internal Auxiliary Fuel System (IAFS); twenty-four (24) 125 gallon Reduced Capacity Crashworthy External Fuel Systems (RCEFS); two (2) IAFS Spares; two (2) IAFS Publications; six (6) IAFS Ground Support Equipment (GSE) Apache Magazine and Auxiliary Tank Transfer Systems (AMATTS); five (5) IDM Software Loader Verifiers (SLV); training devices; helmets; simulators; generators; transportation; wheeled vehicles and organizational equipment; spare and repair parts; support equipment; tools and test equipment; technical data and publications; personnel training and training equipment; U.S. government and contractor engineering, technical, and logistics support services; and other related elements of logistics support. The estimated total program cost was $4 billion. Major Defense Equipment (MDE) constituted $2 billion of this total.

This transmittal notifies the following MDE items that were previously reported as non-MDE: fifty-four (54) AN/ARC–231A (RT–1987) radios. The following non-MDE items will also be included: M261 2.75-inch Rocket Launchers; and AN/AVS–6 Aviator Night Vision Devices (NVDs).

The estimated total value of these items is $39 million. The total MDE value will increase by $27 million to a total MDE value of $2.027 billion. The estimated total non-MDE value will decrease by $15 million (after deducting MDE values previously notified as non-MDE and adding new non-MDE costs), resulting in a total non-MDE value of $1.985 billion. The total estimated case value will increase to $4.012 billion.

(iv) *Significance:* This notification is being provided as the additional MDE items were enumerated as non-MDE in the original notification. The additional non-MDE items were left out of the original notification. The proposed articles and services will support Kuwait's ongoing effort to modernize its armed forces and increase its capacity to detect threats and control theirs borders, contributing to the maintenance of regional stability and security. This will contribute to the Kuwaiti military's effort to update its capabilities and enhance interoperability with the United States and other strategic allies.

(v) *Justification:* This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that has been an important force for political stability and economic progress in the Middle East.

(vi) *Sensitivity of Technology:*

The AN/ARC–231A (RT–1987) radio is a multi-mode software defined radio providing line of sight VHF/UHF secure/non-secure voice and data communications over the 30.000–941.000 MHz frequency and Satellite Communications (SATCOM) beyond line of sight secure/non-secure voice and data including Demand Assigned Multiple Access (DAMA) communications from 240–320 MHz frequency on manned and unmanned aviation platforms. ARC–231A includes improved type-1 cryptographic algorithm and processing capabilities, Civil Land Mobile Radio, Single Channel Ground and Airborne Radios System (SINCGARS) capabilities, HAVE QUICK (HQ), Second Generation Anti-Jam Tactical UHF Radio for NATO (SATURN) wave form, 8.33 kHz channel spacing for Global Air-Traffic Management (GATM) compliance, and capability for Mobile User Objective System (MUOS) waveform through possible future hardware and software updates.

The Sensitivity of Technology Statement contained in the original notification applies to other items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* September 27, 2022

[FR Doc. 2024–17370 Filed 8–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0091]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 7, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Rachel Lipari, (703) 309–6714, 4800 Mark Center Dr., Suite 06E22, Alexandria, VA 22311 or *rachel.n.lipari.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: At the direction of President Biden, the Secretary of Defense ordered a 90-Day Independent Review Commission (IRC) on Sexual Assault in the Military. The IRC recommended that the DoD establish a ''pulse survey'' tool that would enable unit-level commanders to collect real-time climate data from Service members in their units between required administrations of the Defense Organizational Climate Survey (DEOCS), the command climate assessment tool used by the DoD. A subsequent September 2021 memo from the Secretary of Defense directed the OUSD(P&R) to develop the survey tool to augment the DEOCS command climate assessment program required under Section 572 of the National Defense Authorization Act for Fiscal Year 2013. OUSD(P&R) developed the Defense Organizational Climate Pulse (DOCP) to meet this directive and launched the DOCP survey in early 2024.

The DOCP provides DoD leaders in active duty and reserve component units and DoD civilian personnel organizations an annual opportunity to assess concerns identified in the DEOCS and/or to support a change of command. Also included in the DOCP population are active duty and reserve component members of the Coast Guard and foreign national employees working for the DoD. The survey is web-based and is a census of the commander's unit. The survey includes core demographic questions and up to 16 questions selected from a curated bank of survey items that include topics related to (1) unit experiences, (2) ratings of leadership, and (3) personal experiences and/or behaviors. OUSD(P&R) will be updating curated set of questions for the 2025 DEOCS (planned fielding in early 2025).

Title; Associated Form; and OMB Number: Defense Organizational Climate Pulse (DOCP); OMB Control Number 0704–0669.

Needs and Uses: The DOCP is fielded in response to a September 2021 memo from Secretary of Defense directing the OUSD (P&R) to develop the survey pulse tool. The information gathered from DOCP surveys will be used by commanders, integrated primary prevention workforce personnel, equal opportunity officers, survey administrators, and other leaders to assess changes in the unit's command climate, gather additional information related to risk and protective factors measured on the DOECS and/or other outcomes of interest (*e.g.,* sexual assault, gender issues, race/ethnic issues, suicide, readiness, retention, retaliation,). The DOCP requirements were further codified in December 2022 in the DoD Instruction 6400.11, which specified that unit commanders may optionally field only one DOCP annually, and not within 90 days of fielding a DEOCS. Based on the DOCP results; commanders, leaders, and their survey administrators will refine the action plans developed after the administration of a DEOCS to positively impact their organization's leadership climate. The survey results are provided to the commander/leader and their survey administrator. Survey responses could also be used in future analyses.

Affected Public: Individuals and households.

Annual Burden Hours: 18,540.

Number of Respondents: 158,910.

Responses per Respondent: 1.

Annual Responses: 158,910.

Average Burden per Response: 7 minutes.

Frequency: As required.

Unit commanders and organizational leaders may choose to administer a DOCP, 90 days before or after their most recent DEOCS. The DEOCS is a required administration for unit commanders. In contrast, the DOCP is a voluntary data collection unit commanders may request. The DOCP will be a confidential data collection.

Dated: July 31, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–17209 Filed 8–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0R]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–0R.

Dated: August 1, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

September 29, 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 22-0R. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 19-07 of November 29, 2018.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal

BILLING CODE 6001–FR–C

Transmittal No. 22–0R

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Republic of Poland
(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 19–07
Date: November 29, 2018
Military Department: Army
Funding Source: National Funds
(iii) *Description:* On November 29, 2018, Congress was notified by Congressional certification transmittal number 19–07, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of twenty (20) High Mobility Artillery Rocket System (HIMARS) M142 Launchers, thirty-six (36) Guided Multiple Launch Rocket System (GMLRS) M31 Unitary, nine (9) Guided Multiple Launch Rocket System (GMLRS) M30A1 Alternative Warheads, thirty (30) Army Tactical Missile System (ATACMS) M57 Unitary, twenty-four (24) Advanced Field Artillery Tactical Data Systems (AFATDS), twenty (20) Multiple Launcher Pod Assembly M68A2 Trainers, twenty-four (24) M1151A1 High Mobility Multi-purpose Wheeled Vehicles (HMMWVs), and nine (9) M1151A1 High Mobility Multi-purpose Wheel Vehicles (HMMWVs). Also included were twenty (20) Low Cost Reduced Range (LCRR) practice rockets, support equipment, communications equipment, spare and repair parts, test sets, batteries, laptop computers, publications and technical data, facility design, personnel training and equipment, systems integration support, Quality Assurance Teams and a Technical Assistance Fielding Team, United States Government and contractor engineering and logistics personnel services, and other related elements of logistics support, training, sensors, and other related elements of logistics and program support. The

estimated total cost was $655 million. Major Defense Equipment (MDE) constituted $335 million of this total.

On September 19, 2019, Congress was notified by Congressional certification transmittal number 0R–19, of the inclusion of four (4) AFATDS as additional MDE. The estimated total MDE and support equipment cost remained the same. The total estimated cost remained $655 million.

This transmittal notifies the inclusion of an additional ninety-eight (98) ATACMS M57 Unitary, which are MDE. The estimated value of the additional items is $175 million. The total estimated MDE value will increase by $175 million to $510 million, resulting in an estimated total case value of $830 million.

(iv) *Significance:* The proposed sale will improve Poland's interoperability with the United States and NATO by increasing the land forces' contingency stock of munitions and allowing for the increased capability to respond to threats. These factors will contribute significantly to Poland's ability to defend itself and address a legitimate need for Poland's military.

(v) *Justification:* This proposed sale will support the foreign policy and national security of the United States by improving the security of a NATO ally and partner nation which is an important force for peace, political stability, and economic progress in Eastern Europe.

(vi) *Sensitivity of Technology:* The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

(vii) *Date Report Delivered to Congress:* September 29, 2022

[FR Doc. 2024–17366 Filed 8–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0L]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 22–0L.

Dated: August 1, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

SEP 2 7 2022

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 22-0L. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 22-06 of February 3, 2022.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001–FR–C

Transmittal No. 22–0L

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of Jordan
(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 22–06
Date: February 3, 2022
Implementing Agency: Air Force
Funding Source: Foreign Military Financing (FMF)
(iii) *Description:* On February 3, 2022, Congress was notified by Congressional certification transmittal number 22–06 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, to the Government of Jordan of twelve (12) F–16 C Block 70 Aircraft; four (4) F–16 D Block 70 Aircraft; twenty-one (21) F100–GE–129D Engines or F100–PW229EEP Engines (16 installed, 5 spares); twenty-one (21) Improved Programmable Display Generators (iPDG) (16 installed, 5 spares); twenty-one (21) AN/APG–83 Active Electronically Scanned Array (AESA) Scalable Agile Beam Radars (SABR) (16 installed, 5 spares); twenty-one (21) Modular Mission Computers (MMC) 7000AH (16 installed, 5 spares); twenty-seven (27) LN–260 (or equivalent) Embedded Global Positioning System (GPS) Inertial Navigation Systems (INS) (EGI) with Selective Availability Anti-Spoofing Module (SAASM) and Precise Positioning Service (PPS) (16 installed, 11 spares); six (6) AN/AAQ–33 Sniper Advanced Targeting Pods (ATP); thirty-one (31) Link 16 Low-Volume Terminals (for aircraft and ground stations) (26 installed, 5 spares); seventy-two (72) LAU–129 launchers (64 installed, 8 spares); twenty-one (21) M61A1 Vulcan Cannons (16 installed, 5 spares); four hundred two (402) FMU–139 or FMU–152 Joint Programmable Fuzes; one hundred (100) KMU–556 Joint Direct Attack Munition (JDAM) tail kits for 2,000LB GBU–31; one hundred two (102) KMU–572 JDAM tail kits for 500LB Laser JDAM GBU–54; one hundred (100) MAU–209 Computer Control Group (CCG) for Paveway II (PWII) GBU–10; one hundred two (102)

MXU–651 Air Foil Group (AFG) for 2000LB PWII GBU–10; one hundred (100) MAU–210 Enhanced Computer Control Group (ECCG) for 500LB Enhanced Paveway II (EP II) EGBU–49; one hundred three (103) MXU–650 Air Foil Group (AFG) for 2000LB EP II EGBU–49; two hundred (200) MK–84 or BLU–117 (or equivalent) bomb bodies; two hundred four (204) MK–82 or BLU–111 (or equivalent) bomb bodies; six (6) MK–82 inert bombs; and two (2) MAU–169 Computer Control Group (CCG) trainers. Also included were AN/ARC–238 radios; AN/APX–126 or equivalent Advanced Identification Friend or Foe (AIFF) with Combined Interrogator Transponder (CIT); Joint Helmet Mounted Cueing System II (JHMCS II) or Scorpion Hybrid Optical-based Inertial Tracker (HObIT) helmet mounted displays; AN/ALQ–254 Viper Shield or equivalent Integrated Electronic Warfare (EW) systems; AN/ALE–47 Countermeasure Dispenser System (CMDS); KY–58M Cryptographic Devices; KIV–78 Cryptographic Devices; Simple Key Loaders (SKL); Joint Mission Planning System (JMPS) or equivalent; PGU–28 High Explosive Incendiary (HEI) ammunition; PGU–27 training ammunition (non-HEI); ARD–446 impulse cartridges; ARD–863 impulse cartridges BBU–36 impulse cartridges; BBU–35 impulse cartridges; MK–124 smoke flares; MJU–7/B flare cartridges L463 or MJU–53 or equivalent; Common Munitions Built-in-Test (BIT) Reprogramming Equipment (CMBRE); ADU–891 adapters for CMBRE; DSU–38 laser sensors for Laser JDAM GBU–54; Cartridge Actuated Device/Propellant Actuated Devices (CAD/PAD); BRU–57 bomb racks; MAU–12 bomb racks and TER–9A triple ejection racks; other chaff and flare, ammunition, and pylons; launcher adaptors and weapons interfaces; fuel tanks and attached hardware; travel pods; aircraft and weapons integration, test, and support equipment; electronic warfare database and mission data file development; precision measurement and calibration laboratory equipment; secure communications; cryptographic equipment; precision navigation equipment; aircraft and personnel support and test equipment; spare and repair parts; repair and return services; maps, publications, and technical documentation; studies and surveys; classified/unclassified software and software support; personnel training and training equipment; facilities and facility management, design and/or construction services; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated total cost was $4.21 billion. Major Defense Equipment (MDE) constituted $2.39 billion of this total.

This transmittal notifies the addition of the following MDE items: thirty-one (31) Multifunctional Information Distribution Systems with Joint Tactical Radio Systems (MIDS JTRS); thirty-two (32) AIM–9X Block II Sidewinder missiles; twenty (20) AIM–9X Block II Sidewinder Captive Air Training Missiles (CATM); four (4) AIM–9X Block II Sidewinder tactical guidance units; and four (4) AIM–9X Block II Sidewinder CATM guidance units. Also, this transmittal reports a correction to the previously notified ''twenty-one (21) F100–GE–129D Engines or F100–PW229EEP Engines (16 installed, 5 spares)'' to ''twenty-one (21) F110–GE–129D Engines or F100–PW229EEP Engines (16 installed, 5 spares);'' there is currently no GE aircraft engine designated as F100. The addition of the new items will cause an increase in the total net cost of MDE by $0.06 billion to $2.45 billion. The estimated total case value will increase to $4.27 billion.

(iv) *Significance:* This notification is being provided to correctly identify the designation of F110–GE–129D engines to be included in this sale; furthermore, the additional MDE items were not enumerated in the original notification. The inclusion of this MDE represents an increase in capability over what was previously notified. The proposed articles and services will continue modernization of the Jordanian fighter aircraft fleet and support operational requirements associated with regional U.S.-coalition goals such as countering violent extremist organizations, countering malign state and non-state actors, and border defense, while ensuring continued interoperability with U.S. and coalition forces.

(v) *Justification:* This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO Ally that is an important force for political stability and economic progress in the Middle East.

(vi) *Sensitivity of Technology:*

The AN/USQ–190 Multifunctional Information Distribution System with Joint Tactical Radio System (MIDS JTRS) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant digital communications links for exchange of near-real-time tactical information, including both data and voice, among air, ground, and sea elements.

The AIM–9X Block II Sidewinder Missile is a short-range, air-to-air missile providing a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe, and the ability to integrate a Helmet Mounted Cueing System.

This potential sale will include tactical guidance units, Captive Air Training Missiles (CATMs), and CATM guidance units.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* September 27, 2022

[FR Doc. 2024–17364 Filed 8–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission

TIME AND DATE: 9:00 a.m., August 19, 2024.

PLACE: On board MISSISSIPPI V at City Front, Cape Girardeau, Missouri.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 20, 2024.

PLACE: On board MISSISSIPPI V at Mud Island Park, Memphis, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis

District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 21, 2024.

PLACE: On board MISSISSIPPI V at Boat Landing below bridge, Lake Village, Arkansas.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 23, 2024.

PLACE: On board MISSISSIPPI V at Garber Brothers Marine Dock, Berwick, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles A. Camillo, telephone 601–634–7023.

Charles A. Camillo,

Executive Director, Mississippi River Commission.

[FR Doc. 2024–17417 Filed 8–2–24; 11:15 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0077]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Maintenance-of-Effort Requirements and Waiver Requests Under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor's Emergency Education Relief (GEER) Fund

AGENCY: Office of the Elementary and Secondary Education (OESE), 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 September 5, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

SUPPLEMENTARY INFORMATION: 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: Maintenance-of-Effort Requirements and Waiver Requests under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor's Emergency Education Relief (GEER) Fund.

OMB Control Number: 1810–0745.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 81.

Total Estimated Number of Annual Burden Hours: 358.

Abstract: This is a request for an extension without change of an existing information collection, 1810–0745. This collection solicits from States, Outlying Areas, and State educational agencies (SEAs) maintenance of effort (MOE) data under section 18008 of the CARES Act. Under four programs the Governors Emergency Education Relief Fund (GEER Fund, Section 18002) and the Elementary and Secondary School Emergency Relief Fund (ESSER Fund, Section 18003) and two formula grant programs to the Outlying Areas authorized under Section 18001(a)(1), Education Stabilization Fund-State Educational Agencies (ESF–SEA) and Education Stabilization Fund-Governors (ESF-Governor) States are required to maintain fiscal effort on behalf of elementary, secondary and postsecondary education. Recipients of the resources from the ESSER Fund, the GEER Fund, the ESF–SEA Fund, and the ESF-Governor Fund have signed Certifications and Agreements, in which they agree to abide by the provisions of the CARES Act, including MOE requirement.

Dated: August 1, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–17350 Filed 8–5–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0097]

Agency Information Collection Activities; Comment Request; Education Stabilization Fund—Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 7, 2024.

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–2024–SCC–0097. 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 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Britt Jung, (202) 453–6046.

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: Education Stabilization Fund—Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form.

OMB Control Number: 1810–0749.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 14,652.

Total Estimated Number of Annual Burden Hours: 2,051,280.

Abstract: Under the COVID national health emergency, the legislative and executive branches of government came together to offer relief to those individuals and industries affected by the COVID–19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) authorized on March 27, 2020, and expanded through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP) Act. The Elementary and Secondary School Emergency Relief (ESSER) Fund awards grants to SEAs and for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID–19) has had, and continues to have, on elementary and secondary schools across the Nation.

This information collection requests approval for a revision to a previously approved collection that includes annual reporting requirements to comply with the requirements of the ESSER program and obtain information on how the funds were used by State and Local Education Agencies. This revision includes updates to the reporting dates minor language updates that do not impact the burden of the collection. No new questions are being added.

The information will be reviewed by U.S. Department of Education (Department) employees to ensure that ESSER funds are used in accordance with applicable requirements under the CARES, CRRSA, and ARP Acts and will be shared with the public to promote transparency regarding the allocation and uses of funds. Furthermore, the information collected will be analyzed to provide aggregate statistics on SEA and LEA use of Education Stabilization Fund (ESF) funds to address the impacts of the COVID–19 virus on students and schools. The collection was used for a similar purpose in the first three years of its administration, with reporting made public in 2021, 2022, and 2024.

Dated: August 1, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–17306 Filed 8–5–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reopening; Applications for New Awards; Basic Needs for Postsecondary Students Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On June 4, 2024, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2024 Basic Needs for Postsecondary Students Program competition, Assistance Listing Number 84.116N. The NIA established a deadline date of August 5, 2024, for the transmittal of applications. For eligible applicants located in counties in Texas that are covered by a major disaster declaration issued by the President, this notice reopens the competition until August 12, 2024 and extends the date of intergovernmental review until October 10, 2024.

DATES:

Deadline for Transmittal of Applications: August 12, 2024.

Deadline for Intergovernmental Review: October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Njeri Clark. Telephone: (202)453–6224. Email: *Njeri.Clark@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 June 4, 2024, we published the NIA in the **Federal Register** (89 FR 47928). Under the NIA, applications were due on August 5, 2024. We are reopening this competition to allow affected applicants (as defined under *Eligibility*) more time—until August 12, 2024—to prepare and submit their applications.

Eligibility: The extended application deadline applies only to eligible applicants under the FY 2024 Basic Needs for Postsecondary Students Program competition that are affected applicants. An eligible applicant for this competition is defined in the NIA. To qualify as an affected applicant, the applicant must have a mailing address that is located in the federally declared disaster area and must provide appropriate supporting documentation, if requested.

The applicable federally declared disaster area under this declaration is the area in which assistance to individuals or public assistance has been authorized under FEMA's disaster declaration for Texas Hurricane Beryl DR–4798–TX. See the disaster declaration available at *https://www.fema.gov/disaster/4798.*

Affected applicants that have already timely submitted applications under the FY 2024 Basic Needs for Postsecondary Students Program competition may resubmit applications on or before the extended application deadline of August 12, 2024, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received by 11:59:59 p.m., Eastern Time, on August 12, 2024.

Any application submitted by an affected applicant under the extended deadline must contain evidence (*e.g.,* the applicant organization mailing address) that the applicant is located in the applicable federally declared disaster area and, if requested, the applicant must provide appropriate supporting documentation.

The application period is not reopened for all applicants. Applications from applicants that are not affected, as defined above, will not be accepted past the original August 5, 2024, deadline.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications for affected applicants and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1138–1138d; the Explanatory Statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47).

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, 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, 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 Department documents 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 Department documents 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 Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–17477 Filed 8–5–24; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: *Public Meeting:* U.S. Election Assistance Commission 2024 Local Leadership Council Meeting.

DATES: Tuesday, August 27, 2024, 1:00 p.m.–2:30 p.m. ET.

ADDRESSES: Virtual via Zoom.

The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual meeting of the EAC Local Leadership Council.

Agenda: The U.S. Election Assistance Commission (EAC) Local Leadership Council will hold a meeting to provide agency updates and gather feedback from members on preparations for the election and what is needed leading up to November 5 and afterward. Throughout the meeting, there will be opportunities for members to ask questions.

Background: The Local Leadership Council was established in June 2021 under agency authority pursuant to and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2). The Advisory Committee is governed by the Federal Advisory Committee Act, which sets forth standards for the formation and use of advisory committees. The Advisory Committee shall advise the EAC on how best to fulfill the EAC's statutory duties set forth in 52 U.S.C. 20922 as well as such other matters as the EAC determines.

The EAC will only accept written comments and questions from members of the public. If you would like to participate, please email *clearinghouse@eac.gov* with your full name and question or comment no later than 12:00 p.m. E.T. on August 27, 2024.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

STATUS: This meeting will be open to the public.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–17430 Filed 8–2–24; 4:15 pm]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before October 7, 2024. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Yohanna Freeman, PRA Officer, Office of the Chief Information Officer; 1000 Independence Avenue SW, Washington, DC 20585 or by email at *DOEPRA@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Yohanna Freeman, PRA Officer, Office of the Chief Information Officer; 1000 Independence Avenue SW, Washington, DC 20585; *DOEPRA@hq.doe.gov;* (202) 586–2255.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–NEW;

(2) *Information Collection Request Title:* Meetings, Events, Workshops and Conferences Request;

(3) *Type of Request:* New collection;

(4) *Purpose:* DOE seeks to collect information from members of the public requesting meetings or appearances with the Secretary or other Senior Officials and those who seek to register to participate in DOE-sponsored meetings, events and conferences. Information will be collected from multiple types of respondents including individuals, Businesses or other for-profit organizations, not-for-profit institutions, the Federal Government, and State, Local, or Tribal Government entities.

DOE intends to collect common elements from interested respondents such as name, organization, address, country, phone number, email address, state, city or town, special accommodations requests and how the respondent learned about the meeting, event or conference. The information collected may also include race, ethnicity, gender and veteran status, and other sensitive information.

The information collected will be used to assess attendance and assist DOE staff in preparing to serve individuals registering for online or in person events. If applicable, the information collection may be used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary.

This collection will allow for ongoing, collaborative and actionable communication between the Agency and its customers and stakeholders.

(5) *Annual Estimated Number of Respondents:* 12,000;

(6) *Annual Estimated Number of Total Responses:* 12,000;

(7) *Annual Estimated Number of Burden Hours:* 900 hours;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: Executive Order (E.O.) 13571, Streamlining Service Delivery and Improving Customer Service.

Signing Authority

This document of the Department of Energy was signed on July 31, 2024, by Ann Dunkin, Chief Information Officer, 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 August 1, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–17354 Filed 8–5–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket Nos. EPA–HQ–OAR–2020–0505 et al.; FRL–12133–01–OAR]

Proposed Information Collection Request; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit the below listed information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. These are proposed extensions of the currently approved ICRs. An Agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 7, 2024.

ADDRESSES: Submit your comments, referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *Ali.Muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC.

The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Burden is defined at 5 CFR 1320.03(b). The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

General Abstract: For all the listed ICRs in this notice, affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 59, subpart A; 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; or part 63, subpart A, as well as the applicable specific standards. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by the EPA to determine compliance with the standards.

(1) *Docket ID Number:* EPA–HQ–OAR–2020–0505; NESHAP for Carbon Black Production (40 CFR part 63, subpart YY) (Renewal); EPA ICR Number 2677.03; OMB Control Number 2060–0738; Expiration date December 31, 2024.

Respondents: Carbon black production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YY).

Estimated number of Respondents: 15.

Frequency of response: Periodically, semiannually.

Estimated Annual burden: 289 hours.

Estimated Annual cost: $180,928, includes $152,473 annualized capital or O&M costs.

Changes in Estimates: There is a projected decrease in burden due to one-time costs that are expected to already have been incurred.

(2) *Docket ID Number:* EPA–HQ–OAR–2024–0266; NESHAP for Boat Manufacturing (40 CFR part 63, subpart VVVV) (Renewal); EPA ICR Number 1966.10; OMB Control Number 2060–0546; Expiration date February 28, 2025.

Respondents: Boat manufacturers.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart VVVV).

Estimated number of Respondents: 93.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 7,829 hours.

Estimated Annual cost: $808,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is a projected decrease in burden due to one-time costs that are expected to already have been incurred.

(3) *Docket ID Number:* EPA–HQ–OAR–2024–0267; NESHAP for Stationary Reciprocating Internal Combustion Engines (40 CFR part 63, subpart ZZZZ) (Renewal); EPA ICR Number 1975.12; OMB Control Number 2060–0548; Expiration date February 28, 2025.

Respondents: Stationary reciprocating internal combustion engines (RICE).

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZ).

Estimated number of Respondents: 910,177.

Frequency of response: Initially, quarterly, semiannually, and annually.

Estimated Annual burden: 3,620,000 hours.

Estimated Annual cost: $461,000,000, includes $41,700,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(4) *Docket ID Number:* EPA–HQ–OAR–2021–0119; NESHAP for Taconite Iron Ore Processing (40 CFR part 63 subpart RRRRR) (Renewal); EPA ICR Number 2050.10; OMB Control Number 2060–0538; Expiration date February 28, 2025.

Respondents: Taconite iron ore processing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart RRRRR).

Estimated number of Respondents: 8.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 1,000 hours.

Estimated Annual cost: $550,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(5) *Docket ID Number:* EPA–HQ–OAR–2024–0269; NESHAP for Lime Manufacturing (40 CFR part 63, subpart AAAAA) (Renewal); EPA ICR Number 2072.10; OMB Control Number 2060–0544; Expiration date February 28, 2025.

Respondents: Lime manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart AAAAA).

Estimated number of Respondents: 37.

Frequency of response: Initially, occasionally, and semiannually.

Estimated Annual burden: 9,690 hours.

Estimated Annual cost: $1,810,000, includes $684,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(6) *Docket ID Number:* EPA–HQ–OAR–2024–0270; NESHAP for Metal Can Manufacturing Surface Coating (40 CFR part 63, subpart KKKK) (Renewal); EPA ICR Number 2079.10; OMB Control Number 2060–0541; Expiration date February 28, 2025.

Respondents: Metal can manufacturing facilities that use 5,700 liters (1,500 gallons) per year or more of surface coatings.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart KKKK).

Estimated number of Respondents: 5.

Frequency of response: Initially, occasionally, and semiannually.

Estimated Annual burden: 54 hours.

Estimated Annual cost: $21,800, includes $15,600 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(7) *Docket ID Number:* EPA–HQ–OAR–2024–0271; NESHAP for Acrylic/Modacrylic Fibers Prod., Carbon Black

Prod., Chemical Mfg: Chromium Compounds; Flexible Polyurethane Foam Production/Fabrication, Lead Acid Battery Mfg, Wood Preserving (Renewal); EPA ICR Number 2256.07; OMB Control Number 2060–0598; Expiration date February 28, 2025.

Respondents: HAP area sources as follows: (1) Acrylic or modacrylic fibers production plants; (2) carbon black production plant; (3) facilities that use chromite ore as the basic feedstock to manufacture chromium compounds; (4) facilities that manufacture or fabricate flexible polyurethane foam; (5) lead acid battery manufacturing facilities; (6) facilities that use either pressure or thermal processes to impregnate chemicals into wood to a depth that will provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ).

Estimated number of Respondents: 939.

Frequency of response: Initially, semiannually.

Estimated Annual burden: 5,730 hours.

Estimated Annual cost: $671,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(8) *Docket ID Number:* EPA–HQ–OAR–2024–0272; NESHAP for Electric Arc Furnace Steelmaking Facilities (40 CFR part 63, subpart YYYYY) (Renewal); EPA ICR Number 2277.07; OMB Control Number 2060–0608; Expiration date February 28, 2025.

Respondents: Electric arc furnace (EAF) steelmaking facilities that are HAP area sources.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YYYYY).

Estimated number of Respondents: 78.

Frequency of response: Initially, semiannually.

Estimated Annual burden: 4,000 hours.

Estimated Annual cost: $485,000, includes $15,500 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(9) *Docket ID Number:* EPA–HQ–OAR–2006–0971; National Volatile Organic Compound (VOC) Emission Standards for Aerosol Coatings (40 CFR part 59, subpart E) (Renewal); EPA ICR Number 2289.06; OMB Control Number 2060–0617; Expiration date February 28, 2025.

Respondents: Manufacturers, importers, and distributors of aerosol coating products.

Respondent's obligation to respond: Mandatory (40 CFR part 59, subpart E).

Estimated number of Respondents: 65.

Frequency of response: Initially, occasionally, annually, and triennially.

Estimated Annual burden: 13,598 hours.

Estimated Annual cost: $972,539, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(10) *Docket ID Number:* EPA–HQ–OAR–2024–0273; NESHAP for Ferroalloys Production Area Sources (40 CFR part 63, subpart YYYYYY) (Renewal); EPA ICR Number 2303.07; OMB Control Number 2060–0625; Expiration date February 28, 2025.

Respondents: Ferroalloy production area source facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YYYYYY).

Estimated number of Respondents: 9.

Frequency of response: Initially, annually.

Estimated Annual burden: 362 hours.

Estimated Annual cost: $42,500, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(11) *Docket ID Number:* EPA–HQ–OAR–2024–0274; NESHAP for Group IV Polymers and Resins (40 CFR part 63, subpart JJJ) (Renewal); EPA ICR Number 2457.05; OMB Control Number 2060–0682; Expiration date February 28, 2025.

Respondents: Thermoplastic resin production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart JJJ).

Estimated number of Respondents: 27.

Frequency of response: Initially, occasionally, quarterly, and semiannually.

Estimated Annual burden: 141,000 hours.

Estimated Annual cost: $23,700,000, includes $7,430,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(12) *Docket ID Number:* EPA–HQ–OAR–2024–0276; National Emission Standards for Hazardous Air Pollutants (NESHAP) from Manufacturing of Nutritional Yeast (40 CFR Part60, CCCC) (Renewal); EPA ICR Number 2568.04; OMB Control Number 2060–0719; Expiration date February 28, 2025.

Respondents: Nutritional yeast manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart CCCC).

Estimated number of Respondents: 4.

Frequency of response: Initially, semiannually.

Estimated Annual burden: 1,410 hours.

Estimated Annual cost: $941,000, includes $776,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(13) *Docket ID Number:* EPA–HQ–OAR–2024–0275; NSPS Review for Municipal Solid Waste Landfills (40 CFR part 60, subpart XXX) (Renewal); EPA ICR Number 2498.05; OMB Control Number 2060–0697; Expiration date March 31, 2025.

Respondents: Municipal solid waste landfills operated by the public and private landfill owners.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart XXX).

Estimated number of Respondents: 190.

Frequency of response: Initially, annually.

Estimated Annual burden: 176,000 hours.

Estimated Annual cost: $12,500,000, includes $858,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(14) *Docket ID Number:* EPA–HQ–OAR–2024–0265; NESHAP for Solvent Extraction for Vegetable Oil Production (40 CFR part 63, subpart GGGG) (Renewal); EPA ICR Number 1947.10; OMB Control Number 2060–0471; Expiration date April 30, 2025.

Respondents: Vegetable oil production facilities.

Respondent's obligation to respond: Mandatory (40 CFR Part63, subpart GGGG).

Estimated number of Respondents: 90.

Frequency of response: Initially, annually.

Estimated Annual burden: 34,100 hours.

Estimated Annual cost: $3,490,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an

increase in the number of sources subject to the regulation.

(15) *Docket ID Number:* EPA–HQ–OAR–2020–0643; NSPS for Municipal Waste Combustors (40 CFR part 60, subparts Ea and Eb) (Renewal); EPA ICR Number 1506.15; OMB Control Number 2060–0210; Expiration date May 31, 2025.

Respondents: Municipal waste combustor facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts Ea and Eb).

Estimated number of Respondents: 22.

Frequency of response: Initially, quarterly, semiannually, and annually.

Estimated Annual burden: 32,600 hours.

Estimated Annual cost: $3,320,000, includes $197,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(16) *Docket ID Number:* EPA–HQ–OAR–2021–0091; NESHAP for Pesticide Active Ingredient Production (40 CFR part 63, subpart MMM) (Renewal); EPA ICR Number 1807.11; OMB Control Number 2060–0370; Expiration date May 31, 2025.

Respondents: Pesticide active ingredient production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMM).

Estimated number of Respondents: 19.

Frequency of response: Periodically, quarterly, and semiannually.

Estimated Annual burden: 13,200 hours.

Estimated Annual cost: $1,910,000, includes $339,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(17) *Docket ID Number:* EPA–HQ–OAR–2021–0116; NESHAP for Plating and Polishing Area Sources (40 CFR part 63, subpart WWWWWW) (Renewal); EPA ICR Number 2294.07; OMB Control Number 2060–0623; Expiration date May 31, 2025.

Respondents: Plating and polishing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart WWWWWW).

Estimated number of Respondents: 2,900.

Frequency of response: Annually.

Estimated Annual burden: 67,700 hours.

Estimated Annual cost: $8,000,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(18) *Docket ID Number:* EPA–HQ–OAR–2020–0654; NSPS for Beverage Can Surface Coating (40 CFR part 60, subpart WW) (Renewal); EPA ICR Number 0663.15; OMB Control Number 2060–0001; Expiration date June 30, 2025.

Respondents: Beverage can surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart WW).

Estimated number of Respondents: 46.

Frequency of response: Semiannually.

Estimated Annual burden: 4,970 hours.

Estimated Annual cost: $686,000, includes $97,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(19) *Docket ID Number:* EPA–HQ–OAR–2020–0658; NSPS for the Phosphate Fertilizer Industry (40 CFR part 60, subparts T, U, V, W, and X) (Renewal); EPA ICR Number 1061.16; OMB Control Number 2060–0037; Expiration date June 30, 2025.

Respondents: Phosphate fertilizer manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts T, U, V, W, and X).

Estimated number of Respondents: 13.

Frequency of response: Initially, semiannually.

Estimated Annual burden: 1,390 hours.

Estimated Annual cost: $484,000, includes $320,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(20) *Docket ID Number:* EPA–HQ–OAR–2020–0661; NSPS for Surface Coating of Plastic Parts for Business Machines (40 CFR part 60, subpart TTT) (Renewal); EPA ICR Number 1093.15; OMB Control Number 2060–0162; Expiration date June 30, 2025.

Respondents: Facilities conducting surface coating of plastic parts for business machines.

Respondent's obligation to respond: Mandatory (40 CFR Part60, Subpart TTT).

Estimated number of Respondents: 3.

Frequency of response: Initially, quarterly, and semiannually.

Estimated Annual burden: 2 hours.

Estimated Annual cost: $276, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden to reflect the full burden of the rule rather than the incremental burden associated with the most recent rulemaking as shown in the previous ICR.

(21) *Docket ID Number:* EPA–HQ–OAR–2020–0663; NSPS for Synthetic Fiber Production Facilities (40 CFR part 60, subpart HHH) (Renewal); EPA ICR Number 1156.16; OMB Control Number 2060–0059; Expiration date June 30, 2025.

Respondents: Synthetic fiber production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart HHH).

Estimated number of Respondents: 22.

Frequency of response: Initially, quarterly, and semiannually.

Estimated Annual burden: 1,880 hours.

Estimated Annual cost: $388,000, includes $165,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(22) *Docket ID Number:* EPA–HQ–OAR–2021–0089; NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N) (Renewal); EPA ICR Number 1611.14; OMB Control Number 2060–0327; Expiration date June 30, 2025.

Respondents: Hard and decorative chromium electroplating and chromium anodizing tanks.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart N).

Estimated number of Respondents: 1,343.

Frequency of response: Quarterly, semiannually, and annually.

Estimated Annual burden: 242,000 hours.

Estimated Annual cost: $49,000,000, includes $20,400,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(23) *Docket ID Number:* EPA–HQ–OAR–2021–0090; NESHAP for Flexible Polyurethane Foam Product (40 CFR part 63, subpart III) (Renewal); EPA ICR Number 1783.12; OMB Control Number 2060–0357; Expiration date June 30, 2025.

Respondents: Flexible polyurethane foam production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart III).

Estimated number of Respondents: 12.

Frequency of response: Semiannually, annually.

Estimated Annual burden: 869 hours.

Estimated Annual cost: $102,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(24) *Docket ID Number:* EPA–HQ–OAR–2021–0093; NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR part 63, subpart XXX) (Renewal); EPA ICR Number 1831.09; OMB Control Number 2060–0391; Expiration date June 30, 2025.

Respondents: Facilities that produce ferroalloys.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXX).

Estimated number of Respondents: 2.

Frequency of response: Quarterly, semiannually, and annually.

Estimated Annual burden: 1,610 hours.

Estimated Annual cost: $609,000, includes $424,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(25) *Docket ID Number:* EPA–HQ–OAR–2021–0104; NESHAP for Refractory Products Manufacturing (40 CFR part 63, subpart SSSSS) (Renewal); EPA ICR Number 2040.11; OMB Control Number 2060–0515; Expiration date June 30, 2025.

Respondents: Refractory products manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart SSSSS).

Estimated number of Respondents: 3.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 230 hours.

Estimated Annual cost: $97,000, includes $69,900 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(26) *Docket ID Number:* EPA–HQ–OAR–2020–0710; Emission Guidelines for Existing Other Solid Waste Incineration (OSWI) Units (40 CFR part 60, subpart FFFF) (Renewal); EPA ICR Number 2164.09; OMB Control Number 2060–0562; Expiration date June 30, 2025.

Respondents: Very small municipal waste combustion and institutional waste incineration facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart FFFF).

Estimated number of Respondents: 155.

Frequency of response: Initially, semiannually, and annually.

Estimated Annual burden: 91,600 hours.

Estimated Annual cost: $11,400,000, includes $630,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(27) *Docket ID Number:* EPA–HQ–OAR–2021–0114; NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities and Gasoline Dispensing Facilities (40 CFR part 63, subparts BBBBBB and CCCCCC) (Renewal); EPA ICR Number 2237.07; OMB Control Number 2060–0620; Expiration date June 30, 2025.

Respondents: Gasoline distribution, bulk terminals, bulk plants, pipeline, and gasoline dispensing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts BBBBBB and CCCCCC).

Estimated number of Respondents: 350,000.

Frequency of response: Semiannually.

Estimated Annual burden: 214,000 hours.

Estimated Annual cost: $25,400,000, includes $110,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(28) *Docket ID Number:* EPA–HQ–OAR–2020–0668; Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (40 CFR part 60, subpart DDDD) (Renewal); EPA ICR Number 2385.09; OMB Control Number 2060–0664; Expiration date June 30, 2025.

Respondents: Commercial and industrial solid waste incineration facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DDDD).

Estimated number of Respondents: 78.

Frequency of response: Semiannually, annually.

Estimated Annual burden: 9,890 hours.

Estimated Annual cost: $12,200,000, includes $11,000,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(29) *Docket ID Number:* EPA–HQ–OAR–2020–0664; NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999 (40 CFR part 60, subpart BBBB) (Renewal); EPA ICR Number 1901.09; OMB Control Number 2060–0424; Expiration date July 31, 2025.

Respondents: Small municipal waste combustion facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart BBBB).

Estimated number of Respondents: 22.

Frequency of response: Semiannually, annually.

Estimated Annual burden: 86,500 hours.

Estimated Annual cost: $6,550,000, includes $422,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(30) *Docket ID Number:* EPA–HQ–OAR–2020–0666; NSPS for Stationary Compression Ignition Internal Combustion Engines (40 CFR part 60, subpart IIII) (Renewal); EPA ICR Number 2196.08; OMB Control Number 2060–0590; Expiration date July 31, 2025.

Respondents: Manufacturers and operators of stationary compression ignition internal combustion engines.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart IIII).

Estimated number of Respondents: 207,240.

Frequency of response: Annually.

Estimated Annual burden: 408,000 hours.

Estimated Annual cost: $48,400,000, includes $242,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(31) *Docket ID Number:* EPA–HQ–OAR–2022–0037; NSPS for Stationary Combustion Turbines (40 CFR part 60, subpart KKKK) (Renewal); EPA ICR Number 2177.09; OMB Control Number 2060–0582; Expiration date October 31, 2025.

Respondents: Stationary combustion turbine facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart KKKK).

Estimated number of Respondents: 871.

Frequency of response: Initially, semiannually.

Estimated Annual burden: 90,300 hours.

Estimated Annual cost: $10,800,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an

increase in the number of sources subject to the regulation.

(32) *Docket ID Number:* EPA–HQ–OAR–2022–0059; NSPS for Ammonium Sulfate Manufacturing Plants (40 CFR part 60, subpart PP) (Renewal); EPA ICR Number 1066.11; OMB Control Number 2060–0032; Expiration date November 30, 2025.

Respondents: Ammonium sulfate manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart PP).

Estimated number of Respondents: 2.

Frequency of response: Semiannually.

Estimated Annual burden: 286 hours.

Estimated Annual cost: $34,300, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(33) *Docket ID Number:* EPA–HQ–OAR–2021–0092; NESHAP for Steel Pickling, HCI Process Facilities and Hydrochloric Acid Regeneration Plants (40 CFR part 63, subpart CCC) (Renewal); EPA ICR Number 1821.12; OMB Control Number 2060–0419; Expiration date November 30, 2025.

Respondents: Steel pickling, HCl process facilities and hydrochloric acid regeneration plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCC).

Estimated number of Respondents: 100.

Frequency of response: Semiannually.

Estimated Annual burden: 35,000 hours.

Estimated Annual cost: $4,140,000, includes $10,600 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(34) *Docket ID Number:* EPA–HQ–OAR–2021–0122; NESHAP for Nine Metal Fabrication and Area Finishing Sources (40 CFR part 63, subpart XXXXXX) (Renewal); EPA ICR Number 2298.07; OMB Control Number 2060–0622; Expiration date November 30, 2025.

Respondents: Metal fabrication and finishing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXXXXX).

Estimated number of Respondents: 5,800.

Frequency of response: Annually.

Estimated Annual burden: 39,000 hours.

Estimated Annual cost: $4,620,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(35) *Docket ID Number:* EPA–HQ–OAR–2020–0670; NSPS for Oil and Natural Gas Production and Natural Gas Transmission and Distribution (40 CFR part 60, subpart OOOO) (Renewal); EPA ICR Number 2437.06; OMB Control Number 2060–0673; Expiration date November 30, 2025.

Respondents: Oil and natural gas production, natural gas processing, natural gas transmission, and natural gas distribution facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart OOOO).

Estimated number of Respondents: 532.

Frequency of response: Semiannually and annually.

Estimated Annual burden: 69,300 hours.

Estimated Annual cost: $9,430,000, includes $1,220,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(36) *Docket ID Number:* EPA–HQ–OAR–2020–0657; NSPS for Kraft Pulp Mills (40 CFR part 60, subpart BB) (Renewal); EPA ICR Number 1055.14; OMB Control Number 2060–0021; Expiration date December 31, 2025.

Respondents: Kraft pulp mills.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart BB).

Estimated number of Respondents: 97.

Frequency of response: Semiannually.

Estimated Annual burden: 13,900 hours.

Estimated Annual cost: $5,650,000, includes $4,010,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(37) *Docket ID Number:* EPA–HQ–OAR–2022–0066; NSPS for Grain Elevators (40 CFR part 60, subpart DD) (Renewal); EPA ICR Number 1130.14; OMB Control Number 2060–0082; Expiration date December 31, 2025.

Respondents: Grain elevators operating truck or railcar loading and unloading stations, grain dryers, or grain handling facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DD).

Estimated number of Respondents: 200.

Frequency of response: Initially and annually.

Estimated Annual burden: 460 hours.

Estimated Annual cost: $55,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(38) *Docket ID Number:* EPA–HQ–OAR–2022–0070; NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR part 60, subpart FFF) (Renewal); EPA ICR Number 1157.14; OMB Control Number 2060–0073; Expiration date December 31, 2025.

Respondents: Flexible vinyl and urethane coating and printing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart FFF).

Estimated number of Respondents: 42.

Frequency of response: Initially, semiannually.

Estimated Annual burden: 1,340 hours.

Estimated Annual cost: $545,000, includes $385,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(39) *Docket ID Number:* EPA–HQ–OAR–2022–0021; NESHAP for Secondary Aluminum Production (40 CFR part 63, subpart RRR) (Renewal); EPA ICR Number 1894.12; OMB Control Number 2060–0433; Expiration date December 31, 2025.

Respondents: Secondary aluminum production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart RRR).

Estimated number of Respondents: 161.

Frequency of response: Initially, annually, and semiannually.

Estimated Annual burden: 12,400 hours.

Estimated Annual cost: $5,590,000, includes $4,110,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(40) *Docket ID Number:* EPA–HQ–OAR–2021–0084; NESHAP for Mercury (40 CFR part 61, subpart E) (Renewal); EPA ICR Number 0113.15; OMB Control Number 2060–0097; Expiration date January 31, 2026.

Respondents: Mercury ore processing facilities, mercury cell chlor-alkali plants, sludge incineration plants, and sludge drying plants.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart E).

Estimated number of Respondents: 101.

Frequency of response: Initially, semiannually, and annually.

Estimated Annual burden: 17,200 hours.

Estimated Annual cost: $2,030,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(41) *Docket ID Number:* EPA–HQ–OAR–2021–0094; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards (40 CFR part 63, subpart YY) (Renewal); EPA ICR Number 1871.12; OMB Control Number 2060–0420; Expiration date February 28, 2026.

Respondents: Polycarbonate, acrylic and modacrylic fiber, acetal resin, and hydrogen fluoride production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YY).

Estimated number of Respondents: 7.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 2,910 hours.

Estimated Annual cost: $388,000, includes $43,900 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(42) *Docket ID Number:* EPA–HQ–OAR–2021–0110; NESHAP for Coke Oven Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC) (Renewal); EPA ICR Number 1995.09; OMB Control Number 2060–0521; Expiration date February 28, 2026.

Respondents: Coke oven batteries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCCCC).

Estimated number of Respondents: 14.

Frequency of response: Initially, quarterly, and semiannually.

Estimated Annual burden: 23,900 hours.

Estimated Annual cost: $2,950,000, includes $125,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(43) *Docket ID Number:* EPA–HQ–OAR–2020–0665; NSPS for Other Solid Waste Incineration (OSWI) Units (40 CFR part 60, subpart EEEE) (Renewal); EPA ICR Number 2163.09; OMB Control Number 2060–0563; Expiration date March 31, 2026.

Respondents: Very small municipal waste combustion and institutional waste incineration facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart EEEE).

Estimated number of Respondents: 2.

Frequency of response: Initially, semiannually, and annually.

Estimated Annual burden: 1,210 hours.

Estimated Annual cost: $153,000, includes $10,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(44) *Docket ID Number:* EPA–HQ–OAR–2021–0125; NESHAP for Polyvinyl Chloride and Copolymer Production (40 CFR part 63, subpart HHHHHHH) (Renewal); EPA ICR Number 2432.07; OMB Control Number 2060–0666; Expiration date May 31, 2026.

Respondents: Polyvinyl chloride and copolymer production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHHHHH).

Estimated number of Respondents: 13.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 318,000 hours.

Estimated Annual cost: $44,700,000, includes $7,140,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(45) *Docket ID Number:* EPA–HQ–OAR–2003–0085; NESHAP for Radionuclides (40 CFR part 61, subparts B, K, R, and W) (Renewal); EPA ICR Number 1100.18; OMB Control Number 2060–0191; Expiration date June 30, 2026.

Respondents: Underground uranium mines, elemental phosphorous plants, phosphogypsum stacks, and uranium tailings impoundments.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart B, K, R, and W).

Estimated number of Respondents: 25.

Frequency of response: Annually.

Estimated Annual burden: 4,146 hours.

Estimated Annual cost: $293,792, includes $339,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(46) *Docket ID Number:* EPA–HQ–OAR–2020–0662; NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L) (Renewal); EPA ICR Number 1128.14; OMB Control Number 2060–0080; Expiration date July 31, 2026.

Respondents: Secondary lead smelting facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart L).

Estimated number of Respondents: 10.

Frequency of response: Initially and annually.

Estimated Annual burden: 26 hours.

Estimated Annual cost: $3,130, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(47) *Docket ID Number:* EPA–HQ–OAR–2022–0082; NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ec) (Renewal); EPA ICR Number 1730.13; OMB Control Number 2060–0363; Expiration date July 31, 2026.

Respondents: Hospital/medical/infectious waste incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ec).

Estimated number of Respondents: 3.

Frequency of response: Initially, semiannually, and annually.

Estimated Annual burden: 1,780 hours.

Estimated Annual cost: $370,000, includes $157,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(48) *Docket ID Number:* EPA–HQ–OAR–2022–0019; NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR part 63, subpart OOO) (Renewal); EPA ICR Number 1869.13; OMB Control Number 2060–0434; Expiration date July 31, 2026.

Respondents: Amino/phenolic resin manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart OOO).

Estimated number of Respondents: 19.

Frequency of response: Initially, quarterly, semiannually, and annually.

Estimated Annual burden: 23,300 hours.

Estimated Annual cost: $5,080,000, includes $2,280,000 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(49) *Docket ID Number:* EPA–HQ–OAR–2022–0047; NSPS for Greenhouse Gas Emissions for New Electric Utility Generating Units (40 CFR part 60, subpart TTTT) (Renewal); EPA ICR Number 2465.06; OMB Control Number 2060–0685; Expiration date July 31, 2026.

Respondents: Electric utility generating units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart TTTT).

Estimated number of Respondents: 92.

Frequency of response: Initially, quarterly.

Estimated Annual burden: 3,130 hours.

Estimated Annual cost: $376,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(50) *Docket ID Number:* EPA–HQ–OAR–2021–0098; NESHAP for the Surface Coating of Large Household and Commercial Appliances (40 CFR part 63, subpart NNNN) (Renewal); EPA ICR Number 1954.11; OMB Control Number 2060–0457; Expiration date September 30, 2026.

Respondents: Large household and commercial appliance surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart NNNN).

Estimated number of Respondents: 10.

Frequency of response: Initially, periodically, annually.

Estimated Annual burden: 4,380 hours.

Estimated Annual cost: $524,000, includes $6,350 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(51) *Docket ID Number:* EPA–HQ–OAR–2021–0101; NESHAP for Integrated Iron and Steel Manufacturing (40 CFR part 63, subpart FFFFF) (Renewal); EPA ICR Number 2003.10; OMB Control Number 2060–0517; Expiration date September 30, 2026.

Respondents: Sinter plants, blast furnaces, and basic oxygen process furnace shops at integrated iron and steel manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart FFFFF).

Estimated number of Respondents: 11.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 6,500 hours.

Estimated Annual cost: $800,000, includes $50,300 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(52) *Docket ID Number:* EPA–HQ–OAR–2021–0105; NESHAP for Semiconductor Manufacturing (40 CFR part 63, subpart BBBBB) (Renewal); EPA ICR Number 2042.09; OMB Control Number 2060–0519; Expiration date September 30, 2026.

Respondents: Semiconductor manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart BBBBB).

Estimated number of Respondents: 1.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 41 hours.

Estimated Annual cost: $5,450, includes $550 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(53) *Docket ID Number:* EPA–HQ–OAR–2021–0120; NESHAP for Primary Magnesium Refining (40 CFR part 63, subpart TTTTT) (Renewal); EPA ICR Number 2098.11; OMB Control Number 2060–0536; Expiration date September 30, 2026.

Respondents: Primary magnesium refining facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTTTT).

Estimated number of Respondents: 1.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 972 hours.

Estimated Annual cost: $116,000, includes $1,200 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

(54) *Docket ID Number:* EPA–HQ–OAR–2021–0124; NESHAP for Aluminum, Copper, and Other Non-Ferrous Foundries (40 CFR part 63, subpart ZZZZZZ) (Renewal); EPA ICR Number 2332.07; OMB Control Number 2060–0630; Expiration date September 30, 2026.

Respondents: Aluminum, copper, and other non-ferrous metals foundries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZZZ).

Estimated number of Respondents: 318.

Frequency of response: Initially and semiannually.

Estimated Annual burden: 11,900 hours.

Estimated Annual cost: $1,410,000, includes $0 annualized capital or O&M costs.

Changes in Estimates: There is no projected change in burden from the previous ICR.

Penny Lassiter,

Director, Sector Policies and Programs Division.

[FR Doc. 2024–17273 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEJECR–2024–0235; FRL–12020–01–OEJECR]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Environmental Justice Community Change Grant Program: Post-Award Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an Information Collection Request (ICR), Environmental Justice Community Change Grant Program: Post-Award Reporting (EPA ICR Number 7781.01, OMB Control Number 2035–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. This document allows for 60 days for public comments.

DATES: Comments must be submitted on or before October 7, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OEJECR–2024–0235, to EPA online using *https://www.regulations.gov* (our preferred method), by email to *Docket_OMS@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Aarti Iyer, Office of the Chief Financial Officer, Environmental Protection Agency, 1200 Pennsylvania Ave. NW,

Washington, DC 20460; telephone number: (202) 564–0214; email address: *iyer.aarti@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This document allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA makes competitive financial assistance awards to support projects that tackle environmental, public health, and energy challenges across the country. Historically, these investments have not reached communities and groups who are overburdened by the effects of pollution, environmental hazards, and climate change. To help get resources and funding to underserved and overburdened communities, the Inflation Reduction Act (IRA) created the Environmental and Climate Justice Block Grant Program (ECJP)—the largest investment in environmental and climate justice in U.S. history—when it was signed into law by President Biden on August 16, 2022. The Community Change Grants (CCG) are the final and most comprehensive piece of EPA's implementation of ECJP IRA funding. This CCG program will provide funding to communities and their partners to design, develop, and implement multi-faceted, community-driven projects to protect public health and the environment. With this ICR, EPA seeks authorization to collect information to track progress made by the CCG grantees. Collection of this information enables EPA to assess and manage this program, which ensures responsible stewardship of public funds; rigorous evidence-based learning and improvement; and transparent accountability to the American public.

Form numbers: None.

Respondents/affected entities: Recipients of financial assistance awards from the EJCCG program.

Respondent's obligation to respond: Mandatory for grant recipients as per reporting requirements included in 2 CFR parts 200 and 1500.

Estimated number of respondents: 170 grantees.

Frequency of response: One work plan, quarterly progress reports per year the grant is active; one final report.

Total estimated burden: 18,133 hours per year.

Total estimated cost: $614,357 per year.

Changes in the estimates: This is a new collection; therefore there is no change in burden.

Laura Ebbert,

Acting Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2024–17308 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12144–01–R4]

Florida—Indian River-Vero Beach to Fort Pierce Aquatic Preserve Vessel Sewage No-Discharge Zone; Tentative Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative affirmative determination.

SUMMARY: Pursuant to the Clean Water Act, the State of Florida has determined that the protection and enhancement of the quality of the waters within the Indian River-Vero Beach to Fort Pierce Aquatic Preserve (''the Preserve'') requires greater environmental protection. As such, Florida has submitted an application to the U.S. Environmental Protection Agency (EPA), Region 4, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. The proposed no-discharge zone encompasses the 9,500 acres of the Preserve located in the Indian River and St. Lucie counties. The Preserve extends 12 miles from the southern Vero Beach corporate limit south to the north U.S. Highway A1A bridge in Fort Pierce. Through this notice, EPA is soliciting public comment on the Agency's tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters subject to the proposed no-discharge zone.

DATES: Comments must be received on or before September 5, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OW–2024–0379, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jennifer Dimaio, Ocean, Wetlands, and Streams Protection Branch, Water Division, U.S. Environmental Protection

Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–9268; email address: *dimaio.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Notice is hereby given that the State of Florida submitted an application on July 3, 2024, to the U.S. Environmental Protection Agency, Region 4, for a determination under Clean Water Act section 312(f)(3) that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Preserve.

EPA's role under Clean Water Act section 312(f)(3) is to review State applications to determine whether adequate pumpout and treatment facilities are reasonably available. Applications submitted pursuant to section 312(f)(3), in accordance with 40 CFR 140.4, must include: (1) a certification that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard; (2) a map showing the location of commercial and recreational pumpout facilities; (3) a description of the location of pumpout facilities within waters designated for no discharge; (4) the general schedule of operating hours of the pumpout facilities; (5) the draught requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility; (6) information indicating that treatment of wastes from such pumpout facilities is in conformance with Federal law; and (7) information on vessel population and vessel usage of the subject waters. A copy of Florida's application, as well as a memorandum summarizing conversations between EPA and the State, are available in the docket.

After consideration of all comments received, if EPA makes a final determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Preserve, the State of Florida may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into those waters through the designation of a no-discharge zone. Vessels with installed toilets are required to operate U.S. Coast Guard-approved marine sanitation devices (MSDs). MSDs are either flow-through systems—Type I or Type II MSDs—that treat sewage before discharging to surrounding waters or holding tanks—Type III MSDs—that retain sewage onboard. Upon designation of a vessel sewage no-discharge zone, vessels with flow-through systems that operate within the zone's boundaries would need to retrofit to holding tanks to prevent any overboard discharge. These vessels would then require access to pumpout facilities to empty their holding tanks. Alternatively, U.S. Coast Guard regulations at 33 CFR 159.7(b) specify four methods of securing a flow-through MSD to demonstrate compliance with a no-discharge zone. These methods include: (1) closing the seacock and removing the handle; (2) padlocking the seacock in the closed position; (3) using a non-releasable wire-tie to hold the seacock in the closed position; or (4) locking the door to the space enclosing the toilets with a padlock or door handle key lock. EPA must determine whether adequate facilities are reasonably available to those vessels that would require pump outs to support the designation of a no-discharge zone.

II. Application Information and Determination

A. Proposed Waters and Certification of Need

As described in its application, the State of Florida has determined that the protection and enhancement of the quality of the waters within the Preserve requires greater environmental protection than is afforded by the applicable Federal standard. The proposed no-discharge zone encompasses the entirety of the Preserve, as delineated in Chapter 258.39, Florida Statutes (F.S.), as described in the Official Records of Indian River County in Book 368, pages 9–12, and in the Official Records of Saint Lucie County in Book 187, pages 1083–1086. The proposed no-discharge zone includes a segment of the Atlantic Intracoastal Waterway between approximately mile 953.5 (North 27 degrees 37.6153 minutes, West 80 degrees 22.1865 minutes) and mile 964.8 (North 27 degrees 28.3272 minutes, West 80 degrees 19.4741 minutes). The 9,500-acre Preserve extends 12 miles from the southern Vero Beach corporate limit to the north U.S. Highway A1A bridge in Fort Pierce and includes Big Starvation Cove, Wildcat Cove, and Fort Pierce Cut.

The Florida Department of Environmental Protection's Office of Resilience and Coastal Protection administers the Preserve as part of a network that protects the State's most popular and ecologically important waters. The Preserve lies within the Indian River Lagoon, one of the most biologically diverse estuaries in North America and is also designated as an Estuary of National Significance and an Outstanding Florida Water (Chapter 62–302, Florida Administrative Code (F.A.C.)). As referenced in the State of Florida's application, the East Coast Florida Regional Planning Council and Treasure Coast Regional Planning Council estimated the total annual value of the lagoon to be $7.6 billion in 2014.

The waters in parts of the Preserve do not meet all applicable water quality standards and have been identified by the State of Florida as impaired by nutrients and fecal coliforms. A nutrient Total Maximum Daily Load for the Preserve was adopted by the State of Florida in March 2009 and is included in the State's 2021 *Central Indian River Lagoon Basin Management Action Plan.*

In 2021, the Florida Legislature passed Senate Bill 1086 creating Chapter 327.521, F.S., designating, upon approval from EPA, all waters within the boundaries of aquatic preserves identified in Chapter 258.39, F.S., as no-discharge zones. The State of Florida's application and this notice pertain only to the Preserve.

B. Adequacy and Availability of Pumpout Facilities

EPA's analysis of the reasonable availability of adequate facilities considers the number of recreational and commercial vessels that use the proposed waters on both a regular and transient basis. To estimate the number of vessels operating in the proposed waters, the State of Florida used registration data from the Florida Department of Highway Safety and Motor Vehicles and determined that there are approximately 26,000 vessels registered in the Indian River and St. Lucie counties. There is high vessel usage both inside and outside of the Preserve without significant seasonal variation. About 25,000 of the vessels registered in the two counties are for recreational purposes. In consideration that the Preserve encompasses only 25 percent of the water area in the two counties, the State of Florida estimates that 25 percent of the approximately 25,000 recreation vessels, or 6,209 recreational vessels, would operate within the proposed waters. To estimate how many of these 6,209 vessels have MSDs onboard, the State of Florida used the ''Recreational Vessel Worksheet'' from EPA's *Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f)).* The Worksheet provides default values for the percent of vessels, by length, that are expected to have an MSD onboard. Based on these calculations, about 1,534 recreational vessels are likely to require

pumpout services if a no-discharge zone is designated.

The State of Florida also estimates that there are 823 commercial vessels operating in the Preserve, largely on a transient basis, in the fishing and boating industries (*e.g.,* construction, charter boats, and towing). Most of these vessels (637) are under 26 feet in length, and the State of Florida does not expect these smaller vessels to be equipped with an installed toilet. By extension, these vessels would not have MSDs onboard and would not require pumpout services if a no-discharge zone is designated. The basis for this assumption is that Florida law only requires those vessels 26 feet or more in length that have an enclosed cabin with berthing facilities to be equipped with a toilet (either portable or permanently installed). The State of Florida also provided information regarding a 48-slip marina that supports commercial fishing vessels 40 to 60 feet in length, noting that it is the only marina in the vicinity of the Preserve for commercial vessels over 40 feet. The marina and fishing fleet owner indicated to the State of Florida that these vessels are engaged in offshore day trips, traveling briefly through the southern border of the Preserve before departing into the Atlantic Ocean. The owner also explained that the vessels either do not have MSDs or, if a vessel is equipped with a toilet, the crew will lock the toilet (consistent with U.S. Coast Guard regulations at 33 CFR 159.7(b)) so that it cannot be used until offshore. Based on the foregoing information—that neither vessels under 26 feet in length (637) nor vessels over 40 feet in length (40) are expected to require pumpout services—there are 146 commercial vessels between 26 and 40 feet in length that may be affected by a no-discharge zone designation.

The State of Florida acknowledges that some vessels may be excluded from accessing available pumpout facilities due to draft limitations, since the authorized depth of the nearby Intracoastal Waterway is 12 feet. The State of Florida explained that any ''draft excluded'' vessel would not be originating in the Preserve and reasoned that these transient vessels with flow-through MSDs could refrain from discharging during the period of time (*i.e.,* 30 minutes to one hour) it would take to traverse the no-discharge zone. As such, the State of Florida does not expect any vessels to be excluded from operating within the Preserve despite draft limitations associated with the identified pumpout facilities.

In support of its application, the State of Florida provided information on the available pumpout facilities that can service the vessels that operate within the Preserve. Eight marinas with stationary pumpout facilities are located within approximately two miles of the Preserve. One of the eight pumpout facilities is a private, members-only facility, and the remaining seven are publicly accessible. The seven publicly accessible pumpout facilities dispose of collected sewage directly to a wastewater treatment plant (*i.e.,* either the Fort Pierce Utilities Authority or the City of Vero Beach Wastewater Treatment Plant). The private pumpout facility contracts with a licensed septage hauler.

The State of Florida also provided information on two mobile service providers that operate pumpout trucks that can service vessels operating in and around the Preserve. In addition to reviewing the information provided in the State of Florida's application, EPA contacted the two providers to request additional information regarding their operations and availability to vessel operators in the Preserve. The first provider, Marine and RV Pumping ToGo, services Miami to Fort Pierce and operates nine trucks with capacities between 900 and 1,500 gallons. The provider charges a base fee of 200 dollars for a pumpout, increasing from there based on gallons pumped and distance traveled. The second provider, Coastal Tank, is based out of Fort Lauderdale but offers services between Key West and the Florida-Georgia border on the Atlantic Coast. Coastal Tank operates three trucks with a capacity of 4,000 gallons and typically charges between 650 and 1,300 dollars for a pumpout depending on factors, such as distance traveled. The second provider typically services the superyacht industry and focuses on oil and tank cleanings, but also provides sewage pump out services. A memorandum is available in the docket which summarizes EPA's conversations with the two providers and includes additional details regarding their services.

To determine whether sewage pumpout capacity for recreational vessels is sufficient to meet demand during periods of peak usage in the Preserve, EPA compared the number of vessels needing pumpout service during peak usage with the number of vessels supported by existing pumpout facilities within the proposed no-discharge zone. In its application, the State of Florida provided a completed copy of the ''Recreational Vessel Worksheet'' discussed earlier in this notice. Based on the total number of vessels operating during peak usage (*e.g.,* a holiday weekend), the number of vessels serviced per hour by each facility, and the hours of operation for each facility, the Worksheet generates a recommended number of pumpout facilities to provide a reliable level of service for the recreational vessel population within a proposed no-discharge zone. Of the 1,534 recreational vessels expected to have MSDs onboard, the Worksheet assumes that 40 percent of those vessels would be operating during peak usage, such as a holiday weekend. In this case, 614 recreational vessels are expected to require access to pumpout facilities during peak usage, but up to 778 recreational vessels can be served by existing pumpout facilities (*see* Section 3.1 of the State of Florida's application, available in the docket, for the completed worksheet). As such, EPA expects that adequate pumpout facilities are available to handle expected demand during periods of peak recreational boating. Additionally, the ongoing cost for recreational vessels to access these facilities is minimal, with most of the facilities charging only five dollar per use. Information regarding each pumpout facility, including location, operating hours, and fees, can be found in Table 1.

Because commercial vessels incur additional types of costs associated with accessing pumpout facilities that recreational vessels do not, EPA evaluated the adequacy and reasonable availability of facilities for commercial vessels using the ''No-Discharge Zone Cost Analysis Tool'' from EPA's *Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f)).* The Tool, which relies on a mix of default values and information provided in the State of Florida's application, conducts a screening analysis to calculate how frequently the demand for pumpout facilities (*i.e.,* the volume of sewage produced by commercial vessels) is projected to exceed commercial vessel pumpout facility capacity (*i.e.,* the volume of sewage that can be pumped out) across a typical year. Then, the cost analysis portion of the Tool generates an estimate of the percent increase in baseline operating costs that commercial vessels may incur as a result of using pumpout facilities if the no-discharge zone is established. While the State of Florida's application reiterates that not all registered commercial vessels would be operating in the proposed no-discharge zone because it only covers 25 percent of the water area of the two counties, EPA conservatively assumed that all 146 commercial vessels between

26 and 40 feet in length would require pumpout services when populating the Tool. EPA also assumed that one-third of these 146 vessels were working vessels (*e.g.,* tugboats) and two-thirds were fishing vessels. Regarding available pumpout facilities, EPA included the seven publicly accessible facilities but conservatively did not include the private facility since it is unclear how many vessels can be serviced there. The two mobile service providers were also not included in the Tool because vessels are largely expected to access the stationary facilities due to convenience and cost.

EPA's screening analysis showed that demand for pumpout services is never expected to exceed capacity in the Preserve, indicating that sufficient pumpout capacity is available for commercial vessels. In fact, capacity greatly exceeds demand, and EPA expects that this capacity surplus would be sufficient even if both recreational and commercial vessels were accessing the facilities during peak usage. EPA also considered the various costs incurred by commercial vessels associated with accessing facilities, including pumpout fees and lost revenue due to the time spent pumping out. The Tool showed that the tugboat category, used as a catch all for the working boats in the area, would incur a 0.8 percent increase in baseline operating costs, while commercial fishing vessels would incur a 6.3 percent increase. Almost all of this increase is attributable to lost revenue due to the time it takes to pump out sewage from a vessel; however, these costs would only be incurred when the vessel operator is forgoing work in favor of pumping out sewage. In other words, if the vessel can pump out sewage in between fishing trips, then revenue is not being lost. The true percent increase, therefore, is likely much lower on the basis that vessel operators should be able to time their pumpout activities to minimize cost impacts and, more generally, EPA used conservative values in populating the Tool. As discussed, most of these vessels are believed to be transient and not likely to be impacted in any meaningful way by the designation of a no-discharge zone. As such, EPA determined that facilities are reasonably available to these vessels. A copy of the completed Tool that includes the calculations and underlying assumptions is available in the docket.

The wastewater treatment plants that receive sewage from the stationary pumpout facilities are the Fort Pierce Utilities Authority (FPUA) Wastewater Treatment Plant (WWTP) and the City of Vero Beach WWTP. The FPUA WWTP has a permitted capacity of 10 million gallons per day annual average daily flow (MGD AADF). The FPUA is in the process of relocating the WWTP five miles inland from its current location and has a projected fully operational date in late 2027. The relocated WWTP will be rated at 8 MGD AADF with a peak flow of 24 MGD and can be increased to 30 MGD to accommodate future growth. The City of Vero Beach WWTP has a permitted capacity of 4.5 MGD AADF. The State of Florida anticipates that the City of Vero Beach will replace and relocate this WWTP in early 2027 with a WWTP to be located further inland with a capacity of 5 MGD AADF. The State of Florida indicated that capacity analysis projections demonstrate that the City of Vero Beach WWTP's current design capacity would not be exceeded within a ten-year timeframe. Despite some deficiencies regarding reporting, exceedances, and unresolved discharges over the last few years, the State of Florida indicated that both WWTPs are in compliance with effluent limits. Additionally, based on best available information, the State of Florida explained that the capacity loads of these WWTPs would not be meaningfully impacted by the likely increase in the volume of sewage treated by the WWTPs that may result from establishment of a no-discharge zone. In support of its application, the State of Florida provided capacity reports for the two WWTPs. These reports are available in the docket.

C. Determination

In summary, EPA finds that adequate facilities for the safe and sanitary removal of sewage are reasonably available to recreational and commercial vessels within the Preserve. This analysis included an assessment of whether existing pumpout facilities could meet the expected demand during periods of peak usage, as well as a consideration of the costs associated with accessing and using those facilities. EPA finds that both recreational and commercial vessels would incur minimal costs to access pumpout facilities. Finally, EPA finds that sewage is handled in conformance with Federal law by the pumpout facilities and the associated wastewater treatment plants.

Based on the information above, EPA Region 4 hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the Preserve in the State of Florida. EPA is seeking public comment on the contents of Florida's application and EPA's tentative affirmative determination.

TABLE 1—LIST OF PUMPOUT FACILITIES

Name	Location	Contact information	Operating schedule	Water depth (feet)	Fee ($)	Type of facility
Causeway Cove Marina.	601 Seaway Dr., Fort Pierce, FL 34949	(772) 242–3552	9 a.m.–5 p.m	5.6	5.00	Stationary.
Fort Pierce City Marina.	1 Ave. A, Fort Pierce, FL 34950	(772) 464–1245	6:30 a.m.–5:30 p.m	7.6	5.00	Stationary.
Harbour Isle	801 Seaway Dr., Fort Pierce, FL 34949	(772) 461–9049	9:30 a.m.–1:30 p.m. (Mon–Fri) 10 a.m.–1 p.m. (Sat–Sun).	9.0	5.00	Stationary.
Pelican Yacht Club	1120 Seaway Dr., Fort Pierce, FL 34949	(772) 464–2700	11:30 a.m.–9 p.m. (Wed–Sat) 8 a.m.–6 p.m. (Sun).	6.0	5.00	Stationary.
Quail Valley River Club.	2345 Hwy. A1A, Vero Beach, FL 32963	(772) 492–2020	9:30 a.m.–4 p.m	8.0	5.00	Stationary.
Riverside Boatyard & Marina.	2350 Old Dixie Hwy., Fort Pierce, FL 34946.	(772) 464–5720	8 a.m.–7 p.m. (Mon–Sat).	6.0	Private	Stationary.
Safe Harbor Harbortown.	1936 Harbortown Dr., Fort Pierce, FL 34946.	(772) 466–7300	7 a.m.–5 p.m	6.5	15.00	Stationary.
Vero Beach Municipal Marina.	3611 Rio Vista Blvd., Vero Beach, FL 32963.	(772) 978–4960	8 a.m.–5 p.m	8.0	5.00	Stationary.

TABLE 1—LIST OF PUMPOUT FACILITIES—Continued

Name	Location	Contact information	Operating schedule	Water depth (feet)	Fee ($)	Type of facility
Coastal Tank	Service area from Miami to Fort Pierce	(954) 562–8656	7 a.m.–5 p.m.; advanced scheduling for off hours and emergency services available.	N/A	*See Section II.B. for details*	Mobile (3 trucks).
Marine and RV Pumping ToGo.	Service area from Key West to Florida/Georgia border.	(954) 740–7506	7 a.m.–7 p.m. (Mon–Sat); advanced scheduling for off days/hours and emergency services available.	N/A	*See Section II.B. for details*	Mobile (9 trucks).

Dated: August 1, 2024.

Jeaneanne M. Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–17329 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 236764]

Open Commission Meeting Wednesday, August 07, 2024

July 31, 2024.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 07, 2024, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Consumer & Governmental Affairs	*Title:* Wireless Emergency Alerts (PS Docket No. 15–91); Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System (PS Docket No. 15–94). *Summary:* The Commission will consider a Report and Order to establish a Missing and Endangered Persons event code that will provide law enforcement, EAS Participants, and WEA providers with a means to quickly disseminate information pertaining to missing and endangered persons cases.
2	Consumer & Governmental Affairs	*Title:* Protecting Consumers from Unwanted Artificial Intelligence Robocalls (CG Docket No. 23–362). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would propose steps to protect consumers from the abuse of AI in robocalls and robotexts alongside actions that clear the path for positive uses of AI, including its use to improve access to the telephone network for people with disabilities.
3	Wireline Competition	*Title:* Improving the Effectiveness of the Robocall Mitigation Database (WC Docket No. 24–213); Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of CORES Registration System (MD Docket No. 10–234). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would propose and seek comment on procedural measures to promote improved diligence when providers submit required information to the Robocall Mitigation Database, technical validation solutions to identify data discrepancies in filings, and accountability measures to ensure and improve the overall quality of submissions in the Robocall Mitigation Database.
4	Media	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter from the Media Bureau.
5	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the

Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–17344 Filed 8–5–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 8:04 a.m. on Friday, August 2, 2024.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities. In calling the meeting, the Board determined, on motion of Director Jonathan McKernan, seconded by Director Michael J. Hsu (Acting Comptroller of the Currency), by the unanimous vote of Chairman Martin J. Gruenberg, Vice Chairman Travis Hill, Director Jonathan McKernan, Director Michael J. Hsu (Acting Comptroller of the Currency), and Director Rohit Chopra (Director, Consumer Financial Protection Bureau), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), and (c)(6), of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), and(c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 2nd day of August, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–17438 Filed 8–2–24; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA42

Request for Information on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for information and comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is soliciting comments from interested parties on deposit data that is not currently reported in the Federal Financial Institutions Examination Council's (FFIEC) Consolidated Reports of Condition and Income (Call Report) or other regulatory reports, including for uninsured deposits. The FDIC seeks information on the characteristics that affect the stability and franchise value of different types of deposits and whether more detailed or more frequent reporting on these characteristics or types of deposits could enhance offsite risk and liquidity monitoring, inform analysis of the benefits and costs associated with additional deposit insurance coverage for certain types of deposits, improve risk sensitivity in deposit insurance pricing, and provide analysts and the general public with accurate and transparent data.

DATES: Comments must be received on or before October 7, 2024.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064–ZA42, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–ZA42 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–ZA42, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Insurance and Research: Ashley Mihalik, Associate Director, Financial Risk Management, 202–898–3793, *amihalik@fdic.gov;* Kayla Shoemaker, Chief, Banking and Regulatory Policy, 202–898–6962, *kashoemaker@fdic.gov;* Legal Division: Sheikha Kapoor, Assistant General Counsel, 202–898–3960, *skapoor@fdic.gov;* Vivek Khare, Senior Counsel, 202–898–6847; or Ryan McCarthy, Counsel, 202–898–7301, *rymccarthy@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The bank failures that occurred in March 2023 and subsequent events renewed focus by financial regulatory agencies, banks, investors, and the public on deposit insurance coverage, bank funding concentrations, and certain banks' reliance on uninsured deposits. While banks are required to provide certain data on deposit liabilities on the Call Report,[1] they do

[1] The ''Call Report'' consists of the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041),

not report comprehensive data on the composition of insured and uninsured deposits.[2] Through this request for information, the FDIC is seeking to further evaluate whether and to what extent certain types of deposits may behave differently from each other, particularly during periods of economic or financial stress.

Specifically, the FDIC is soliciting comments on deposit data that is not currently reported in the Call Report or other regulatory reports, including for uninsured deposits, to gather information on the characteristics that affect the stability and franchise value of different types of deposits and whether more detailed or more frequent reporting on these characteristics or types of deposits could enhance offsite risk and liquidity monitoring; inform analysis of the benefits and costs associated with additional deposit insurance coverage for certain types of deposits; improve risk sensitivity in deposit insurance pricing; and provide analysts and the general public with accurate and transparent data.

II. Background Information

A. The Events of March 2023 and the Role of Deposit Information in Offsite Risk and Liquidity Monitoring

In March 2023, runs of uninsured deposits contributed to the failures of Silicon Valley Bank and Signature Bank, respectively the second and third largest bank failures in the FDIC's history at the time, and the subsequent failure of First Republic Bank on May 1, 2023. These runs were exacerbated by each bank's high reliance on uninsured deposit funding and concentrations in the depositor base, among other factors.[3] The failures of these institutions and subsequent events prompted a renewed focus by regulators, banks, investors, and the public on deposit insurance, funding concentrations, and reliance on uninsured deposits.

A bank's liability structure can reflect its risk-taking behavior, and information about an institution's funding base is important in evaluating liquidity risk and interest rate risk. As demonstrated during the spring 2023 bank failures, deposit data are also important for monitoring liquidity. The experience in spring 2023 demonstrated that depositors may be able to move funds extremely quickly in the event of a bank's deteriorating condition or negative media attention.

Silicon Valley Bank had an extremely high level of uninsured deposits and the bank's management and board of directors overestimated the stability of the deposit base.[4] The deposit withdrawals happened quickly after clients began to speculate about the bank's solvency on various social media platforms.[5] This demonstrates that the ubiquity of new technologies, such as social media and mobile banking, may mean that potential future bank runs and potential contagion effects happen at an accelerated pace.

Deposit data are also important for receivership purposes, as the presence of deposit insurance coverage has direct implications for the costs associated with the resolution of a failed institution. The FDIC has issued regulations applicable to certain large banks to facilitate its ability to make timely deposit insurance determinations in the event of failure.[6] Providing insured depositors access to their funds may require the completion of an insurance determination, which involves the FDIC obtaining and analyzing depositor and account data to determine deposit account ownership type and the appropriate insurance status.

The Material Loss Reviews conducted following the failures of Silicon Valley Bank, Signature Bank, and First Republic Bank provide support for enhanced monitoring of uninsured deposit levels and concentrations. The recommendations resulting from the Material Loss Reviews include monitoring and evaluation of rapid growth and concentrations, including growth and concentrations of uninsured deposits, in total, and from specific depositors or depositors in specific industries.[7] The Material Loss Reviews for Signature Bank and First Republic Bank specifically recommend an evaluation of whether updates to examination guidance are needed in the areas of stability of deposits, including large and long-term uninsured depositor relationships, and the velocity and magnitude of potential deposit outflows, including the supervision of liquidity stress testing. In addition, in the *FDIC's Supervision of First Republic Bank* report, the FDIC's Chief Risk Officer identified as a matter for further study, the need for enhanced examination guidance related to supervising banks that are overly reliant on uninsured deposit funding or have concentrations in uninsured deposits.[8]

Furthermore, the 2023 Annual Report of the Financial Stability Oversight Council (FSOC) noted that reviews of recent events yield lessons about the ways in which banking supervision and resolution preparedness could be enhanced, and suggested that more granular information on uninsured deposits could be helpful.[9]

Following these recommendations and matters for consideration, the FDIC updated the Risk Management Manual of Examination Policies (Manual) to

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and the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $5 Billion (FFIEC 051). U.S. branches and agencies of foreign banks file the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). FFIEC 002 filers report many of the same deposit liabilities items as Call Report filers, including estimated uninsured deposits, preferred deposits, transaction accounts, and nontransaction accounts.

[2] The appendix to this document details relevant information on deposit liabilities available from the Call Report and other regulatory reports.

[3] *See* Material Loss Review of Silicon Valley Bank, Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, 2023–SR–B–013, September 25, 2023. *Available at: https://oig.federalreserve.gov/reports/board-material-loss-review-silicon-valley-bank-sep2023.pdf. See also* Material Loss Review of Signature Bank of New York, Office of the Inspector General of the Federal Deposit Insurance Corporation, EVAL–24–02, October 2023. *Available at: https://www.fdicoig.gov/sites/default/files/reports/2023-12/EVAL-24-02.pdf. See also* Material Loss Review of First Republic Bank, Office of the Inspector General of the Federal Deposit Insurance Corporation, EVAL–24–03, November 2023. *Available at: https://www.fdicoig.gov/sites/default/files/reports/2023-12/EVAL-24-03.pdf.*

[4] *See* Material Loss Review of Silicon Valley Bank, Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, 2023–SR–B–013, September 25, 2023. *Available at: https://oig.federalreserve.gov/reports/board-material-loss-review-silicon-valley-bank-sep2023.pdf.*

[5] *Ibid.* Another account of the events is that the genesis of the run on Silicon Valley Bank was private communications among a networked group of sophisticated investors. *See, e.g.,* Financial Times, ''Y2K23's Y2K Moment: Blaming the internet for Bank Runs,'' February 5, 2024. *Available at: https://www.ft.com/content/74a7ec7c-cd7e-4e69-8af0-21dead706855.*

[6] *See* 12 CFR 360.9 (Large-Bank Deposit Insurance Determination Modernization) and 12 CFR part 370 (Recordkeeping for Timely Deposit Insurance Determination).

[7] *See* Material Loss Review of Silicon Valley Bank, Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, 2023–SR–B–013, September 25, 2023. *Available at: https://oig.federalreserve.gov/reports/board-material-loss-review-silicon-valley-bank-sep2023.pdf. See also* Material Loss Review of Signature Bank of New York, Office of the Inspector General of the Federal Deposit Insurance Corporation, EVAL–24–02, October 2023. *Available at: https://www.fdicoig.gov/sites/default/files/reports/2023-12/EVAL-24-02.pdf. See also* Material Loss Review of First Republic Bank, Office of the Inspector General of the Federal Deposit Insurance Corporation, EVAL–24–03, November 2023. *Available at: https://www.fdicoig.gov/sites/default/files/reports/2023-12/EVAL-24-03.pdf.*

[8] *See* FDIC's Supervision of First Republic Bank, FDIC, September 8, 2023. *Available at: https://www.fdic.gov/news/press-releases/2023/pr23073a.pdf.*

[9] Financial Stability Oversight Council 2023 Annual Report. *Available at: https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf.*

provide additional guidance for assessing the stability of uninsured deposits and related concentration risk management practices.[10]

While banks are required to provide certain data on deposit liabilities on the Call Report, including on transaction and nontransaction deposit accounts and other deposit data described in the appendix to this document, Appendix: Relevant Information on Deposit Liabilities Available from the Call Report and other Regulatory Reports (appendix), they do not report comprehensive data on the composition of insured and uninsured deposits.

Only banks with $1 billion or more in total consolidated assets report the estimated amount of uninsured deposits on the Call Report each quarter.[11] On an annual basis, institutions also report a subset of uninsured deposits: preferred deposits, which are uninsured deposits of states and political subdivisions in the U.S. that are secured or collateralized as required under state law. Preferred deposits are the only component of uninsured deposits banks report separately on the Call Report and are the only type of collateralized deposits reported on the Call Report.

Also as described in the appendix, while certain institutions report information on deposit liabilities through other information collections, reporting requirements for most of these data collections are limited to the largest institutions or a subset of all insured depository institutions (IDIs). In most cases, the granularity of the data collected on deposits in these reports may also be limited in informing the efforts herein.

At the same time, the FDIC recognizes that different types of uninsured deposits may not necessarily behave the same way. For example, uninsured deposits that are secured by collateral generally do not have the same risk of loss as other types of uninsured deposits, although the presence of collateral may not fully mitigate run risk. Intercompany depositors also may have different incentives than unaffiliated depositors with respect to withdrawing funds. Because banks do not report these categories of uninsured deposits on the Call Report, the FDIC does not have historical data on banking industry trends for these types of deposits, including how depositors for these different types of deposits would behave under conditions of economic or liquidity stress. Furthermore, other types of uninsured depositors may have various other characteristics that impact the stability and franchise value of the associated deposits.

Given these observations and recommendations, the FDIC is seeking information on deposits, including how banks measure or evaluate the stability of different types of deposits and whether and how banks monitor collateralized or secured deposits, or intercompany deposits, such as deposits with affiliates and subsidiaries.

B. Options for Deposit Insurance Reform

Additional deposit data also would inform analysis of the benefits and costs associated with additional deposit insurance coverage for certain types of deposits. In May 2023, following the bank failures, the FDIC published a comprehensive review of deposit insurance, ''Options for Deposit Insurance Reform'' (the report), outlining three options to reform the nation's deposit insurance system.[12] The proposed options require an act of Congress. The report first discusses the events of March 2023, and then reviews the history of deposit insurance in the United States. It then discusses the objectives and possible consequences of deposit insurance, and tools that may be used to support the objectives and address possible consequences. The report examines three options for deposit insurance reform that range in their departure from the status quo: Limited Coverage, Unlimited Coverage, and Targeted Coverage.

Limited Coverage would maintain the current structure of deposit insurance in which there is a finite deposit insurance limit that applies across depositors and types of accounts, while Unlimited Coverage would provide unlimited deposit insurance. As described in the report, Targeted Coverage would allow for different levels of deposit insurance coverage across different types of accounts, with a particular focus on higher coverage for business payment accounts. The report does not define precisely ''business payment accounts'' but suggests that they should reflect business accounts whose purpose is for payment services and not for investment. The report notes that although each option has strengths and weaknesses, Targeted Coverage captures many of the financial stability benefits of expanded coverage while mitigating many of the undesirable consequences.

Targeted Coverage would provide substantial additional coverage to business payment accounts without extending similar insurance to all deposits, which the report suggests could yield large financial stability benefits relative to its costs. Extending deposit insurance to business payment accounts may have relatively large financial stability benefits, with fewer costs from moral hazard relative to increasing the limit for all accounts, as in the other options. Further, losses on business payment accounts are likely to have broader financial stability implications due to the spill-over to payroll, consumption, and other businesses. One challenge to establishing Targeted Coverage is deciding how broadly or narrowly to define the type of accounts eligible for expanded coverage. Further, additional data could inform efforts to establish a practical definition consistent with concepts discussed in the report.

Each option for deposit insurance reform contemplated in the report could have implications for the Deposit Insurance Fund (DIF). Increases to the deposit insurance limit—whether they apply to all deposits on a limited or unlimited basis, or only apply to a targeted set of deposits—would imply the need for a larger DIF to maintain the same reserve ratio under the Federal Deposit Insurance Act (FDI Act), and may also have effects on bank risk-taking and liability structure, and on depositor discipline. Limited information on the volume of deposits at alternative thresholds and on the volume of deposits that would be covered under Targeted Coverage makes it difficult to determine the impact on the DIF.

To inform discussion around any potential increases in deposit insurance coverage, which would require an act of Congress, the FDIC is seeking comment on the options described in the FDIC's May 2023 report. The FDIC is also seeking comment on the definition of ''business payment accounts'' and any burden or challenges associated with providing new deposit data items, such as ''business payment accounts'' or similar accounts linked to payroll, vendors, or operations.

C. The Deposit Insurance Fund and Risk-Based Pricing

Data on deposits inform the FDIC's management of the DIF, which is used to insure deposits and protect the depositors of insured banks, and to resolve failed banks. A key measure in

[10] Available at: https://www.fdic.gov/resources/supervision-and-examinations/examination-policies-manual/section6-1.pdf and *https://www.fdic.gov/resources/supervision-and-examinations/examination-policies-manual/section16-1.pdf.*

[11] The $1 billion asset-size test is based on the total assets reported on the prior year's Report of Condition as of June 30.

[12] Options for Deposit Insurance Reform, FDIC, May 1, 2023. *Available at: https://www.fdic.gov/analysis/options-deposit-insurance-reforms/report/options-deposit-insurance-reform-full.pdf.*

assessing the adequacy of the DIF is the reserve ratio, which is defined as the net worth of the DIF divided by insured deposits.[13] Insured deposits are estimated based on banks' reported estimates of uninsured deposits and total deposit liabilities, as defined by the FDI Act.

The DIF is primarily funded by risk-based deposit insurance assessments. Deposit insurance introduces a degree of moral hazard as it removes incentives for insured depositors to monitor banks. Risk-based deposit insurance pricing that charges premiums commensurate with the risk assumed by banks can mitigate moral hazard.[14] Risk-based pricing can also promote fairness, whereby banks that pose higher risk pay higher premiums; incentivize banks to take less risk; and mitigate cross-subsidization from lower-risk to higher-risk banks.

The FDIC collects information, as appropriate, for purposes of determining risk of losses at IDIs and economic conditions generally affecting depository institutions.[15] However, risk sensitivity in the deposit insurance assessment system could be improved with additional data.[16] For example, liquidity risk measurement in a risk-based pricing system based on statistical analyses and historical failures is limited by the data available, as failures due to bank runs have occurred less frequently in recent decades than insolvency failures. Changes to risk-based pricing based on bank liability structure and interest rate risk could improve the risk sensitivity of the FDIC's risk-based deposit insurance system, and could be enhanced with additional data.

In an effort to better inform analysis of deposit balance trends, a factor that affects an important measure of DIF adequacy, and improve risk sensitivity in the deposit insurance assessment system, the FDIC is soliciting comments on how banks measure or evaluate the stability of different types of deposits, and, more generally, on what additional data, including more granular or more frequently reported data, should be considered for collection.

D. Deposit Data Provided to the General Public

The FDIC is a pre-eminent source of U.S. banking industry research for analysts, including Quarterly Banking Profiles, working papers, and banking performance data. This research is based on data reported in the Call Report and other regulatory reports. The FDIC provides tools, education, and news updates to help consumers make informed decisions to protect their assets. The FDIC's Quarterly Banking Profile provides a comprehensive summary of financial results, including deposit data and trends, for all FDIC-insured institutions.[17] The FDIC also offers a suite of tools and searchable databases to help analysts, bankers, and the public find information on specific banks, their branches, and the industry.[18]

The appendix details relevant information on deposit liabilities that certain banks report or maintain through existing recordkeeping systems and information collections, including the Call Report and the Summary of Deposits Survey, among others. However, in most cases, the granularity of the data collected on deposits in the Call Report and other regulatory reports may be limited in supporting the efforts herein.

The Call Report, administered by the FFIEC, is a quarterly report of an institution's condition and income, and is a primary source of financial data used for the supervision and regulation of banks. Most data items collected on the Call Report, including data on deposit liabilities described in detail in the appendix, are also made available to the general public and can help consumers and analysts make informed decisions.

To better inform analysts and the general public, the FDIC is soliciting comments on deposit data not currently reported in the Call Report or other regulatory reports, including for uninsured deposits, and information on whether more detailed or more frequent reporting on characteristics of or types of deposits could improve the accuracy and transparency of data reported on the Call Report or other regulatory reports.

III. Request for Comment

The FDIC is seeking information and comment on deposit data that is not currently reported in the Call Report or other regulatory reports, including for uninsured deposits. The FDIC seeks to gather information on characteristics that affect the stability and franchise value of different types of deposits and whether more detailed or more frequent reporting on these characteristics or types of deposits could enhance offsite risk and liquidity monitoring; inform analysis of the benefits and costs associated with additional deposit insurance coverage for certain types of deposits; improve risk sensitivity in deposit insurance pricing; and provide analysts and the general public with accurate and transparent data.

Additional information provided through this request, or through potential enhancements in the granularity of deposit reporting, also would promote transparency and efficiencies in the bank resolution process, including estimation of payment to insured depositors and processing claims that exceed the insurance limit. The benefits from any enhancements in the granularity of deposit reporting would need to be considered in conjunction with any increase in regulatory reporting burden.

The FDIC encourages comments from all interested parties, including but not limited to IDIs, depositors and financial consumers, businesses that utilize various types of payroll and payment accounts, consumer groups, researchers, trade associations, and other members of the financial services industry. In particular, the FDIC requests input on the following questions:

Questions on Banks' Internal Deposit Information

Question 1: How do banks measure or evaluate the stability of different types of uninsured deposits? For example, do banks measure or track characteristics such as length or type of depositor relationship, duration, depositor proximity, or rates paid by account type?

a. What are the different types of collateralized or secured deposits and what are the reasons for collateralization? Do banks monitor the uninsured portion of collateralized or secured deposits separately from the insured portion?

b. How do banks monitor intercompany deposits such as deposits with affiliates, subsidiaries, sweep deposits, or any bank-owned deposit account?

c. How do banks measure or evaluate the stability of operational deposits and non-operational deposits?

d. To what extent, if any, do banks rely on deposit categories as defined for

[13] 12 U.S.C. 1813(y)(3).

[14] *See* Options for Deposit Insurance Reform, FDIC, May 1, 2023, at 35. *Available at: https://www.fdic.gov/analysis/options-deposit-insurance-reforms/report/options-deposit-insurance-reform-full.pdf. See also:* Ehrlich and Becker (1972), Demirgüç-Kunt and Detragiache (2002), Hovakimian, Kane, and Laeven (2003), and Shoukry (Forthcoming).

[15] 12 U.S.C. 1817(b)(1)(E)(i).

[16] The goals of risk-based pricing include additional objectives, such as transparency. For the purposes of this document, risk-based pricing is discussed primarily in regard to its ability to affect bank risk-taking.

[17] *See* FDIC Quarterly Banking Profile. *Available at: https://www.fdic.gov/analysis/quarterly-banking-profile/index.html.*

[18] *See* FDIC Data Tools. *Available at: https://www.fdic.gov/resources/data-tools/.*

regulatory reporting to determine stability?

e. Is there additional data on uninsured deposit components that banks collect and maintain internally?

f. What additional information would be helpful to the FDIC, the banking industry, and the public in demonstrating the stability of uninsured deposits?

Question 2: What are the challenges in calculating and reporting uninsured deposits on the Call Report?

a. How do banks estimate uninsured deposits for omnibus and other accounts that contain deposits owned by various parties where the underlying customer data is not maintained by the bank?

Question 3: As discussed in the appendix, 12 CFR part 370 (part 370) generally requires covered institutions to maintain complete and accurate records regarding the ownership and insurability of deposits (except as otherwise provided) and to have an information technology system that can be used to calculate deposit insurance coverage in the event of failure. These capabilities would facilitate the FDIC's prompt payment of deposit insurance and enhance the FDIC's ability to implement the least costly resolution of these covered institutions.[19] However, the FDIC understands that some institutions that are subject to the requirements of part 370 do not necessarily use information from their part 370 recordkeeping and insurance calculation capabilities for purposes of reporting uninsured deposits on the Call Report. For some part 370 covered institutions, what is the reasoning for not using the same methodology from their part 370 recordkeeping and insurance calculation capabilities to report uninsured deposits on the Call Report?

a. For part 370 covered institutions, how long would it take to effectively use part 370 calculation-generated insured and uninsured information to report data on Call Report Schedule RC–O,—Other Data for Deposit Insurance Assessments, instead of other estimated measures?

b. Where other estimated measures are used, has analysis been performed to evaluate the margin of difference between those estimates and the calculation produced using part 370 capabilities? If so, what are those margin differences?

c. Do institutions collect additional deposit information from customers that is not reported in part 370 output files (*e.g.* customer classifications, account categorizations, etc.)

[19] 12 CFR part 370.

Question 4: For what other types of deposits, which are not already reported on the Call Report or other data collections, do banks collect and maintain data internally and at what frequency?

a. How are these types of deposits defined?

b. How does data on these types of deposits help inform analysis of bank liability structure, risk, and funding stability?

c. Of the data collected and maintained internally, what information could be provided at little or no burden? What challenges may occur in reporting this information?

d. Of the information collected and maintained internally, what information could be provided pertaining to foreign deposits and how the deposits are payable (dually or not dually payable)?

Questions on Potential Additional Data Items

Question 5: What, if any, additional data, including more granular or more frequently reported data, should the FDIC, in conjunction with other members of the FFIEC, consider collecting on the Call Report or another data collection to better inform the public and agencies' understanding of different types of depositor behavior? What specific additional data, such as length or type of depositor relationship, duration, depositor proximity, or rates paid by account type, would be the most helpful to collect, if any?

a. Should data collections include particular types of deposits or uninsured deposits? If so, which types and at what frequency? What are the benefits or challenges of maintaining and reporting average values of such data for a given frequency?

b. Should data collections include different measures of concentrations of deposits, such as by deposit account size, depositor type, or industry? If so, which thresholds, types, and industries are appropriate and why?

c. Should collection of additional data be limited to certain reporting thresholds, based on, for example, consolidated asset size, amount of the item to be reported, or some other activity-based threshold? Why or why not? What type of burdens would collection of additional data place on institutions?

d. Should collection of any additional, more granular, data on deposits be afforded confidential treatment? If so, please explain why.

e. To what extent should data collections require consistency across different definitions and information reported on deposits, including deposit liabilities, operational deposits, and other types of deposits, between the Call Report and other data collections?

f. How helpful would standardized reporting definitions, including for operational and non-operational deposits, be to the FDIC, the banking industry, and the public?

g. If the agencies were to consider collecting additional information, is there any information that the agencies currently collect that commenters believe is less useful, overly burdensome, and should no longer be collected?

Questions on Deposit Data To Inform Conversations on Deposit Insurance Coverage

As mentioned in section II.B. of this document, the May 2023 report, ''Options for Deposit Insurance Reform,'' notes that Targeted Coverage would provide substantial additional coverage to meet ongoing payment and operational needs of businesses, which is expected to yield large financial stability benefits relative to its costs. However, Targeted Coverage is one of three options examined in the report, and each option has strengths and weaknesses. The proposed options require an act of Congress.

Question 6: If Congress were to consider deposit insurance reform, what are the pros and cons of the options described in the FDIC's May 2023 report? Do commenters have additional data that could help inform the discussion?

Question 7: If Congress were to pursue increased coverage for particular types of deposit accounts, but not all deposits, what type of deposits should be included?

Question 8: If Congress were to pursue increased coverage for ''business payment accounts,'' as described in the May 2023 report, what are the specific definitions commenters would recommend and why?

a. What features of an account would indicate that it is a ''business payment account,'' and are these features quantifiable and readily available?

b. Should such a definition be limited to coverage of accounts linked to payroll at businesses, include accounts linked to operations such as payroll, or otherwise be defined? Should such a definition consider the existing definition for ''operational deposits,'' as defined in 12 CFR 329.3?

Question 9: What burden or challenges would be associated with providing new deposit data items, such as ''business payment accounts'' or similar accounts linked to payroll, vendors, or operations?

Other Comments

Question 10: Please provide any other comment or information that would be useful for the FDIC to consider.

Appendix: Relevant Information on Deposit Liabilities Available From the Call Report and Other Regulatory Reports

Certain institutions report or maintain information on deposit liabilities through existing recordkeeping systems and information collections, including the Call Report and the Summary of Deposits Survey, among others. However, in most cases, the granularity of the data collected on deposits in these reports may be limited in supporting the efforts herein.

A. Deposit Liabilities on the Call Report

The Call Report is a primary source of financial data used for the supervision and regulation of banks. Banks file the Call Report quarterly, as of the last calendar day of March, June, September, and December. The Call Report consists of a balance sheet, an income statement, and supporting schedules. The Report of Condition schedules provide details on assets, liabilities, and capital accounts. The Report of Income schedules provide details on income and expense accounts.

The FDI Act requires each IDI to report the total amount of the liability of the depository institution for deposits in the main office and in any domestic branch according to the definition of the term ''deposit,'' [20] and provided other requirements are met.[21] The FDI Act also requires the FDIC to collect information from each IDI on a regular basis on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the IDI.[22]

Institutions report deposit liability information primarily on Schedule RC–E—Deposit Liabilities and Schedule RC–O—Other Data for Deposit Insurance Assessments. Additional information for certain deposit liability items is reported on Schedule RC—Balance Sheet, Schedule RC–K—Quarterly Averages, and for certain institutions on Schedule RC–Q—Assets and Liabilities Measured at Fair Value on a Recurring Basis. Schedule RC–E is also divided into two parts on the FFIEC 031, Part I, which requests data on deposits in domestic offices, and Part II, which requests data on deposits in foreign offices (including Edge and Agreement subsidiaries and International Banking Facilities).

B. Transaction and Nontransaction Accounts Including Savings Deposits on the Call Report

Despite certain distinctions on the Call Report, regulatory changes and the economic environment have blurred the distinctions between some deposit account categories over time. For example, historically, regulatory restrictions—such as interest rate caps and withdrawal limits—delineated between the payment and investment functions of deposits. Amendments to Regulation D and the repeal of Regulation Q have removed some of the historical differences.[23]

For Call Report purposes, with a few exceptions, a ''transaction account,'' is defined as a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar devices for the purpose of making payments or transfers to third persons or others or from which the depositor may make third-party payments at an automated teller machine, a remote service unit, or another electronic device, including by debit card.[24]

Savings deposits are deposits with respect to which the depositor is not required by the deposit contract, but may at any time be required by the depository institution, to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. For Call Report purposes, savings deposits (both money market deposit accounts and other savings deposits) are excluded from transaction accounts.[25]

Banks report transaction and nontransaction accounts by depositor type on Schedule RC–E, items 1 through 6. Additionally on Schedule RC–E, banks report components of transaction and nontransaction accounts as well as maturity and repricing data for time deposits. On Schedule RC–K, banks report quarterly averages of interest-bearing transaction accounts and certain components of nontransaction accounts: savings deposits, time deposits of $250,000 or less, and time deposits of more than $250,000. On Schedule RC–O, banks reported the number and amount of noninterest-bearing transaction accounts of more than $250,000 from 2008 through 2013, when such accounts were guaranteed under the Transaction Account Guarantee Program or provided unlimited deposit insurance coverage under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

C. Uninsured Deposits on the Call Report

Currently, banks report estimated uninsured deposits on Schedule RC–O in the Call Report. Specifically, banks with $1 billion or more in total assets [26] report on Schedule RC–O, Memorandum item 2, the estimated amount of uninsured deposits in domestic offices of the bank and in insured branches in Puerto Rico and U.S. territories and possessions, including related interest accrued and unpaid.

For Schedule RC–O, Memorandum item 2, the estimated amount of uninsured deposits reported in this item should be based on the bank's deposits included in Schedule RC–O, item 1, ''Total deposit liabilities before exclusions (gross) as defined in section 3(l) of the Federal Deposit Insurance Act and FDIC regulations,'' less item 2, ''Total allowable exclusions, including interest accrued and unpaid on allowable exclusions (including foreign deposits).'' In addition, for some deposits, banks should make a reasonable estimate of the portion of its deposits that are uninsured using the data available from its information systems.[27] In preparing this estimate, in addition to instructions for specific deposit items, if the bank has automated information systems in place that enable it to identify, for example, jointly owned accounts and estimate the deposit

[20] ''Deposit'' is defined in section 3(l) and ''domestic branch'' is defined in section 3(o) of the FDI Act; 12 U.S.C. 1813(l) and (o).

[21] Section 7(a)(4) of the FDI Act; 12 U.S.C. 1817(a)(4).

[22] Section 7(a)(9) of the FDI Act; 12 U.S.C. 1817(a)(9).

[23] *See* Options for Deposit Insurance Reform, FDIC, May 1, 2023, at 20–21, for further information. *Available at: https://www.fdic.gov/analysis/options-deposit-insurance-reforms/report/options-deposit-insurance-reform-full.pdf.*

[24] *See* FFIEC 031 and FFIEC 041 Instructions for Preparation of Consolidated Reports of Condition and Income, Glossary entry for ''Deposits.'' *Available at: https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202403_i.pdf.*

[25] Regulation D (12 CFR part 204) classifies savings deposits as a type of transaction account. However, for Call Report purposes, savings deposits are classified as a type of nontransaction account. *See* FFIEC 031 and FFIEC 041 Instructions for Preparation of Consolidated Reports of Condition and Income, Glossary entry for ''Deposits.'' *Available at: https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202403_i.pdf.*

[26] The $1 billion asset-size test is based on the total assets reported on the prior year's Report of Condition as of June 30.

[27] *See* FFIEC 031 and FFIEC 041 Instructions for Preparation of Consolidated Reports of Condition and Income, SCHEDULE RC–O—OTHER DATA FOR DEPOSIT INSURANCE ASSESSMENTS, pg. RC–O–15—RC–O–17. *Available at: https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202403_i.pdf.*

insurance coverage of these deposits, the higher level of insurance afforded these joint accounts should be taken into consideration. Similarly, if the bank has automated information systems in place that enable it to classify accounts by deposit owner and/or ownership capacity, the bank should incorporate this information into its estimate of the amount of uninsured deposits by aggregating accounts held by the same deposit owner in the same ownership capacity before applying the $250,000 insurance limit. In the absence of automated information systems, a bank may use nonautomated information such as paper files or less formal knowledge of its depositors if such information provides reasonable estimates of appropriate portions of its uninsured deposits.[28]

For institutions with less than $1 billion in assets that do not report estimated uninsured deposits, the FDIC calculates estimated uninsured deposits based on other Call Report data items. For example, for purposes of the FDIC Quarterly Banking Profile, the FDIC calculates estimated uninsured deposits for institutions that do not report such deposits on the Call Report as the amount of deposit and retirement accounts with balances greater than the standard maximum deposit insurance amount (SMDIA), currently $250,000, minus the portion that is insured.[29] The insured portion is estimated by multiplying the number of accounts with balances greater than the SMDIA, as reported on the Call Report, by the SMDIA. The data underlying this calculation comes from Schedule RC–O, Memorandum 1 subitems.

For the December 31 reporting period only, institutions report preferred deposits on Schedule RC–E. Specifically, in Schedule RC–E, Memorandum item 1.e, banks are required to report preferred deposits (uninsured deposits of states and political subdivisions in the U.S. which are secured or collateralized as required under state law). As a result, data on preferred deposits are available on an annual basis only, and banks do not report other types of collateralized deposits on the Call Report. Preferred deposits are the only component of uninsured deposits banks report separately on the Call Report.

While banks are required to provide certain data on deposit liabilities on Schedules RC–E and RC–O, banks do not report comprehensive data on the composition of insured and uninsured deposits. The FDIC is seeking to further evaluate whether and to what extent certain types of deposits may behave differently from each other, particularly during periods of economic or financial stress. For example, while in the FDIC's view the presence of collateral does not fully mitigate deposit runoff risk, uninsured deposits that are secured by collateral may be less likely to run in a liquidity stress event compared to other types of uninsured deposits, or the collateral may be subject to a loss in value that may need to be realized. Additional data on the behavior of these types of uninsured deposits, and the associated collateral securing the deposits, could provide pertinent information on the risk of these uninsured deposits.

D. Insured Deposits on the Call Report

Institutions do not report information on total insured deposits on the Call Report. Certain Memoranda items on Schedule RC–E break out components of some types of deposits that are above or below the SMDIA. For example, institutions report brokered deposits of $250,000 or less (fully insured brokered deposits), time deposits of $250,000 or less, and fully insured affiliate and non-affiliate sweep deposits.

Estimated insured deposits can be calculated using reported estimated uninsured deposits. For example, in the FDIC Quarterly Banking Profile, in general, the FDIC calculates estimated insured deposits as total deposit liabilities after exclusions minus estimated uninsured deposits.[30] As mentioned previously, uninsured deposits for institutions that do not report estimated uninsured deposits can be calculated from the Schedule RC–O Memorandum 1, subitems a through d. This calculated estimate of uninsured deposits can also be subtracted from deposit liabilities after exclusions to estimate insured deposits.

E. Sweep Deposits on the Call Report

Beginning with the September 30, 2021, Call Report, institutions are required to report deposits held at the reporting institution by a customer or counterparty through a contractual feature that automatically transfers to the reporting institution from another regulated financial company at the close of each business day amounts under the agreement governing the account from which the amount is being transferred, or sweep deposits, on the Memoranda to Schedule RC–E. Specifically, institutions report sweep deposits based on both fully insured or not fully insured classification, and affiliate or non-affiliate classification, in Schedule RC–E, Memorandum items 1.h.(1) through 1.h.(4). Additionally, institutions report total sweep deposits that are not brokered deposits in Schedule RC–E, Memorandum item 1.i. Institutions filing the FFIEC 031 or FFIEC 041 Call Report are required to report these items quarterly, and institutions filing the FFIEC 051 Call Report are required to report these items semiannually in the June and December report only. In addition, institutions with $100 billion or more in total assets report retail sweep deposits based on both fully insured or not fully insured classification, and affiliate or non-affiliate classification, in Schedule RC–E, Memorandum items 1.h.(1) through 1.h.(4) subitems on the FFIEC 031 Call Report.

F. Summary of Deposits Survey

The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. The SOD Survey is a unique source of information about the number and physical locations of the tens of thousands of bank offices across the United States. The SOD data also includes a dollar amount of domestic deposits for each bank office. While SOD data is informative, it has some limitations due to the varying methods used by banks for attributing deposits to bank offices.

G. Recordkeeping for Timely Deposit Insurance Determination

To pay deposit insurance in the event of a bank failure, the FDIC uses a failed IDI's records to aggregate the amounts of all deposits that are maintained by a depositor in the same right and capacity and then applies the SMDIA, currently $250,000 per right and capacity.[31]

In 2008, the FDIC adopted a final rule on Large Bank Deposit Insurance Determination Modernization to ensure that depositors have access to their funds as soon as possible in the event of a bank failure. In the event of a failure, the rule allows the FDIC to use the covered institution's deposit system(s) provisional hold capabilities to give depositors uninterrupted access to preliminary insurance funds, while the FDIC works to complete the final insurance determination. The rule was applicable to banks reporting at least $2 billion in domestic deposits and either

[28] Ibid.

[29] *See* FDIC Quarterly Banking Profile for First Quarter 2024, at 38 (definition of ''Estimated uninsured deposits''). *Available at: https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2024mar/qbp.pdf#page=38.*

[30] *Ibid.*

[31] 12 U.S.C. 1821(a)(1)(C) and (E).

250,000 deposit accounts, or $20 billion in total assets.[32] In 2017, the FDIC adopted 12 CFR part 370 to implement additional measures to ensure prompt and accurate payment of deposit insurance to depositors of the larger IDIs that qualify as covered institutions.[33]

The FDIC generally relies on the failed IDI's deposit account records to identify deposit owners and the right and capacity in which deposits are insured.[34] Section 7(a)(9) of the FDI Act authorizes the FDIC to take action as necessary to ensure that each IDI maintains, and the FDIC receives on a regular basis from such IDI, information on the total amount of all insured deposits and uninsured deposits at the IDI.[35] Part 370 generally requires covered institutions to maintain complete and accurate records regarding the ownership and insurability of deposits (except as otherwise provided) and to have an information technology system that can be used to calculate deposit insurance coverage in the event of failure. These capabilities would facilitate the FDIC's prompt payment of deposit insurance and enhance the FDIC's ability to implement the least costly resolution of these covered institutions.

H. Deposit Liabilities on Other Data Collections

Certain institutions report information on deposit liabilities through other information collections, including the Complex Institution Liquidity Monitoring Report (FR 2052a), Report of Deposits and Vault Cash (FR 2900), the Systemic Risk Report (FR Y–15), and the Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks (FR 2644). However, reporting requirements for most of these data collections are limited to the largest institutions or a subset of all IDIs. In most cases, the granularity of the data collected on deposits in these reports may also be limited in informing the efforts herein.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 30, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–17298 Filed 8–5–24; 8:45 am]

BILLING CODE 6714–01–P

[32] 12 CFR 360.9. *See* 73 FR 41180 (July 17, 2008).

[33] 12 CFR part 370. *See* 81 FR 87734 (Dec. 5, 2016). *See also* 84 FR 37020 (July 30, 2019).

[34] 12 U.S.C. 1822(c); 12 CFR 330.5.

[35] 12 U.S.C. 1817(a)(9).

GENERAL SERVICES ADMINISTRATION

[Notice—PBS–2024–07; Docket No. 2024–0002; Sequence No. 32]

Notice of Availability for the Final Environmental Impact Statement for the Buildings 202, 214 and 220 South State Street, Chicago, Illinois; Correction

AGENCY: Public Building Service (PBS), General Services Administration (GSA).

ACTION: Notice; correction.

SUMMARY: GSA published a document in the **Federal Register** of July 31, 2024, announcing the availability of the Final Environmental Impact Statement (EIS) for the future of 202, 214, and 220 South State Street, Chicago, Illinois. The date provided in the publication period was incorrect. This notice is being issued to list the correct date.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Mulligan, GSA, 230 S. Dearborn St., Suite 3600, Chicago, IL 60604; email: *statestreet@gsa.gov;* telephone: 312–886–9593.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 31, 2024, in FR Doc. 2024–16837, on page 61426, in the second column, change ''Monday, September 2, 2024'' to ''Tuesday, September 3, 2024.''

William Renner,

Director, Facilities Management and Services Programs Division, Great Lakes Region 5, U.S. General Services Administration.

[FR Doc. 2024–17269 Filed 8–5–24; 8:45 am]

BILLING CODE 6820–CF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10831]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 5, 2024.

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.

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/PRA-Listing*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the

collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Transitional Coverage and Retroactive Medicare Part D Coverage for Certain Low-Income Beneficiaries through the Limited Income Newly Eligible Transition (LI NET) Program; *Use:* Section 118 of the Consolidated Appropriations Act, 2021 (CAA) (Public Law 116–260) enacted on December 27, 2020, amended section 1860D–14 of the Social Security Act (the Act) (42 U.S.C. 1395w–114) and authorized CMS to make transitional coverage and retroactive Medicare Part D coverage for certain low-income beneficiaries, called the Limited Income Newly Eligible Transition (LI NET) program a permanent part of the Part D program. The LI NET program under this statute must begin no later than January 1, 2024.

CMS established the Medicare Part D Demonstration for Retroactive and Point-of-Sale Coverage for Certain Low-Income Beneficiaries (also known as Medicare's Limited Income Newly Eligible Transition (LI NET) demonstration). The LI NET demonstration consolidates administration of transitional and retroactive Part D coverage for eligible beneficiaries to a single Part D sponsor. The LI NET demonstration provides an exception to the 36-month maximum period of retroactive enrollment if there is a Medicaid determination within the last 90 days that confers Medicaid eligibility going back further than 36 months. In these situations, LI NET enrollment under the demonstration goes back to the start of Medicaid eligibility.

The information provided by LI NET beneficiaries is largely paper based, such as showing a Medicaid eligibility letter to a pharmacist or sending a signed direct reimbursement request through the mail or by fax. Beneficiaries could also opt to email a digital copy of their documentation to the LI NET sponsor. *Form Number:* CMS–10831 (OMB control number: 0938–1441); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Private Sector and Business or other for-profit; *Number of Respondents:* 73,705; *Total Annual Responses:* 110,686; *Total Annual Hours:* 11,701. (For policy questions regarding this collection contact Marie Gutierrez at 410–786–4486).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–17301 Filed 8–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10631]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 7, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, 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/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10631 The PACE Organization Application Process in 42 CFR part 460

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Revision of an approved information collection; *Title of Information Collection:* The PACE Organization Application Process in 42 CFR part 460; *Use:* The Programs of All-Inclusive Care for the Elderly (PACE) consist of pre-paid, capitated plans that

provide comprehensive health care services to frail, older adults in the community who are eligible for nursing home care according to state standards. PACE organizations (PO) must provide all Medicare and Medicaid covered services; financing of this model is accomplished through prospective capitation of both Medicare and Medicaid payments. Upon approval of a PACE application, CMS executes a 3-way program agreement with the applicant entity and the applicable State Administering Agency (SAA). CMS regulations at 42 CFR 460.98(b)(2) require a PO to provide PACE services in at least the PACE center, the home, and inpatient facilities. The PACE center is the focal point for the delivery of PACE services; the center is where the interdisciplinary team (IDT) is located, services are provided, and socialization occurs with staff that is consistent and familiar to participants.

Collection of this information is mandated by statute under sections 1894(f) and 1934(f) of the Act and at 42 CFR part 460, subpart B, which addresses the PO application and waiver process. In general, PACE services are provided through a PO. An entity wishing to become a PO must submit an application to CMS that describes how the entity meets all the requirements in the PACE program. An entity's application must be accompanied by an assurance from the SAA of the State in which the PO wishes to operate its PACE program. CMS accepts applications on a designated date four times per year (*i.e.,* on a quarterly basis, generally the last Friday of March, June, September and December). *Form Number:* CMS–10631 (OMB control number: 0938–1326); *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profits, Not for-profits and Federal Government State, Local; *Number of Respondents:* 72; *Number of Responses:* 109; *Total Annual Hours:* 7,271. (For policy questions regarding this collection contact Jacqueline Ford at 410–786–7767 or *Jacqueline.Ford@cms.hhs.gov*).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–17303 Filed 8–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; for the State Annual Long-Term Care Ombudsman Report (OMB Control Number 0985–0005)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a 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 IC extension solicits comments on the information collection requirements relating to the State Annual Long-Term Care Ombudsman Report (OMB Control Number 0985–0005).

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by October 7, 2024.

ADDRESSES: Submit electronic comments on the collection of information to: Beverley Laubert *Beverley.Laubert@acl.hhs.gov*. Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Beverley Laubert.

FOR FURTHER INFORMATION CONTACT: *Beverley.Laubert@acl.hhs.gov*, (202) 740–0801.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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. The PRA 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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(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 using automated collection techniques when appropriate, and other forms of information technology.

The State Annual Long-Term Care Ombudsman Report is needed to comply with Administration for Community Living/Administration on Aging reporting requirements in the Older Americans Act (OAA); and 45 CFR 1324.21(b)(1) and (b)(2)(v). The long-term care ombudsman report is used to measure the services and strategies that are provided to assist residents in the protection of their health, safety, welfare, or rights; advocate at the state and federal levels for changes needed to improve the quality of life and care in long-term care facilities; and effectively manage the Long-Term Care Ombudsman Program at the state and federal level.

The National Ombudsman Reporting System (NORS) was developed in response to these needs and directives. Section 712(c) of the OAA requires the state agency to establish a statewide uniform reporting system to:

(1) Collect and analyze data relating to resident complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.

and

(2) Submit the data on a regular basis to the state licensing/certifying agency, other state and federal entities that the Ombudsman determines to be appropriate, the Assistant Secretary for Aging, and the National Long-Term Care Ombudsman Resource Center.

The proposed data collection tools may be found on the ACL website for

review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

Fifty-two grantees report to ACL using NORS.

a. *Number of respondents:* 52.
b. *Frequency of response:* 1.
c. *Total annual responses:* 52.
d. *Hours per response:* 214.
e. *Total burden hours:* 11,153.

Dated: August 1, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–17320 Filed 8–5–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Single-Source Supplement for the National Center for Benefits Outreach and Enrollment (NCBOE)

AGENCY: Administration for Community Living, HHS.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the National Council on Aging (NCOA) for the National Center for Benefits Outreach and Enrollment (NCBOE). The purpose of the NCBOE is to provide technical assistance to states, Area Agencies on Aging, Aging and Disability Resource Centers and community-based organizations who conduct outreach and low-income benefits enrollment assistance, particularly to older individuals with greatest economic need for federal and state programs. The administrative supplement for FY 2024 will be for $3,207,650, bringing the total award for FY 2024 to $14,707,650.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Margaret Flowers, U.S. Department of Health and Human Services, Administration for Community Living, Center for Innovation and Partnership, Office of Healthcare Information and Counseling; telephone (202) 795–7315; email *Margaret.flowers@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: This supplemental funding will expand the NCBOE's outreach and education efforts targeting older adults with the greatest economic need, especially people from underserved communities. The NCBOE will build on current efforts to reach and assist beneficiaries, including expanding the work of the Benefits Enrollment Centers, making enhancements to the benefits eligibility and screening tool, and expanding the capacity of the benefits call center. With this supplemental funding, the NCBOE will focus on retirement security, Medicaid and Medicare integration, and streamlining benefits access.

The NCBOE will expand the pilot work on retirement security for older adults with low and moderate incomes. This may include but is not limited to activities such as developing materials, providing technical assistance and training, and conducting and evaluating a pilot with select community-based organizations. The NCBOE should collaborate with ACL to coordinate planned and emerging efforts to help older adults with low and moderate incomes with retirement planning.

The NCBOE should also build on the work done to date to educate individuals who are dually eligible by maintaining the My Care, My Choice decision support tool. The NCBOE should develop plans to support the usage of the tool such as counselor training or piloting with local community based organizations. Additionally, the NCBOE should build leadership among state grantees to educate state Medicaid agencies on Medicare to improve the experience of people who are dually eligible for Medicaid and Medicare.

Additionally, the NCBOE should build on work done to date to explore the approaches to streamlining benefits applications in coordination with federal and state government efforts to modernize access to public benefits. This could include research into the consumer experience and/or convening key stakeholders to discuss opportunities and challenges.

The NCBOE will continue, expand, and complete the work they are currently undertaking with the NCBOE award without disrupting services.

Program Name: The National Center for Benefits Outreach and Enrollment (NCBOE).

Recipient: National Council on Aging (NCOA).

Period of Performance: The award will be issued for the current project period of September 1, 2024 through August 31, 2025.

Total Award Amount: $14,707,650 in FY 2024.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The statutory authority is contained in the 2006 Reauthorization of the Older Americans Act and the Medicare Improvements for Patients and Providers Act of 2008, as amended by the Patient Protection and Affordable Care Act of 2010 and most recently reauthorized by the Consolidated Appropriations Act of 2024.

Basis for Award: The National Council on Aging (NCOA) is currently funded to carry out the NCBOE Project for the period of September 1, 2020 through August 31, 2025. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time-consuming and disruptive to the NCBOE project, and the beneficiaries being served for ACL to establish a new grantee at this time when critical services are presently being provided in an efficient manner.

NCOA is uniquely placed to complete the work under the NCBOE grant. Since 2001, NCOA has been the national leader in improving benefits access to vulnerable older adults. They have an unparalleled history of working with community-based organizations to develop and replicate outreach and enrollment solutions while maintaining and enhancing technology to make it easier and more efficient to find benefits. NCOA through NCBOE accomplishes its mission by developing and sharing tools, resources, best practices, and strategies for benefits outreach and enrollment via its online clearinghouse, electronic and print publications, webinars, and training and technical assistance.

In addition, NCOA has BenefitsCheckUp which is, by far, the nation's most comprehensive and widely-used web-based service that screens older and disabled adults with limited incomes and resources and informs them about public and private benefits for which they are very likely to be eligible. BenefitsCheckUp includes more than 2,500 benefits programs from all 50 states and DC, including over 50,000 local offices for people to apply for benefits; and more than 1,500 application forms in every language in which they are available. NCOA is successfully meeting all programmatic goals under the current NCBOE grant.

Dated: August 1, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–17321 Filed 8–5–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

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 meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 12, 2024.

Open: 9:00 a.m. to 2:30 p.m.

Agenda: Grant applications and/or proposals.

Place: National Institutes of Health, Building 31C, 31 Center Drive, Bethesda, MD 20892 (Hybrid Meeting).

Closed: 2:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31C, 31 Center Drive Bethesda, MD 20892.

Contact Person: Elizabeth Tarlov, Ph.D., RN, Director, Division of Extramural Science Programs (DESP), National Institute of Nursing Research, 31 Center Drive, Bethesda, MD 20892, (301) 594–1580, *elizabeth.tarlov@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, 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.

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.

Information is also available on the Institute's/Center's home page: *https://www.ninr.nih.gov/aboutninr/nacnr,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: July 31, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–17292 Filed 8–5–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

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. In person attendees should register at (*https://www.nibib.nih.gov/about-nibib/advisory-council/registration*) in advance of the meeting so that the meeting organizers can plan accordingly.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB, September 2024.

Date: September 10, 2024.

Open: 9:00 a.m. to 12:30 p.m.

Agenda: Report from the Institute Director, Outside Speaker, Council Members and other Institute Staff.

Place: National Institutes of Health, Rockledge II, 160, 6701 Rockledge Drive, Bethesda, MD 20892, In Person and Virtual Meeting.

Closed: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Rockledge II, 160, 6701 Rockledge Drive, Bethesda MD, 20892, In Person and Virtual Meeting.

Contact Person: David T. George, Ph.D., Director, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892, 301–496–8633, *georged@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: *https://www.nibib.bnih.gov/about-nibib/advisory-council* where an agenda and any additional information for the meeting will be posted when available.

Dated: July 31, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–17293 Filed 8–5–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Study Section.

Date: October 18, 2024.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis E. Dettin, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Room 2131B, Bethesda, MD 20892, (301) 827–8231, *luis.dettin@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 31, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–17294 Filed 8–5–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting of the Advisory Committee for Women's Services (ACWS)

Notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on August 27, 2024.

The meeting will include discussions on assessing SAMHSA's current strategies, including the mental health and substance use needs of the women and girls population. Additionally, the ACWS will be addressing strategic initiatives and policy recommendations regarding Maternal Behavioral Health, pregnant and parenting women, eating disorders, and gender-based violence.

The meeting is open to the public and will be held in-person and virtually (virtually is best option since physical space is very restricted). Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions and oral presentations from the public should be coordinated with the contact person by August 20, 2024. Oral presentations from the public will be scheduled at the conclusion of the meeting during the Public Comment section. Up to approximately three minutes will be allotted for each oral presentation and as time permits, as these are presented in the order received. All oral and written comments will become part of the meeting's official records.

The meeting may be accessed via telephone or web conference. To obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at: *https://snacregister.samhsa.gov/,* or communicate with SAMHSA's Designated Federal Officer, Ms. Valerie Kolick.

Substantive meeting information and a roster of ACWS members may be obtained either by accessing the SAMHSA Committees' Web, *https://www.samhsa.gov/about-us/advisory-councils/acws,* or by contacting Ms. Kolick.

Committee Name: Substance Abuse and Mental Health Services Administration, Advisory Committee for Women's Services (ACWS).

Date/Time/Type: Tuesday, August 27, 2024, from 9:00 a.m. to 4:30 p.m., EDT (OPEN).

Place: Hubert H. Humphrey Building, 200 Independence Ave. SW, Washington, DC 20201 (Room 305A).

Contact: Valerie Kolick, Designated Federal Officer, SAMHSA's Advisory Committee for Women's Services, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (240) 276–1738, Email: *Valerie.kolick@samhsa.hhs.gov*.

Authority: Public Law 92–463.

Dated: July 31, 2024.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2024–17331 Filed 8–5–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–19]

60-Day Notice of Proposed Information Collection: Single Family Mortgage Insurance on Hawaiian Home Lands; OMB Control No.: 2502–0358

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* October 7, 2024.

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 *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 should 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 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email; *Colette.Pollard@hud.gov,* telephone (202) 402–3400. 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: Single Family Mortgage Insurance on Hawaiian Home Lands.

OMB Approval Number: 2502–0358.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use:

FHA insures mortgages on single-family dwellings under provisions of the National Housing Act (12 U.S.C. 1709). The Housing and Urban Rural Recovery Act (HURRA), Public Law 98–181, amended the National Housing Act to add section 247 (12 U.S.C. 1715z–12) to permit FHA to insure mortgages for properties located on Hawaiian Home Lands.

Section 247 requires that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) be a co-mortgagor; (b) guarantees, or reimburses the Secretary for any mortgage insurance claim paid in connection with a property located on Hawaiian Home Lands; or (c) offers other security acceptable to the Secretary. There are no changes to the program for this submission. Under the State of Hawaii, the DHHL is responsible for management of Hawaiian Home Lands for the benefit of native Hawaiians. The DHHL determines that the mortgagor meets its eligibility requirement as a native Hawaiian.

Respondents: Business of other for-profit (FHA-approved lenders).

Estimated Number of Respondents: 23.

Estimated Number of Responses: 233.

Frequency of Response: As needed.

Average Hours per Response: 0.583.

Total Estimated Burdens: $2,682.75.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Jeffrey D. Little,

General Deputy Assistant Secretary.

[FR Doc. 2024–17343 Filed 8–5–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6461–N–01]

Waiver of Regulations Issued by HUD: Restatement of Policy

AGENCY: Office of the Secretary, Department of Housing and Urban Development (HUD).

ACTION: Notice of statement of policy.

SUMMARY: This notice reiterates HUD's statement of policy concerning the procedures that govern the waiver of regulations and directives issued by HUD. This policy was first announced by notice published in 1991, following enactment of the Department of Housing and Urban Development Reform Act of 1989. In 2001, HUD published a notice that clarified how these procedures are implemented during a period of Administration transition. In 2008, HUD published a notice consolidating and updating the 1991 and 2001 notices. This notice updates information to reflect current HUD operations and procedures.

DATES: Applicable date July 29, 2024.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10282, Washington, DC 20410, telephone number 202–708–1793 (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.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) added a new section 7(q) to the Department of Housing and Urban Development Act. (See 42 U.S.C. 3535(q).) This provision specifies that all waivers of HUD regulations:

- Must be in writing and indicate the grounds for granting the waiver;
- May be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, who is authorized to issue the regulation to be waived; and
- Must provide notification to the public through a notice published at least quarterly in the **Federal Register**. (See 42 U.S.C. 3535(q)(1) through (3).)

Section 7(q) also provides that any waiver of a provision of a HUD handbook (which is included in HUD's definition of ''directive'') must be in writing, specify the grounds for the waiver, and be indexed and made available for public inspection for a period of 3 years. (See 42 U.S.C. 3535(q)(4).) Section 7(q) contains only procedural requirements with respect to waivers of regulations and handbooks. These include requirements governing the form and content of a waiver, who may grant the waiver, and public notification of the waiver. Section 7(q) made no change in the substantive grounds upon which, or the circumstances in which, HUD may grant a waiver.

II. Statement of Policy on Waiver of Regulations and Directives

This statement sets forth HUD's policy and procedures governing the waivers of HUD regulations and directives. These procedures are consistent with the requirements of section 7(q) of the Department of Housing and Urban Development Act, as added by section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)). HUD's regulation at 24 CFR 5.110 also sets forth HUD's obligation to comply with the waiver requirements of 42 U.S.C. 3535(q). This policy was first announced by notice

published in 1991 (April 22, 1991, 56 FR 16337), following enactment of the Department of Housing and Urban Development Reform Act of 1989. In 2001 (March 8, 2001, 66 FR 13944), HUD published a notice that clarified how these procedures are implemented during a period of Administration transition. In 2008 (December 17, 2008, 73 FR 76674), HUD published a notice consolidating and updating the 1991 and 2001 notices. This notice updates information to reflect current HUD operations and procedures. These operations and procedures apply during periods of Administration transition and non-transition periods.

A. Definitions as Used in This Statement of Policy

Assistant Secretary means an Assistant Secretary of the Department under section 4(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(a)), or an individual of equivalent rank (as such term is defined in this section).

Department or HUD means the United States Department of Housing and Urban Development.

Deputy Secretary means the Deputy Secretary of Housing and Urban Development.

HUD Act means the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*).

Directive means a handbook (including a change or supplement), notice, and any other issuance that HUD may classify as a directive.

Individual of equivalent rank means an individual with rank equivalent to an Assistant Secretary, such as the General Counsel, the Chief Financial Officer, the Inspector General, and the President of the Government National Mortgage Association, or the highest-ranking individual administering a HUD program office pursuant to the office's Order of Succession, written Delegation of Authority, or designation.

Regulation means:

- Any material contained in Title 24, Code of Federal Regulations;
- Any notice published in the **Federal Register** announcing the availability of funds (referred to as a notice of funding opportunity or NOFO), or the criteria to be used to select recipients of the funds, under any program administered by HUD; and
- Any other notice published in the **Federal Register** that establishes program requirements pursuant to a statute that authorizes HUD to administer the program by **Federal Register** publication, pending issuance of effective regulations amending Title 24, Code of Federal Regulations.

Secretary means the Secretary of Housing and Urban Development.

B. Waiver of Regulations

1. *Actions Subject to Section 7(q).*

Section 7(q) of the HUD Act only covers waivers of non-statutory regulatory requirements. Many HUD regulations reflect statutory requirements, and section 7(q) grants no authority to waive statutory requirements that may be codified in HUD regulations. Therefore, HUD officials must always exercise caution that a waiver of a HUD regulation is not a waiver of a statutory requirement.

Section 7(q), however, is not applicable to HUD regulations that contain, within the regulation, the authority to grant an exception to the overall requirement stated in the regulation under certain specified criteria. This type of regulation was established to provide ''built-in'' exceptions to the general regulatory requirement, thereby allowing the applicable HUD official to act on such exceptions under the exception criteria specified without undertaking the more formal regulatory waiver process. Examples of this type of regulation can be found in the following regulations:

a. 24 CFR 203.43(c)(2)

§ 203.43 Eligibility of Miscellaneous Type Mortgages

* * * * *

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage given to refinance an existing mortgage insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

* * * * *

(2) It must have a term which does not exceed the unexpired term of the existing mortgage, *except that in any case where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage,* the term may be extended to the lesser of (i) 30 years or (ii) the unexpired term of the existing mortgage, plus 12 years; (Emphasis added).

Section 203.43 specifies the conditions under which the Federal Housing Commissioner may grant an exception to the general condition that a refinanced mortgage must have a term that does not exceed the unexpired term of the existing mortgage.

b. 24 CFR 201.5

§ 201.5 Waivers

Waiver of lender's noncompliance. The Secretary may waive a lender's noncompliance with any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

Section 201.5 provides a built-in waiver provision and specifies the basis upon which the waiver may be granted.

2. *Form and Content of Waivers.* Each waiver of a HUD regulation must be in writing and specify the grounds for granting the waiver.

3. *Who May Grant a Waiver?* The Secretary is the ultimate repository of the authority both to issue and to waive HUD regulations. The Deputy Secretary has been delegated concurrent authority with the Secretary to issue and waive HUD regulations. The Secretary and the Deputy Secretary may delegate each of these powers to HUD Assistant Secretaries or other individuals of equivalent rank, as defined in this notice, and as provided in this section. Typically, the authority to issue final regulations is delegated to an Assistant Secretary or an individual with equivalent rank.

The authority to waive a regulation may not be delegated below the Assistant Secretary or equivalent rank (as defined in Section A of this Notice). An individual formally authorized to act for the Secretary, Deputy Secretary, or an Assistant Secretary, or an individual of equivalent rank in that official's absence may exercise the waiver authority of that individual. Use of this power is limited to situations in which an official is designated as, and is performing the duties of, the absent official pursuant to a current, written designation or order of succession signed by the appropriate official and subject to the limitations of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345 et. seq.), or the Inspector General Act of 1978 (5 U.S.C. 403(h)) as amended by the Securing Inspector General Independence Act of 2022 (Title LII, Subtitle A, of Pub. L. 117–263, § 5203). *Note:* Special issues are raised by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (''URA''). The URA statute authorizes the Department of Transportation, as the lead agency, to

issue regulations. (See 42 U.S.C. 4633 and the implementing regulations at 49 CFR part 24.) Section 24.7 of the Department of Transportation regulations (49 CFR 24.7) authorizes HUD, as a federal funding agency to waive certain non-statutory requirements of 49 CFR part 24 subject to certain restrictions imposed by the lead agency. Under 49 CFR 24.7, HUD may waive any requirement in 49 CFR part 24 that is not required by law, if HUD determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under 49 CFR part 24. Any request for a waiver shall be justified on a case-by-case basis. Accordingly, the authority to issue URA regulations in 49 CFR part 24 and the authority to waive regulations in 49 CFR part 24 are in different agencies. HUD's position is that the authority to waive provisions of 49 CFR part 24 given to HUD in 49 CFR 24.7 is not subject to section 7(q) of the HUD Act because section 7(q) addresses only regulations that the Secretary has the authority to issue. HUD's authority to issue waiver of relocation regulations in title 24 of the Code of Federal Regulations that are not required under the URA statute remains subject to section 7(q).

4. *Legal Concurrence on Waivers.* A proposed waiver of a regulation subject to section 7(q) must be concurred on by the General Counsel (or the General Counsel's designee with responsibility for the legal area involving the waiver), if the waiver would:

a. Be precedential in effect;

b. Affect in any way the competitive ''ground rules'' under which assistance is distributed to recipients;

c. Relate to litigation involving HUD or its programs; or

d. Otherwise present novel decisions or circumstances.

A proposed waiver that does not meet any of these criteria may be granted without the concurrence of the Office of General Counsel.

5. *Concurrence on Waivers of Nondiscrimination Provisions.* Any proposed waiver of a regulation that prohibits discrimination on the basis of race, color, religion, national origin, sex, disability, age, or familial status, or that sets forth related affirmative obligations subject to section 7(q), must be concurred on by the Assistant Secretary for Fair Housing and Equal Opportunity, or the Assistant Secretary's designee.

6. *Notification to the Public.*

a. *In General.* HUD will notify the public of all waivers of regulations subject to section 7(q) that are granted by HUD through notice published in the **Federal Register**.

b. *Timing of Notice.* Each notice will be published not less frequently than quarterly and will provide information on all waivers of regulations subject to section 7(q) since the end of the period covered by the last **Federal Register** notice containing all the waivers granted during the reporting period.

c. *Content of Notice.* The notice will contain the following information for each waiver:

i. An identification of the project or activity that is the subject of the regulatory waiver;

ii. A description of the nature of the requirement that has been waived and a specification of the provision involved, including the citation to the Code of Federal Regulations (CFR), if the provision is codified in the CFR;

iii. The name and title of the official who granted the waiver;

iv. A brief description of the grounds for granting the waiver; and

v. A statement of how more information about the waiver, a copy of any request, and the approval of the waiver may be obtained.

d. *Public Inspection of Waivers.* A record of each waiver of a HUD regulation (including the information specified in Section B.6.c. of this notice) is maintained by the office of the HUD official who granted the waiver, and will be published in the **Federal Register** not less than quarterly as required by section 7(q)(3). Information about specific waivers granted should be directed to the office that granted the waiver. General information about the procedures for granting waivers of regulations may be obtained from the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410, telephone number 202–708–2084 (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.*

C. Waiver of Directives

1. *Form and Content of Waivers.* Each waiver of a provision in a HUD directive will be in writing and will specify the grounds for granting it.

2. *Who May Grant a Waiver?* The HUD officer who is authorized to issue a directive may also grant waivers of its provisions. This authority may be delegated to any officer or employee in the issuing official's organization, as well as to any officer or employee in a HUD Field or Regional Office. Any such delegation must be in writing, although a published delegation of authority is not necessary to delegate the power to waive the provisions of directives.

3. *What May be Waived?* This notice applies only to a waiver that is intended to provide a benefit to, or to remove an obstacle to participation in a HUD program by specific individuals or entities outside the Department. Waivers of provisions governing internal HUD operations, and any action establishing guidance that applies to all individuals or entities that are in similar circumstances, are not subject to the waiver requirements of this notice. Issuance of a new directive is not a waiver for purposes of this notice.

HUD officials must be alert and cognizant that waiver of a directive provision that restates or summarizes a regulation may constitute a regulatory waiver. In determining whether a directive provision is to be treated as a regulatory waiver, HUD will consider whether the waiver of the directive would also require a regulatory waiver. If so, the waiver must meet the regulatory waiver requirements set forth in this notice.

All prohibitions against discrimination on the basis of race, sex, color, national origin, religion, handicap, age, or familial status, and all related affirmative obligations that are direct derivatives of regulations, are considered regulatory prohibitions.

4. *Public Inspection of Waivers.* A record of each waiver of a HUD directive (including the grounds for granting the waiver) will be made available to the public. For more information on where and how this information may be inspected, interested members of the public are to contact the HUD office that granted the waiver. The record of the waiver will be maintained in indexed form for not less than the 3-year period beginning on the date the waiver is granted.

III. Findings and Certifications

Environmental Review. This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of

1969 (42 U.S.C. 4321). It should be noted that the actual grant of a waiver pursuant to this notice may require environmental review. If this occurs, the environmental considerations will be assessed at that time and in that context.

Executive Order 13132, Federalism. Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. The statement of policy sets forth only the procedures for granting waivers of regulations and directives, and for notifying the public of the waiver. Accordingly, this statement of policy does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Authority: Sections 7(d) and 7(q) of the United States Department of Housing and Urban Development Act, 42 U.S.C. 3535(d) and 3535(q).

Damon Smith,

General Counsel.

[FR Doc. 2024–17034 Filed 8–5–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2024–N024; FF07J00000–245–FXRS12610700000]

Alaska Subsistence Regional Advisory Council Meetings for 2025

AGENCY: Fish and Wildlife Service, Interior; Forest Service, Agriculture.

ACTION: Notice of meetings.

SUMMARY: The Federal Subsistence Board (Board) announces the public meetings of the 10 Alaska Subsistence Regional Advisory Councils (Councils) for the winter and fall cycles of 2025. The Councils each meet approximately twice a year to provide advice and recommendations to the Board about subsistence hunting and fishing issues on Federal public lands in Alaska.

DATES:

Winter 2025 Meetings: The Alaska Subsistence Regional Advisory Councils will meet between February 18, 2025, and April 2, 2025, as shown in table 1 in **SUPPLEMENTARY INFORMATION**.

Fall 2025 Meetings: The Alaska Subsistence Regional Advisory Councils will meet between September 16, 2025, and October 30, 2025, as shown in table 2 in **SUPPLEMENTARY INFORMATION**.

Teleconferences will substitute for in-person meetings if public health or safety restrictions are in effect. For more information about accessing the meetings, including start times and whether meetings will be in person or via teleconference, visit *https://www.doi.gov/subsistence/regions.*

All meetings are open to the public. For more information, see **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Specific information about meeting locations and the final agendas can be found at *https://www.doi.gov/subsistence/regions.*

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service; Attention: Amee Howard, Deputy Assistant Regional Director, Office of Subsistence Management; (907) 786–3888 (phone) or *subsistence@fws.gov* (email). For questions specific to National Forest System lands, contact Gregory Risdahl, Subsistence Program Leader, (907) 302–7354 (phone) or *gregory.risdahl@usda.gov* (email). Individuals in the United States who are deaf, blind, 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.

Reasonable Accommodations: The Board is committed to providing access to these meetings for all participants. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact Katerina Wessels, (907) 786–3885 (phone), *katerina_wessels@fws.gov* (email), at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

SUPPLEMENTARY INFORMATION: The Board announces the 2025 public meeting schedule for the 10 Councils, in accordance with the Federal Advisory Committee Act (5 U.S.C. ch. 10). Established in 1993, the Councils are statutory Federal advisory committees that provide a public forum for their regions and recommendations to the Board about subsistence hunting, trapping, and fishing issues on Federal public lands in Alaska, as authorized by section 805 of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111–3126).

The Councils are a crucial link between federally qualified subsistence users and the Board. The Board is a multi-agency body that includes representatives of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and U.S. Forest Service, as well as a chair and two public members who are appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

Each Council meets approximately two times per calendar year, once in the winter and once in the fall, to attend to business and develop proposals and recommendations to the Board.

Winter 2025 Meetings: The Alaska Subsistence Regional Advisory Councils will meet between February 18, 2025, and April 2, 2025, as shown in table 1.

TABLE 1—WINTER 2025 MEETINGS OF THE ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCILS

Regional advisory council	Dates	Location (if in person)
Southeast Alaska—Region 1	March 18–20	Sitka.
Southcentral Alaska—Region 2	March 12–13	Cordova.
Kodiak/Aleutians—Region 3	March 6–7	Kodiak.
Bristol Bay—Region 4	February 18–19	Naknek.
Yukon-Kuskokwim Delta—Region 5	March 4–5	Bethel.
Western Interior—Region 6	February 25–26	McGrath.
Seward Peninsula—Region 7	April 1–2	Nome.
Northwest Arctic—Region 8	March 27–28	Kotzebue.

TABLE 1—WINTER 2025 MEETINGS OF THE ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCILS—Continued

Regional advisory council	Dates	Location (if in person)
Eastern Interior—Region 9	February 19–20	Fairbanks.
North Slope—Region 10	February 24–25	Utqiagvik.

Fall 2025 Meetings: The Alaska Subsistence Regional Advisory Councils will meet between September 16, 2025, and October 30, 2025, as shown in table 2.

TABLE 2—FALL 2025 MEETINGS OF THE ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCILS

Regional advisory council	Dates	Location (if in person)
Southeast Alaska—Region 1	September 30–October 2	TBD.
Southcentral Alaska—Region 2	October 14–15	Anchorage.
Kodiak/Aleutians—Region 3	September 17–18	Larsen Bay.
Bristol Bay—Region 4	October 29–30	Dillingham.
Yukon-Kuskokwim Delta—Region 5	October 21–23	Anchorage.
Western Interior—Region 6	October 7–8	Fairbanks.
Seward Peninsula—Region 7	October 14–15	Nome.
Northwest Arctic—Region 8	October 27–28	Kotzebue.
Eastern Interior—Region 9	October 7–9	Manley Hot Springs.
North Slope—Region 10	September 16–17	Utqiagvik.

Meeting Agendas

Winter 2025 Meetings

- General Council business: Review and adoption of agenda; election of officers; review and approval of previous meeting minutes; Council Chair and members reports; public and Tribal comments on non-agenda items.
- Develop proposals and accept public comments on potential changes to regulations for subsistence take of wildlife.
- Review and approve Annual Report.
- Review and propose changes to the Council charter.
- Agency, Tribal governments, State of Alaska, and nongovernmental organizations reports.
- Future meeting dates.

Fall 2025 Meetings

- General Council business: Review and adoption of agenda; review and approval of previous meeting minutes; Council Chair and members reports; public and Tribal comments on non-agenda items.
- Prepare recommendations and accept public comments on proposals to change subsistence take of wildlife regulations and review and prepare recommendations on wildlife closures.
- Define issues for upcoming Annual Report.
- Agency, Tribal governments, Native organizations, State of Alaska, and nongovernmental organizations reports.
- Future meeting dates.

A notice will be published with specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings; in addition, announcements will be made on local radio stations and posted on social media and the Federal Subsistence Management Program website (*https://www.doi.gov/subsistence/regions*). Locations and dates may change based on weather or local circumstances. A teleconference will substitute for an in-person meeting if public health or safety restrictions are in effect. The final draft agendas, call-in numbers, instructions on how to participate and provide public comments, and other related meeting information will be posted on the Federal Subsistence Management Program website and on social media at *https://www.facebook.com/subsistencealaska/*. Transcripts of the meetings are maintained by the program and will generally be available for public inspection within 14 days after each meeting at *https://www.doi.gov/subsistence/regions.*

Public Submission of Comments

Time will be allowed for any individual or organization wishing to present oral or written comments. If you are not available to submit your comments, you may have another party present your comments on your behalf. Any written comments received will be presented to the Council members by staff.

Public Availability of Comments

Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personal identifiable information—may be made publicly available at any time. While you can request, in your comment, to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Amee Howard,

Deputy Assistant Regional Director, U.S. Fish and Wildlife Service.

Gregory Risdahl,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2024–17314 Filed 8–5–24; 8:45 am]

BILLING CODE 4333–15–P; 3411–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAK3003100/A0C904040.99990]

Annual Meeting of Federal Partners and Tribal 477 Workgroup Under Indian Employment, Training and Related Services Act of 2017

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is announcing the annual meeting of Federal agencies and Tribes that participate in the Indian Employment, Training, and Related Services Act of 2017, as amended known as the ''Public Law 477 Work Group.''

DATES:

• *Meeting:* The annual Federal partner and Tribal Public Law 477 Work Group meeting will be held on August 29, 2024, from 1 p.m. to 4 p.m. ET. Please see **SUPPLEMENTARY INFORMATION** below for details on how to participate.

• *Comments:* Interested persons are invited to submit comments on or before October 7, 2024. Please see **ADDRESSES** below for details on how to submit written comments.

ADDRESSES: Send your comments to Genevieve Giaccardo, Deputy Bureau Director, Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–3645–MIB, Washington, DC 20240; or by email to *Genevieve.Giaccardo@bia.gov.* Please reference the Public Law 477 Work Group in the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Genevieve Giaccardo, Deputy Bureau Director, Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–3645–MIB, Washington, DC 20240, *Genevieve.Giaccardo@bia.gov;* (202) 513–7642.

SUPPLEMENTARY INFORMATION: This meeting is being held under the authority of Public Law 102–477, as amended (25 U.S.C. 3410(a)(3)(B)(i)), and section 2 of the interdepartmental memorandum of agreement (MOA), signed by Secretary Haaland on September 12, 2022.

In 2017, Congress enacted the Indian Employment Training and Related Services Consolidation Act of 2017, Public Law 115–93, codified at 25 U.S.C. 3401–3417 (''2017 Act''). The 2017 Act amended the Indian Employment and Related Services Demonstration Act of 1992, Public Law 102–477, in part, by expanding coverage to include 12 Federal agencies.

Under the 2017 Act, Tribes may propose to integrate eligible grant programs from the Departments of the Interior, Agriculture, Commerce, Education, Energy, Health & Human Services, Homeland Security, Housing & Urban Development, Justice, Labor, Transportation, and Veterans Affairs. This allows Tribes to consolidate and reprogram grant funds in accordance with a single plan, budget, and report approved by the Secretary of the Interior (477 Plan). As required by the 2017 Act, the Department of the Interior entered into a MOA among the 12 Federal agencies to implement Public Law 477. Each of the 12 Federal agencies signed a renegotiated MOA in the fall of 2022.

The Department of the Interior (DOI) is the lead agency responsible for implementing Public Law 102–477, and the Secretary of the Interior delegated that responsibility to BIA. BIA announces the annual meeting of participating Tribes and Federal agencies. As directed by statute, the meeting will be co-chaired by the Assistant Secretary—Indian Affairs Bryan Newland and the Public Law 477 Work Group Tribal Chairs Margaret Zientek (contiguous 48 States) and Holly Morales (Alaska). 25 U.S.C. 3410(a)(3)(B)(i).

Meeting Agenda

1. Opening Remarks
2. Status of the Implementation of Revised MOA
3. Status of Labor Force Report—U.S. Dept. of Labor
4. Summary Status of Tribes Participating in the Public Law 477 Work Group (FY 2023)
   - A. Public Law 102–477 Programs Integrated
   - B. Plan Approval/Denial Process
   - C. Waiver Approvals/Denials- list
   - D. Fund Transfers
   - E. Annual Reports—Annual Report Roll Up/Statistical and Financial Summary
   - F. Update on OMB 1076–0135 (version 2) Reporting Form (extended to 02–28–24)
5. 2023 Report(s) from the 12 Federal Partners
6. Miscellaneous
   - A. Establish Annual Meeting and Bi-Monthly Meeting Between Tribes and Federal Agencies
   - B. Discussion on New Annual Report Implementation Timeline
   - C. Discussion on Federal Fund Transfer of Existing or Prior Year Grant Funds
   - D. Forum and Discussion Regarding Conflict Resolution
7. Adjourn

Meeting Access

• *Physical Access:* The meeting will be conducted in the North Penthouse of the Stewart Lee Udall Department of the Interior Building, 1849 C Street NW, Washington, DC 20240. Members of the public are required to present a valid government-issued photo ID to enter the building and are subject to security screening, including bag and parcel checks.

• *Virtual Meeting Access:* To join and participate in the meeting via Zoom, please register in advance using the following Zoom link: *https://www.zoomgov.com/j/1618012499?pwd=fRV7vLNtBpeNGqvmlnsdKpTb4hM63d.1.*

• *Audio Meeting Access:* To join and participate in the meeting by telephone, please use the following dial-in information: Phone Number: (609) 254–5252, Meeting ID: 161 801 2499, Passcode: 158403.

• *Special Accommodations:* Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 7-business days prior to the meeting to give DOI sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Authority: This notice is published in accordance with 25 U.S.C. 3410(a)(3)(B)(i).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–17326 Filed 8–5–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500179179; IDID106326604]

Notice of Proposed Withdrawal and Opportunity for Public Meeting for Mud Flat Oolite Site, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the Bureau of Land Management (BLM), and subject to valid existing rights, the Secretary of the Interior proposes to withdraw 1,957.89 acres of public land from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for 50 years to protect the rare plants and fossils within the Mud Flat Oolite Site, Idaho. Publication of this notice segregates the lands for up to two years from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws or disposal under the Mineral Materials Act of 1947, while the application is being processed. This notice initiates a 90-day public comment period and announces the opportunity to request a public meeting on the proposed withdrawal.

DATES: Comments and requests for a public meeting must be received by November 4, 2024.

ADDRESSES: All comments and meeting requests should be sent to the BLM Idaho State Office, Attn: ID–933–Realty/Mud Flat Oolite Site Withdrawal, 1387 S. Vinnell Way, Boise, ID 83709, or by email to *BLM_ID_LLID933000_Withdrawal@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM Idaho State Office, telephone: (208) 908–3368, or *csloand@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. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has filed a petition/application requesting the Secretary of the Interior to withdraw the following described public land from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for a period of 50 years.

Boise Meridian, Idaho

T. 7 S., R. 2 E.,
Sec. 1, SE¼SE¼;
Sec. 12, lots 1 and 2, lots 6 thru 11, and lots 14 thru 16.
T. 7 S., R. 3 E.,
Sec. 4, lots 2 thru 4 and S½NW¼;
Sec. 5, lots 1 thru 3, S½NE¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 6, lot 7, SE¼NE¼, E½SW¼, and SE¼;
Sec. 7, lots 5 thru 12;
Sec. 8, N½NW¼ and SW¼NW¼.

The areas described aggregate 1957.89 acres, according to the official plats of the surveys of the said lands, on file with the BLM.

The Secretary of the Interior has approved the petition to file a withdrawal application. The Secretary's approval constitutes a proposal to withdraw and segregate the subject lands (43 CFR 2310.1–3(e)).

The use of a right-of-way, interagency agreement, or cooperative agreement, or surface management under 43 CFR subpart 3809 regulations, would not adequately constrain non-discretionary uses and would not provide adequate protection for rare plants and fossils on these lands.

Water rights will not be needed to fulfill the purpose of the proposed withdrawal.

There are no suitable alternative sites, as the described public lands were specifically selected since the rare plants and fossils needing protection occur within the Mud Flat Oolite Site boundary.

For a period until November 4, 2024, persons who wish to submit comments, suggestions, or objections related to the withdrawal application may present their views in writing to the BLM Idaho State Office at the address listed above or by email to *BLM_ID_LLID933000_Withdrawal@blm.gov.*

Comments will be available for public review by appointment at the BLM Idaho State Office Public Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You may ask the BLM in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that the opportunity for a public meeting is afforded in connection with the withdrawal application. All interested parties who desire a public meeting for the purpose of being heard on the withdrawal application must submit a written request to the BLM Idaho State Office at the address indicated above or by email to *BLM_ID_LLID933000_Withdrawal@blm.gov* by November 4, 2024. If the authorized officer determines that the BLM will hold a public meeting, the BLM will publish a notice of the time and place in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until August 6, 2026, subject to valid existing rights, the public lands described in this notice will be segregated from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, or disposal under the Mineral Materials Act of 1947, while the withdrawal application is being processed, unless the application is denied or canceled or the withdrawal is approved prior to that date.

The public lands described in this notice will remain open to such other forms of disposition as may be allowed by law on the public lands. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature and that would not significantly impact the values to be protected by the requested withdrawal may be allowed with the approval of the authorized officer during the temporary segregation period.

This withdrawal application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

(Authority: 43 U.S.C. 1714)

Peter Ditton,

BLM Acting Idaho State Director.

[FR Doc. 2024–17315 Filed 8–5–24; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038396; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Autry Museum of the American West, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Autry Museum of the American West (Southwest Museum Collection) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2024.

ADDRESSES: Karimah Richardson, M.Phil., RPA, Associate Curator of Anthropology and Repatriation Supervisor, Autry Museum of the American West, 4700 Western Heritage Way, Los Angeles, CA 90027, telephone (323) 495–4203, email *krichardson@theautry.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the

sole responsibility of the Autry Museum of the American West and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. No associated funerary objects are present. The human remains (17.C.20 and 17.C.121) were collected from San Miguel Island, Channel Islands, in Santa Barbara County, CA, exact site is unknown. Cultural material was ''found in collections'' with no information other than San Miguel Island, thus date collected or how the human remains came to the Southwest Museum (now part of the Autry Museum) is unknown.

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The one associated funerary object is one bag of soil. The human remains (1760.G.29) were collected from Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. at an unknown date by Mr. Lawrence W. Rundell. His mother, Mrs. William A. Mendel, gifted the cultural material to the Southwest Museum in 1963. Per museum records, Mr. L. W. Rundell ''found the human remains on one of the Channel Islands (prob. Santa Cruz), but we cannot be sure'', at an unknown date.

Based on the information available, human remains representing at least nine individuals have been reasonably identified. The one associated funerary object is one mussel shell fragment. The human remains (421.G.534 and 421.G.535) were collected from the Northern Channel Islands, in Santa Barbara County, CA by Mr. George Wharton James at unknown date(s). Museum records states ''Chumash Archaeological Material'' with no indication of which site or island for any of the human remains. Mr. James wife and his stepdaughter gifted the cultural materials to the Southwest Museum in 1932.

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. No associated funerary objects are present. The human remains (342.G.1, 342.G.2 and 342.G. 3) were collected from Rincon Point (CA–SBa–1), in Santa Barbara County, CA. by Mr. Martin R. Westcott and his wife. The cultural material was collected before it became part of Rincon Point State Beach. Mr. and Mrs. Westcott gifted the cultural material to Southwest Museum in 1924.

Based on the information available, human remains representing at least, one individual has been reasonably identified. The three associated funerary objects are one shell pendant fragment, one shell (missing), and one worked faunal bone fragment incised. The human remains (1052.G.37) and associated funerary objects were collected from the Indian cemetery portion of Rincon Point (CA–SBa–1), in Santa Barbara County, CA by Mr. Harry Clayton Davis as part of the Archaeology Society of Southern California (ASSC) excavation at Rincon Point. The Archaeology Society of Southern California (ASSC) was established circa 1920s and was a non-professional group. Mrs. Harry Clayton Davis gifted the cultural material to the Southwest Museum in 1946. The Chumash village of *Shuku* and cemetery are located at Rincon Point. There are two site ages for Rincon Point: The Early Period (5,000 to 6,000 B.P.) and the early Middle Period (ca. 2,150–2,750 B.P.).

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. The human remains (871.G.68) were collected from an unknown site in the Santa Barbara region in Santa Barbara County, CA. by Miss Elizabeth Mason at an unknown date. Miss Elizabeth Mason gifted the cultural objects to the Southwest Museum in 1954.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Autry Museum of the American West has determined that:

- The human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.
- The five objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the Autry Museum of the American West must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Autry Museum of the American West is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17258 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038407; PPWOCRADN0–PCU00RP14.R50000]

Notice To Rescind a Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Shoshone National Forest, Cody, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Shoshone National Forest is rescinding a Notice of Inventory Completion Correction published in the **Federal Register** on July 1, 2022.

ADDRESSES: Ken Coffin, Forest Supervisor, Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414 telephone (307) 578–5187, email *kenneth.coffin@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under the Native American Graves Protection and Repatriation Act (NAGPRA). The determinations in this notice are the sole responsibility of the Shoshone National Forest, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

The Shoshone National Forest is rescinding a Notice of Inventory Completion Correction published in the **Federal Register** (87 FR 39553–39554, July 1, 2022), and all paragraphs are deleted in their entirety. The human remains and associated funerary objects were removed from Park County, WY. Transfer of control of the items in this notice has not occurred.

The Shoshone National Forest is responsible for notifying the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming and the Shoshone-Bannock Tribes of the Fort Hall Reservation that this notice has been published.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17267 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038391; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of North Carolina at Charlotte, Charlotte, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of North Carolina at Charlotte (UNC Charlotte) has completed an inventory of human remains and has determined that there is no lineal descendant and no Indian Tribe or Native Hawaiian organization with cultural affiliation.

DATES: Upon request, repatriation of the human remains in this notice may occur on or after September 5, 2024.

ADDRESSES: Sara Juengst, UNC Charlotte, 9201 University City Boulevard, Barnard 224, Charlotte, NC 28223, telephone (216) 269–1807, email *sjuengst@charlotte.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UNC Charlotte, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. No associated funerary objects are present. This includes the cranium of one individual. These remains were uncovered in Haywood County, NC, in 1986 and transferred to the Haywood Country Sheriff's office, then the NC Medical Examiner's office in Chapel Hill, NC. They came to UNC Charlotte sometime thereafter. No known hazardous substances have been used to treat the remains.

Consultation

Invitations to consult were sent to the Cherokee Nation; Eastern Band of the Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains in this notice are available: biological, geographical, historical. The information, including the results of consultation, identified:

1. No earlier group connected to the human remains.
2. The Cherokee Nation; Eastern Band of the Cherokee Indians; and the United Keetoowah Band of Cherokee Indian in Oklahoma as the Indian Tribes connected to the human remains.
3. No relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

Determinations

UNC Charlotte has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No known lineal descendant who can trace ancestry to the human remains in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains in this notice has been clearly or reasonably identified.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Upon request, repatriation of the human remains described in this notice may occur on or after September 5, 2024. If competing requests for repatriation are received, UNC Charlotte must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. UNC Charlotte is responsible for sending a copy of this notice to any consulting lineal descendant, Indian Tribe, or Native Hawaiian organization.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17253 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038402; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Western Washington University (WWU) has completed an inventory of human

remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from 45–WH–564, Point Roberts, Whatcom County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4783, email *pinej@wwu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WWU, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, two individuals have been identified. The 21 associated funerary objects are stone, bone and antler tools and carved items, and ochre stained stone. The human remains and associated funerary objects were removed from 45–WH–564, Point Roberts, Whatcom County, WA.

This collection was donated to WWU circa 1989 by Cliff, Art, and Ruth Jorgenson (handwritten note by Sarah Campbell). The sparse notes indicate that either Cliff or Art was a backhoe operator and that the human remains and artifacts were collected in the 1950s and 1960s during construction of the Whalen Development. This is also referred to as Whalen Point and the Whalen Site.

The 1995 WWU NAGPRA Inventory reported a possible MNI of two-to-four individuals. During the WWU 2018–2020 Repatriation and Rehousing Project, the minimum number of individuals was determined to be two. Also, during tribal consultation in 2024, Lummi Nation Cultural Specialist, Ralph Tom, newly identified 21 associated funerary objects. No known individuals were identified. No hazardous chemicals are known to have been used to treat the human remains or associated funerary objects while in the custody of WWU.

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archaeological information, geographical information, historical information, and oral tradition.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The WWU has determined that:

- The human remains described in this notice represent the physical remains of at least two individuals of Native American ancestry.
- The 21 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Lummi Tribe for the Lummi Reservation; Nooksack Indian Tribe; and the Samish Indian Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17262 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038405; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Midewin National Tallgrass Prairie, Wilmington, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Midewin National Tallgrass Prairie (FS Midewin National Tallgrass Prairie) intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after September 5, 2024. If no claim for disposition is received by August 6, 2025, the human remains in this notice will become unclaimed human remains or cultural items.

ADDRESSES: Chirstina Henderson, Supervisor, Midewin National Tallgrass Prairie, USDA Forest Service, 30239 S. State Route 53, Wilmington, IL 60481, telephone (815) 423–6370, email *Christina.Henderson@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the FS Midewin National Tallgrass Prairie and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is

not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, one individual (ancestor) have been reasonably identified. No associated funerary objects, sacred objects or objects of cultural patrimony are present. On July 21, 2021, one isolated, calcined fragment of parietal bone was removed during archaeological excavations conducted by the University of Notre Dame du Lac, operating under an ARPA permit, on Midewin National Tallgrass Prairie, USDA, Forest Service, in Will County, Illinois.

Determinations

The FS Midewin National Tallgrass Prairie has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The Ho-Chunk Nation of Wisconsin have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by August 6, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after September 5, 2024. If competing claims for disposition are received, the FS Midewin National Tallgrass Prairie must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The FS Midewin National Tallgrass Prairie is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17265 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038408; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University (SF State) NAGPRA Program intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 5, 2024.

ADDRESSES: Elise Green, San Francisco State University NAGPRA Program, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 338–1381, email *egreen@sfsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SF State NAGPRA Program, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 85 lots of cultural items have been requested for repatriation. The 85 lots of unassociated funerary objects are stone pestles, worked faunal bones, tools, pestle fragments, projectile points, a mortar fragment, chert, worked stones, mano, and an anvil. These cultural items are from archaeological sites CA–GLE–1 and CA–GLE–15 which are located along Black Butte Lake in Glenn County. CA–GLE–1 was excavated by Adan E. Treganza in 1963 as part of the Tehama-Colusa Canal Survey. CA–GLE–15 was also excavated by Treganza in 1960 and he kept archaeological records at San Francisco State College (SFSC) now renamed San Francisco State University.

It was once common practice by museums to use chemicals on cultural items to prevent deterioration by mold, insects, and moisture. To date, the SF State NAGPRA Program has no records documenting use of chemicals at our facilities, and we currently do not use chemicals on any cultural items. A former SF State professor, Dr. Michael Moratto, stated that staff used glues, polyvinyl acetate, and a solution called Glyptol to mend and stabilize cultural objects in the past. Prior non-invasive and non-destructive hazardous chemical tests conducted at the SF State NAGPRA Program repositories show arsenic, mercury, and/or lead in some storage containers, surfaces, and certain cultural items.

Determinations

The SF State NAGPRA Program has determined that:

- The 85 lots of unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the SF State NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The SF State NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17268 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038397; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Autry Museum of the American West, Los Angeles, CA, and Pasadena City College, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Autry Museum of the American West and Pasadena City College intend to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 5, 2024.

ADDRESSES: Karimah Richardson, M.Phil., RPA, Associate Curator of Anthropology and Repatriation Supervisor, Autry Museum of the American West, 4700 Western Heritage Way, Los Angeles, CA 90027, telephone (323) 495–4203, email *krichardson@theautry.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Autry Museum of the American West and Pasadena City College, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two lots of cultural items have been requested for repatriation. The two unassociated funerary objects are one lot of shell beads and one lot of woven grass mat fragments. In an unknown year, an unknown collector collected cultural material from unknown site(s) on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Mr. Keith Dixon (1073.G) obtained the shell beads from Pasadena City College at an unknown year. Additionally, Mr. Dixon collected the woven sea grass mat at an unknown year from an unknown burial site on Santa Rosa Island. Mr. Dixon gifted the cultural items to the Southwest Museum in 1946.

Determinations

The Autry Museum of the American West and Pasadena City College has determined that:

- The two lots of unassociated funerary objects described above are reasonably believed to have been placed intentionally with or near individual human remains, and are connected, either at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the Autry Museum of the American West and Pasadena City College must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Autry Museum of the American West and Pasadena City College is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17259 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038401; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fort Leavenworth, Fort Leavenworth, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Fort Leavenworth has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2024.

ADDRESSES: Dale Cleland, Fort Leavenworth, 820 McClellan Avenue, Fort Leavenworth, KS 66027, telephone (913) 680–5270, email *dale.d.cleland.civ@army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Fort Leavenworth, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. The 54 associated funerary objects are one projectile point, one section of a drill, one modified stone, two unmodified rocks, one scraper, 45 lithic flakes, two deer antler fragments, and one bag of soil matrix. In 1966, the individual was removed from site 14LV328 in Leavenworth County, Kansas, as part of a Kansas State Historical Society excavation of a burial mound. The site has been dated to the Valley focus (50 B.C.–A.D. 400) or Kansas City Hopewell (A.D. 1–750).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

Fort Leavenworth has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 54 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Kaw Nation, Oklahoma and the Pawnee Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, Fort Leavenworth must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Fort Leavenworth is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17261 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038395; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Autry Museum of the American West, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Autry Museum of the American West intends to repatriate certain cultural items that meet the definition of unassociated funerary objects or sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 5, 2024.

ADDRESSES: Karimah Richardson, M.Phil., RPA, Associate Curator of Anthropology and Repatriation Supervisor, Autry Museum of the American West, 4700 Western Heritage Way, Los Angeles, CA 90027, telephone (323) 495–4203, email *krichardson@theautry.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Autry Museum of the American West, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 36 cultural items have been requested for repatriation. The number of unassociated funerary objects are one stone bead, 33 shell beads, one fishhook blank, and one possible stone pendant. In 1873, Mr. Charles D. Voy (1.F), collected cultural items from an unknown site on San Miguel Island, Channel Islands, in Santa Barbara County, CA. Mr. Voy, gifted the cultural items to the University of California, Berkeley at an unknown date. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum (now part of the Autry Museum of the American Indian).

A total of two cultural items have been requested for repatriation. The number of unassociated funerary objects are one crescent knife and one coastal contracting stem cluster point. In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from unknown sites on Santa Rosa Islands, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of eight cultural items have been requested for repatriation. The number of unassociated funerary objects are two columella (missing), one comal, one pipe, one wand crystal, and three wand handle fragments. In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from Campsite 2 (CA–SRI–60) on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is a whistle. In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from SW of Southeast Anchorage, Becher's Bay, Campsite 8 (CA–SRI–76) on Santa Rosa Island, Channel Islands, in Santa

Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of 48 cultural items have been requested for repatriation. The 48 unassociated funerary objects are shell pendants (five are currently missing). In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from Campsite 11 (CA–SRI–20) on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of three cultural items have been requested for repatriation. The three unassociated funerary objects are two stone beads and one bone tube. In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from the southeast coast of Canada La Jolla, Campsite 12, cave 1 (CA–SRI–154) on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of 194 cultural items have been requested for repatriation. The 194 unassociated funerary objects are shell pendants (179 are currently missing). In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from Campsite 21 (CA–SRI–34) on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of eight cultural items have been requested for repatriation. The eight unassociated funerary objects are four hair pins and four shell ornaments. In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from Campsite 30 (CA–SRI–6) on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of nine cultural items have been requested for repatriation. The nine unassociated funerary objects are two inlaid bone tubes, one bone tube, and six fishhook blanks (two are currently missing). In 1901, Dr. Philip Mills Jones (1.F) collected cultural items from Campsite 35 (CA–SRI–31), on the south coast NW of Bee Rock, on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. Dr. Jones was commissioned by Mrs. Phoebe Apperson Hearst to conduct archaeological explorations for the newly established Museum of Anthropology at the University. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of 72 cultural items have been requested for repatriation. The 72 unassociated funerary objects are one abalone shell with a clump of red ochre, two doughnut stones, one drill, one coastal contracting stem cluster point fragment, four flakes (one are currently missing), 27 olivella shell beads, 29 shell beads (missing), two shell ornaments, four stone beads, and one stone pendant. As part of D.B. Roger's Expedition (1.F) to the Islands between 1927 and 1928, Mr. Ronald Olson collected the cultural items from Forney's Cove (CA–SCrI–3), Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. In 1929, Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum (now part of the Autry Museum of the American West).

A total of seven cultural items have been requested for repatriation. The seven unassociated funerary objects are one fishhook fragment and six drills. In 1928, as part of D.B. Roger's Expedition to the Islands, Ronald Olson (1.F) collected cultural items from West Ranch (CA–ScrI–83) on Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. In 1929, Mr. Alfred L. Kroeber from the University of California Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of 91 cultural items have been requested for repatriation. The 91 unassociated funerary objects are one bone bead, one cup, three faunal bone tube fragments, four fishhook fragments, two hair pin fragments, one knife, 10 matting fragments, 20 shell beads, two shell ornaments, 44 stone beads, one stone pendant, and two possible whistle fragments. In 1928, as part of D.B. Roger's Expedition to the Islands, Ronald Olson (1.F) collected cultural items from Posa Landing (CA–SCrI–100) on Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of nine cultural items have been requested for repatriation. The nine unassociated funerary objects are four cordage fragments, one cup, two drills, one lot of soap root brush with fragments, and one shell pendant. In 1928, as part of D.B. Roger's Expedition to the Islands, Ronald Olson (1.F) collected cultural items from Smuggler's Cove (CA–SCrI–504) on Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. In 1929, Mr. Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are spear points. In 1928, Mr. Ronald Olson (1.F) collected the cultural item from Olson Site 2, 600 yards south of More Ranch (CA–SBa–43), in Santa Barbara County, CA when he was a student at the University of California, Berkeley. In 1929, Alfred L. Kroeber from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of 10 cultural items have been requested for repatriation. The 10 unassociated funerary objects are one pipe, one inlaid bone tube, one bowl, one cooking pot that is Gabrielino/Tongva style, and six shell beads. In 1928, Mr. Ronald Olson (1.F) collected cultural items from Olson Site 1 (More Ranch CA–SBa–46), Goleta, in Santa Barbara County, CA when he was a student at the University of California, Berkeley. In 1929, Alfred L. Kroeber

from the University of California, Department of Anthropology, at Berkeley gave some cultural items to the Southwest Museum.

A total of 12 cultural items have been requested for repatriation. The 12 unassociated funerary objects are 10 stone beads, one shell bead, and one faunal tooth pendant. At an unknown date, the Archaeological Society of Southern California (ASSC), a non-professional group, and volunteer Mr. Harry Clayton Davis (1052.G) collected cultural items from ''site 9'', surface of both Prisoner's Harbor (CA–ScrI–240) and Coche Point, on Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. Mr. Davis gifted the cultural items in 1946 to the Southwest Museum.

A total of 219 cultural items have been requested for repatriation. The 219 unassociated funerary objects are one breast ornament (missing), two charms (missing), one cooking pot (missing), one dress ornament (missing), one fishhook (missing), one hook, one pot, 10 shell beads, two shell ornaments, one shell pendant, five stone beads (three are missing), one stone implement (missing), one stone pendant, one string of shell beads (missing), one possible sucking tube, 186 trade beads, one wand handle, and two whistles (one is missing). Between 1877 and 1895, Dr. Frank M. Palmer (2.P), collected cultural items from unknown sites on Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. In 1895, the Southwest Museum purchased the personal collection of Dr. Palmer, their first museum curator.

A total of 41 cultural items have been requested for repatriation. The 41 unassociated funerary objects are one bone bowl, one bone tube, one grave marker, one pin fragment, 24 shell ornaments, one stone bone, three stone pendants, and nine whistle fragments. In 1958, Mr. Thomas Hayes Meagher (1593.G) collected cultural items from unknown sites on Santa Cruz Island, Channel Islands, in Santa Barbara County, CA. Mr. Meagher gifted the cultural items to the Southwest Museum in 1959.

A total of 18 cultural items have been requested for repatriation. The 18 unassociated funerary objects are one lot of asphaltum (missing), three charm stones (one missing), one crystal charm, two fishhooks (two missing), one abalone shell ornament, one abalone shell pendant (missing), two soap root brushes, six stone beads (two missing), and one stone pendant. Between 1877 and 1895, Dr. Frank M. Palmer (2.P), collected cultural items from unknown sites on San Miguel Island, Channel Islands, in Santa Barbara County, CA. The Southwest Museum purchased Dr. Palmer, their first museum curator, personal collection in 1895.

A total of four cultural items have been requested for repatriation. The four unassociated funerary objects are bird claw pendants. On an unknown date, Mr. Franklin R. Johnston (948.G), collected cultural items from an unknown site on San Miguel Island, Channel Islands, in Santa Barbara County, CA. Mr. Franklin R. Johnston gifted the cultural items in 1944 to the Southwest Museum.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are one shell pendant and one shell bead. On an unknown date, Dr. Emory W. Thurston (1521.G) collected cultural items from an unknown site on San Miguel Island, Channel Islands, in Santa Barbara County, CA. Dr. Thurston gifted the cultural items in 1958 to the Southwest Museum.

A total of 1,647 cultural items have been requested for repatriation. The 1,647 unassociated funerary objects are 23 burned shell beads, 1,415 shell beads, 183 shell ornaments, and 26 trade beads. In 1938, Mr. Willy Stahl (830.G) collected cultural items from Cuyler's Harbor on San Miguel Island, Channel Islands, in Santa Barbara County, CA. Mr. Stahl, a volunteer (1937–1946) and later Associate in Archaeology (1947–1948) at the Southwest Museum, gifted the cultural items to the Southwest Museum in 1939.

A total of 94 cultural items have been requested for repatriation. The 94 unassociated funerary objects are one bone whistle (missing), one possible bird effigy, one boat effigy, one bone implement (missing), one bone tube, one bone pot, one charm pendant, one charm stone (missing), one chisel (missing), one composite fishhook shank, one cooking pot (missing), three cups, one disc (missing), four doughnut stones (one missing), 13 dress ornaments (two missing), one lot of dress ornaments (missing), one drill, nine fishhook barbs (one missing), two flakers (missing), one grooved sinker (missing), four hair pins, one harpoon point, one ladle (missing), one natural formation (missing), three necklaces (missing), one ornament (missing), one paint pot (missing), 11 pendants (eight missing), one pestle, two pins, one polishing stone, one porpoise effigy, one ring (missing), one shell bead, one spindle whorl, four stone beads, one stone bowl, one stone implement (missing), one lot of trade beads (missing), one tube, one Vandenberg Contracting Stem point, one weight, one possible weight, one whale effigy, and five whistles (one missing). Between 1877 and 1895, Dr. Frank M. Palmer (2.P), collected cultural items from unknown sites on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. The Southwest Museum purchased the collection from the museum's first curator, Dr. Frank M. Palmer, in 1895.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are one sweat scraper and one wooden staff. At an unknown date, Archaeological Society of Southern California (ASSC), a non-professional group, and volunteer Mr. Harry Clayton Davis (1052.G) collected cultural items from ASSC ''Site 4—picked up on the surface of Santa Rosa Island'', Channel Islands, in Santa Barbara County, CA. Mr. Davis gifted the cultural items to the Southwest Museum in 1946.

A total of 178 cultural items have been requested for repatriation. The 178 unassociated funerary objects are 177 shell beads and one shell pendant. In an unknown year, Mr. Edward W. Bodman (1479.G) collected cultural items from an unknown site on Santa Rosa Island, Channel Islands, in Santa Barbara County, CA. His wife gifted the objects in 1957 to the Southwest Museum.

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is a modified burned faunal bone. In an unknown year, an unknown collector collected the cultural item (5.C) from an unknown site in Santa Barbara County, CA. The object was found ''in collections'' with no object number, but with ''Santa Barbara'' and ''1/9'' written on it. It is unknown how the cultural item came to the Southwest Museum.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are pestles. In an unknown date, an unknown collector collected the cultural items (18.C) from unknown sites in Santa Barbara County, CA. The objects were found in ''in collections'' with no object number. It is unknown how the objects came to the Southwest Museum. One pestle has ''744/S.B. CO CAL'' written on it and the second pestle has ''777/S.B. CO CAL'' written on it.

A total of 29 cultural items have been requested for repatriation. The 29 unassociated funerary objects are four bowls, four charm stones (one missing), one concretion, two mortars, four paint cups, one perforated stone, nine pestles, one pipe, one pipe preform, one pitcher, and one prong. In the late 1870s, Mr.

James Wesley Calkin (311.G) collected cultural items from unknown sites in Santa Barbara County, CA. Mr. Calkins' daughter gifted the cultural items to the Southwest Museum in 1923.

A total of four cultural items have been requested for repatriation. The four unassociated funerary objects are modified stones. At an unknown date, Dr. Emory Wright Thurston (1521.G) collected cultural items at an unknown site in Santa Barbara County, CA. Dr. Thurston gifted the cultural items to the Southwest Museum in 1958.

A total of 15 cultural items have been requested for repatriation. The 15 unassociated funerary objects are four hair ornaments, five bone beads, one stone bead, one tarring pebble, one asphaltum applicator, one pestle, and two rubbing stones. At an unknown date, the Archaeological Society of Southern California (ASSC), a non-professional group, and volunteer Mr. Harry Clayton Davis (1052.G) collected cultural items from a hobo camp, near Mishopshnow Village, Carpinteria, in Santa Barbara County, CA. Mr. Davis gifted the cultural items to the Southwest Museum in 1946.

A total of 2,427 cultural items have been requested for repatriation. The 2,427 unassociated funerary objects are one arrow (missing), five beads (missing), one bone bead (missing), two bowls, one breast ornament (missing), one lot of buttons (missing), three charm stones (two missing), two comals (missing), two cooking pots (missing), one cup (missing), three doughnut stones, one drill (missing), one Excelsior point, one grinder (missing), one knife (missing), one knife handle (missing), one metate (missing), two mortars (one missing), three necklaces (missing), one paint cake, one paint pot, one pendant (missing), four pestles (three missing), two pipes (one missing), one pot (missing), two pot lids, one pot with asphaltum, three shell beads, two shell ornaments, one organic spoon fragment, 21 stone beads (five missing), one stone ring, 2,352 trade beads, and one Vandenberg Contracting Stem Point. Between 1877 and 1895, Dr. Frank M. Palmer (2.P), collected cultural items from unknown sites along the coast of Santa Barbara County, CA. In 1895, the Southwest Museum purchased the personal collection of Dr. Palmer, their first museum curator.

A total of three cultural items have been requested for repatriation. The three unassociated funerary objects are two shell ornaments and one shell bead. In May 1947, the Archaeological Survey Association of Southern California (ASA) in partnership with the Southwest Museum (3.S) conducted a survey at Ajuahuilashmu Village (CA–SBa–84/CA–SBa–117), at El Capitan, in Santa Barbara County, CA. The village is now identified as two archaeological sites (CA–SBA–84 and CA–SBA–117). El Capitan State Beach was classified in June 1962 as a state beach by the State Park Commission, thus, the objects were collected before it became a state beach. Based on the temporally diagnostic artifacts and radiocarbon dates, the site has been dated to at least three periods of occupation: one from ca. 5000 years BP, one from between 2500- and 1250-years BP, and the last after 1500 years BP.

A total of 20 cultural items have been requested for repatriation. The 20 unassociated funerary objects are one blade, one burnt faunal bone fragments, one chopper, one possible core, three debitages, two fire affected rocks, four flakes, one graver, one possible scraper, one smoothing stone, one thumbnail scraper, and three utilized flakes. In April 1947, Archaeological Survey Association of Southern California (ASA) in partnership with the Southwest Museum (7.S) conducted a survey at a ''burial area at top of sea cliff'' at Piedra De Amolar CA–SBa-93 (now known as Canada del Molino), Gaviota State Park, in Santa Barbara County, CA.

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is a mortar. In the late 1870s, Mr. James Wesley Calkin (311.G) collected cultural items from Goleta in Santa Barbara County, CA. Mr. Calkins' daughter gifted the collection to the Southwest Museum in 1923.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are one possible asphaltum applicator and one modified stone. At an unknown date, Mr. Franklin R. Johnston (948.G), possibly thru the Archaeological Society of Southern California (ASSC), a non-professional group, collected cultural items from the ''Old Camp'' at Goleta Island (aka Mescalitan Island CA–SBa–46), above Santa Barbara in Santa Barbara County, CA. Mr. Franklin R. Johnston gifted the cultural items in 1944 to the Southwest Museum. CA–SBa–46 dates to the Oak Grove period (prior to 3000 B.C) up to the Historic period.

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is an ochre. At an unknown date, the Archaeological Society of Southern California (ASSC), a non-professional group, and volunteer Mr. Harry Clayton Davis (1052.G) collected cultural items from ASSC ''site 11'' at Goleta Slough, in Santa Barbara County, CA. Mrs. Harry Clayton Davis gifted the cultural items to the Southwest Museum in 1946.

A total of 45 cultural items have been requested for repatriation. The 45 unassociated funerary objects are four asphaltum applicators, one awl, four awl fragments, one leaf point, one scraper, 31 shell beads, two stone bones, and one tarring pebble. At an unknown date, the Archaeological Society of Southern California (ASSC), a non-professional group, and volunteer Mr. Harry Clayton Davis excavated at ASSC ''Site 6'' lower section of Rincon Point below railroad and highway cut, Rincon Pont (CA–SBa–1) in Santa Barbara County, CA. Mrs. Harry Clayton Davis (1052.G) gifted the cultural items to the Southwest Museum in 1946. Rincon Point (CA–SBa–1) contains both the Chumash village of *Suku* and a cemetery.

A total of 11,941 cultural items have been requested for repatriation. The 11,941 unassociated funerary objects are one abalone shell with asphaltum plugs, one atlatl weight (missing), 13 awl tips, 23 beads, 12 bone beads (one missing), one Canalino Triangular point, one charm stone, two choppers (one missing), three Coastal Contracting Stem Cluster Points, one contracting stem point, seven crystals, one dart (missing), four drills, three Excelsior Points, one grinding stone, one ground stone, one hammerstone, one knife, five manos, one mortar fragment, one ochre, one paint stone, two pestles, one plug, one point fragment, one ring with inlaid beads, two rubbing stones, 11,035 shell beads, five shell ornaments, one shell pendant, 26 stone beads, 779 possible stone beads, one stone ornament, and two stone pendants. At an unknown date, the Archaeological Society of Southern California (ASSC), a non-professional group, and volunteer Mr. Harry Clayton Davis excavated at ASSC ''Site 1'', ''the Indian cemetery portion of Rincon Point'' (CA–SBa–1), in Santa Barbara County, CA. Mrs. Harry Clayton Davis (1052.G) gifted the cultural items to the Southwest Museum in 1946. Rincon Point (CA–SBa–1) contains both the Chumash village of *Suku* and a cemetery.

A total of one cultural item has been requested for repatriation. The one unassociated funerary objects is a charm stone. In the late 1870s to 1911, Mr. James Wesley Calkins (311.G) collected a cultural item from Rincon Point (CA–SBa–1), in Santa Barbara County, Mr. Calkins' daughter, Mrs. Sydney J. Parsons, gifted the cultural items to the Southwest Museum in 1923. Rincon Point (CA–SBa–1) contains both the

Chumash village of *Suku* and a cemetery.

A total of 479 cultural items have been requested for repatriation. The 479 unassociated funerary objects are two awls (missing), seven bone bead fragments, one bone pendant, one bone tube, 11 charm stones, four composite fishhook shanks, 13 drills (two missing), three eccentric crescent knives, two gorgets, two gravers, three hair pin fragments, one hammerstone, one possible hammerstone, one possible harpoon prong, one inlaid stone bead, one inlaid stone tube (missing), three knives, eight manos (three missing), four minerals, one modified bone (missing), two modified stones, 13 mortars (four missing), one possible mortar preform, four net weights, one nut anvil, one lot of obsidian (missing), one paint cup, one paint mortar, 26 pestles (six missing), one point preform, one lot of points (missing), four polishing stones, four reamers (missing), 13 scrapers (three missing), 269 shell beads (29 missing), one shell blank, one shell bowl (missing), one shell conglomerate, three shell ornaments (one missing), one shell pendant, five stone (missing), three stone balls, one stone bead, five stone bead preforms, 29 stone beads (missing), six stone pendants, one stone pipe, one stone pipe blank, one stone pipe inlaid fragment, one sun ornament, one tarring pebble, four unmodified faunal bone fragments, and two unmodified shells. Between 1915 to 1918, Mr. and Mrs. Martin Richard Westcott (342.G) collected cultural items from excavations of graves at the upper terrace at Rincon Point (CA–SBa-1), in Santa Barbara County, CA. Mr. and Mrs. Westcott gifted the cultural items to the Southwest Museum in 1924. Rincon Point site contains both the Chumash village of *Suku* and a cemetery.

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is one sandstone pipe fragment. In an unknown year, an unknown collector collected the cultural item from Rincon Point (CA–SBa–1), in Santa Barbara County, CA. Mr. George Wharton James (421.G) bought the cultural item for $1.00 and gifted it to the Southwest Museum in 1932. It is unknown where Mr. James bought the cultural item or from whom. Rincon Point site contains both the Chumash village of *Suku* and a cemetery.

A total of 193 cultural items have been requested for repatriation. The 193 unassociated funerary objects are one possible Ano Nuevo Point, 27 Canalino Triangular Point, 34 Coastal Contracting Stem Cluster Points, one contracting stemmed point, five darts, one drill, 33 Excelsior Points, one knife, one lanceolate point, one leaf point, 11 Pacific Coast Side Notched Cluster Points, one point, one spear point (missing), two stemmed points, 68 Vandenberg Contracting Stem points, and five Western Triangular Cluster Points. Between 1915 to 1918, Mr. and Mrs. Martin Richard Westcott (342.G) collected cultural items from the surface of shell knolls in the lower terrace at Rincon Point (CA–SBa–1), in Santa Barbara County, CA. Mr. and Mrs. Westcott gifted the cultural items to the Southwest Museum in 1924. Rincon Point site contains both the Chumash village of *Suku* and a cemetery.

A total of 2,762 cultural items have been requested for repatriation. The 2,762 unassociated funerary objects are shell beads. In the late 1870s to 1911, Mr. James Wesley Calkins (311.G) collected cultural items from the ''Old Rancheria'' at Rincon Point (CA–SBa–1), in Santa Barbara County, CA. Mr. Calkins' daughter, Mrs. Sydney J. Parsons, gifted the cultural items to the Southwest Museum in 1923. Rincon Point site contains both the Chumash village of *Suku* and a cemetery.

A total of 1,364 cultural items have been requested for repatriation. The 1,364 unassociated funerary objects are one cooking slab, one burned bead, 14 burned shell beads, one faunal bone ornament, one hopper mortar, two manos (missing), seven mortars (two missing), one lot of a botanical sample of nicotiana seeds, one paint, 1,052 shell beads, 69 shell ornaments, one stone bead, one stone bowl, 211 trade beads, and one unmodified burned faunal bone fragment. In the late 1870s, Mr. James Wesley Calkin (311.G) collected cultural items from his ranch, Zaca Ranch in Santa Barbara County, CA. His daughter, Mrs. Sydney J. Parsons, gifted the cultural items to the Southwest Museum in 1923.

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is a stone bowl. In the late 1870s, Mr. James Wesley Calkin (311.G) collected a cultural item from an unknown site in the Santa Ynez Valley in Santa Barbara County, CA. His daughter, Mrs. Sydney J. Parsons, gifted the cultural item to the Southwest Museum in 1923.

A total of 10 cultural items have been requested for repatriation. The 10 unassociated funerary objects are seven pipes, one pipe fragment, one pipe preform, and one stone hook. In the late 1870s, Mr. James Wesley Calkin (311.G) collected cultural items possibly from Santa Barbara County, CA. His daughter, Mrs. Sydney J. Parsons, gifted the cultural items to the Southwest Museum in 1923.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are one corner notched point preform and one knife. In 1924, Mr. Roy Van Ross and family (679.G), collected cultural items at the Old Potter Hotel Site in Burton Mound (CA–SBa–28), in Santa Barbara County, CA. Mr. Ross gifted the cultural items in 1936 to the Southwest Museum.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are one gorget fragment and one ornament fragment. In 1924, Mr. Oliver Cressell Jessen (1830.G), collected cultural items at the Old Potter Hotel, at Burton Mound (CA–SBa–28) in Santa Barbara County, CA. His wife, Mrs. Celia I. Fry Jessen, gifted the cultural items in 1964 to the Southwest Museum.

A total of six cultural items have been requested for repatriation. The six unassociated funerary objects are two mortars, three inlaid bone tubes and one lot of shell beads with asphaltum. In 1924, Mr. Oliver Cressell Jessen (1830.G), collected cultural items from Burton Mound (CA–SBa–28) in Santa Barbara County, CA. His wife, Mrs. Celia I. Fry Jessen, gifted the cultural items in 1964 to the Southwest Museum.

A total of one cultural item has been requested for repatriation. The one unassociated funerary objects is one flageolet. In 1880, an unknown person collected the cultural item from Santa Barbara in Santa Barbara County, CA. Mr. John George Braecklein (964.G) purchased the cultural item for his personal collection and gifted it to the Southwest Museum in 1943.

A total of two cultural items have been requested for repatriation. The two unassociated funerary objects are two whistles. On an unknown date, an unknown person collected the cultural items from Santa Barbara in Santa Barbara County, CA. Mr. John George Braecklein (964.G) purchased the objects for his personal collection and gifted the objects to the Southwest Museum in 1943.

A total of three cultural items have been requested for repatriation. The three unassociated funerary objects are gorgets. On unknown dates, unknown collectors collected cultural items from shell mounds near Santa Barbara, in Santa Barbara County, CA. General Charles McCormick Reeve (491.P) purchased the cultural items from Argonaut Book Shop, in San Francisco, San Francisco County, CA for the Southwest Museum in 1962.

A total of one cultural item has been requested for repatriation. The one unassociated funerary objects is a pipe. Between 1877 and 1895, Dr. Frank M. Palmer (2.P), collected a cultural item from an unknown shell mound along the coast of Santa Barbara County, CA. In 1895, the Southwest Museum purchased the personal collection of Dr. Palmer, their first museum curator.

A total of 12 cultural items have been requested for repatriation. The 12 unassociated funerary objects are one awl, one possible awl fragment, one faunal tooth, two possible grave markers, one hair pin, two modified antler fragments, three ornaments, and one pendant. In August 1936, Mr. Roy Van Ross and family (679.G), collected cultural items from 1 mile north of Lompoc Landing in what is now part of Vandenberg Air Force Base. The objects were collected before it became a base. Mr. Ross gifted the cultural items in 1936 to the Southwest Museum.

A total of seven cultural items have been requested for repatriation. The seven unassociated funerary objects are one awl, two awl fragments, two burned awl fragments, one burned modified faunal fragment, and one possible hair pin fragment. In 1937, Mr. Willy Stahl (830.G) collected cultural items from a village west of Carpinteria, in Santa Barbara County, CA. Mr. Stahl gifted the cultural items to the Southwest Museum in 1939.

A total of one cultural item has been requested for repatriation. The one sacred object is a historic basket tray. At an unknown date, Miss Margaret A. Feeney (116.L) purchased the cultural item from an unknown location in Santa Barbara County, CA. Miss Feeney sent the basket to the Southwest Museum in 1922.

A total of three cultural items have been requested for repatriation. The three sacred objects are pestles. In the late 1870s, Mr. James Wesley Calkin (311.G) collected cultural items from unknown sites, in Santa Barbara County, CA. His daughter, Mrs. Sydney J. Parsons, gifted the cultural items to the Southwest Museum in 1923.

A total of one cultural item has been requested for repatriation. The one sacred object is a pestle. At an unknown date, the Archaeological Society of Southern California (ASSC) a non-professional group, and volunteer Mr. Harry Clayton Davis (1052.G) collected the cultural item from a ''hobo camp'', near Mishopshnow Village, Carpinteria, in Santa Barbara County, CA. Mrs. Harry Clayton Davis (1052.G) gifted the cultural items to the Southwest Museum in 1946.

A total of nine cultural items have been requested for repatriation. The nine sacred objects is one feathered skirt, one mat case, one animal skin cover, one sandal, one lot of textile fragments, one scraper, one possible whistle in two fragments, and one basket water bottle. Circa 1931, Mr. James G. James collected cultural items from a cave in the southern edge of Cuyama Valley, on James Ranch, in the Sierra Madre Mountains in Santa Barbara County, CA. The cave was located on hist own property. His brother-in-law Mr. Alfonse H. Heller (217.L) sent the cultural items to the Southwest Museum in 1932.

A total of one cultural item has been requested for repatriation. The one sacred object is an antler scraper. Circa 1931, Mr. James G. James collected the cultural item from a cave in the southern edge of Cuyama Valley, 1.5 miles southeast of James Ranch, in the Sierra Madre Mountains in Santa Barbara County, CA. The cave was not on his ranch. His brother-in-law Mr. Alfonse H. Heller (217.L) sent the cultural item to the Southwest Museum in 1932.

Determinations

The Autry Museum of the American West has determined that:

- The 22,055 unassociated funerary objects described above are reasonably believed to have been placed intentionally with or near individual human remains, and are connected, either at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The 15 sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the Autry Museum of the American West must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Autry Museum of the American West is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17257 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038403; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 5, 2024.

ADDRESSES: Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 44 cultural items have been requested for repatriation. The 44 objects of cultural patrimony are flaked and ground stone, faunal remains, and historic glass. These items were removed from two locations in Sacramento County, CA (CA–SAC–1217 and CA–Linda Creek). The items from CA–SAC–1217 were collected during a student survey in 1968–1970 and have since been housed at the California State University, Sacramento under accession 81–132. Items from CA–SAC–Linda Creek were located in California State University, Sacramento collections in 2024 and were assigned accession number 81–459. No acquisition records have been located.

Determinations

The California State University, Sacramento has determined that:

- The 44 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17263 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038404; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after September 5, 2024.

ADDRESSES: Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified from CA–SAC–57, located in the west-central portion of Sacramento County, CA. The one associated funerary object is a projectile point. The human remains and funerary objects were collected by individuals associated with the California State University, Sacramento in 1980. They have since been housed at the University under accession 81–97.

Human remains representing, at least, one individual have been identified from CA–SAC–118, located in the south-central portion of Sacramento County, CA. The two associated funerary objects are flaked stones and thermally-altered rocks. The human remains and funerary objects were removed from the site in 1974 during a survey by California State University, Sacramento. They have since been housed at the University. They were relocated in collections in 2024 and assigned accession number 81–461.

Human remains representing, at least, one individual have been identified from CA–SAC–329, located in the south-western portion of Sacramento County, CA. The 1,006 associated funerary objects are flaked, ground, and modified stone; modified bone; modified shell; baked clay; faunal remains; floral remains; thermally-altered rock; and one lot of uncataloged materials. The human remains and funerary objects were removed from the site in 1975 during excavations done by California State University, Sacramento under contract with the U.S. Army Corps of Engineers. They have since been housed at the University under accession 81–70.

An unknown number of objects may be missing from the above collections, and California State University, Sacramento continues to look for them.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.

• The 1,009 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a connection between the human remains and associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17264 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038393; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: South Carolina Institute of Archaeology and Anthropology, University of South Carolina, Columbia, SC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the South Carolina Institute of Archaeology and Anthropology (SCIAA) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 5, 2024.

ADDRESSES: Nina Schreiner, South Carolina Institute of Archaeology and Anthropology (SCIAA), College of Arts and Sciences, University of South Carolina, 1321 Pendleton Street, Columbia, SC 29208, email *Schreinn@email.sc.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SCIAA, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is one lot of beads. The beads were removed from the Tomassee site (38OC186) by Marshall Williams at an unknown date and brought to the University of Georgia Laboratory of Archaeology (UGA) at an unknown date. UGA transferred the beads to SCIAA in 2024 to facilitate repatriation. SCIAA has no knowledge of hazardous substances used to treat the cultural items. Tomassee is an eighteenth-century Cherokee town in Oconee County, SC.

Determinations

The SCIAA has determined that:

• The one unassociated funerary object described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

• There is a reasonable connection between the cultural items described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the {1. SCIAA} must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The {1. SCIAA} is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17255 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038394; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, National Park Service, Missouri National Recreational River, Yankton, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Missouri National Recreational River intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after September 5, 2024. If no claim for disposition is received by August 6, 2025, the human remains in this notice will become unclaimed human remains or cultural items.

ADDRESSES: Curt Dimmick, National Park Service, Missouri National Recreational River, 508 E 2nd Street, Yankton, SD 57078, telephone (605) 665–0209 Ext. 22, email *curt_dimmick@nps.gov* and Carolyn Campbell, National Park Service, Missouri National Recreational River, 508 E 2nd Street, Yankton, SD 57078, telephone (605) 665–0209 Ext. 30, email *carolyn_campbell@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Missouri National Recreational River and additional information on the human remains or cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. In August 2018, an employee of the U.S. Army Corps of Engineers (USACE) reported skeletal remains located within Missouri National Recreational River (MNRR) managed lands in Dixon County, NE. The remains were given to MNRR on August 26, 2018, and were subsequently transferred to the National Park Service regional archeological center for secured storage. An osteology report was completed in February 2019 by subject expertise at the University of Nebraska Lincoln. Based on conclusions drawn from the osteology report and the preponderance of the evidence, the human remains are determined to be Native American in origin.

Determinations

Missouri National Recreational River has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The Ponca Tribe of Nebraska has priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by August 6, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after September 5, 2024. If competing claims for disposition are received, Missouri National Recreational River must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. Missouri National Recreational River is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17256 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038398; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Boise National Forest, Boise, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Boise National Forest intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after September 5, 2024. If no claim for disposition is received by August 6, 2025, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Brant Petersen, United States Forest Service, Boise National Forest, 1249 S. Vinnell Way, Suite 200, Boise, ID 83709, telephone (208) 373–4100, email *brant.petersen@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Boise National Forest, and additional information on the human remains or cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. On August 5, 2023, Valley County Sheriff's Office Law Enforcement retrieved a partial human skull from the Boise National Forest, Valley County, Idaho, near the Silver Creek Plunge.

Determinations

The Boise National Forest has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• The Nez Perce Tribe; Shoshone-Bannock Tribes of the Fort Hall Reservation; and the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by August 6, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after September 5, 2024. If competing claims for disposition are received, the Boise National Forest must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains or cultural items are considered a single request and not competing requests. The Boise National Forest is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17260 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038406; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Shoshone National Forest, Cody, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Shoshone National Forest has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after September 5, 2024.

ADDRESSES: Ken Coffin, Forest Supervisor, Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414, telephone (307) 578–5187, email *kenneth.coffin@usda.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Shoshone National Forest, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

This notice supplements the original 2006 Notice of Inventory Completion published in the **Federal Register** (71 FR 9148–9149, February 22, 2006), which identifies human remains representing one individual and one associated funerary object (a mountain sheep hide). Following re-examination of materials collected from level 3/cultural level 36 by members of the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming, the associated funerary objects have been determined to include an additional 226 cultural items. The 226 associated funerary objects are animal parts including bone, hair, horn, antler, teeth and hide; arrow shafts with wrapped sinew; grass bundles and grass moccasin liners; burial matrix and stones; calcite crystals; charred wood fragments; coiled basketry fragments; knotted cordage netting; feathers, unworked and modified; unidentified fibers; lithic materials; moccasin fragments; pigment; wood fragments; reed fragments; and seeds. These were removed from the Mummy Cave site in Park County, Wyoming between 1963 and 1966 by Harold McCracken and have been curated at the Buffalo Bill Center of the West (previously known as the Buffalo Bill Historical Center) since their removal.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the associated funerary objects described in this notice.

Determinations

The Shoshone National Forest has determined that:

• The 226 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a reasonable connection between the associated funerary objects described in this notice and the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming and the Shoshone-Bannock Tribes of the Fort Hall Reservation.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the Shoshone National Forest must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The Shoshone National Forest is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17266 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038392; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of California San Diego, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California San Diego intends to repatriate certain cultural items that meet the definition of unassociated funerary objects, sacred objects, or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after September 5, 2024.

ADDRESSES: Eva Trujillo, Repatriation Coordinator, University of California San Diego, 9500 Gilman Drive, La Jolla, CA 92093, telephone (858) 246–2725, email *e7trujillo@ucsd.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California San Diego, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 1,922 cultural items have been requested for repatriation. The 355 unassociated funerary objects and three sacred objects (358 total objects) consist of one lot of unmodified faunal bone, 284 lots of chipped stone artifacts, one lot of groundstone, 41 lots of historic artifacts, 10 lots of other lithic material, one lot of modified shell, one lot of unmodified shell, one lot of other chipped stone, three lots of soil samples, 14 lots of vegetal material, and one lot of organic material. In July and August of 1976 and December 2000, archaeologists associated with the University of California San Diego excavated and removed associated funerary objects at the site CA–SDI–4670, for the purpose of archaeological research.

The 66 unassociated funerary objects consist of 57 lots of chipped stone, one lot of groundstone, six lots of other lithic materials, one lot of unmodified shell, and one lot of soil samples. At an unknown date in 1986 and 1987, the archaeological site CA–SDI–11075 was excavated by Dr. Patricia Masters for the purpose of research.

The one unassociated funerary object consists of one lot of chipped stone. In November of 1979, Darcy Ike, Douglas Flower and Linda Roth was serving as an archaeological observer for the University of California San Diego during grading associated with construction of a new seawall segment. These items were excavated and removed at archeological site W–151 for the purpose of research.

The 10 unassociated funerary objects consist of two lots of unmodified faunal bone, three lots of chipped stone, one lot of other lithic material, one lot of unmodified shell, and three lots of other vegetal material. At an unknown date, the University of California San Diego came into possession of these items from archaeological site CA–SDI–10940.

The 1,363 unassociated funerary objects consist of five lot of modified faunal bone, 55 lots of unmodified faunal bone, eight lots of ceramics, 143 lots of chipped stone, 75 lots of groundstone, six lots of historic items, 44 lots of organic material, 64 lots of ecofact, 17 lots of modified shell, 926 lots of unmodified shell, eight lots of soil samples, and 12 lots of fire affected stone. Sometime between 1947 and 1976 these items were excavated and removed from various unknown sites in the vicinity of La Jolla, California, by University of California San Diego associates Dr. C.L Hubbs and party. The unassociated funerary objects listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The 15 objects of cultural patrimony consist of five lots of chipped stone, one lot of other organic material, one lot of organic plant material, six lots of unmodified shell, one lot of soil samples, and one lot of battered stone. In April 1959 these items were excavated and removed from the site known as 1959:IV:19 (A) in the vicinity of Chula Vista, San Diego, California by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The 20 objects of cultural patrimony consist of one lot of chipped stone, one lot of groundstone, one lot of organic material, one lot of ecofact, one lot of modified shell, and 15 lots of unmodified shell. Sometime in between December 1944 and June 1959, these items were excavated and removed from the site known as 1944:XII:28, 1955:III:18 and 1959:XI:12 in the vicinity of Mission Bay, San Diego, California by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The three objects of cultural patrimony consist of one lot of chipped stone, one lot of organic material, and one lot of soil samples. Sometime in between January 1957 and March 1959, these items were excavated and removed from the site known as 1957:I:5A, 1957:II:2, and 1959:III:8D in the vicinity of University Heights, San Diego, California, by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the MoU deaccessioned the Hubbs

Collection and donated it to the USD Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The 40 objects of cultural patrimony consist of one lot of modified faunal bone, one lot of unmodified faunal bone, two lots of ceramics, eight lots of chipped stone, four lots of groundstone, three lots of organic material, 16 lots of unmodified shell, one lot of soil samples, two lots of ecofacts, and two lots of fire affected stones. Sometime in January 1956 and January 1957, these items were excavated and removed from the site known 1956:XII:15, 1956:XII:2, 1956:XII:3, 1956:I:11, and 1957:I:12 in the vicinity of National City, San Diego, California, by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the MoU deaccessioned the Hubbs Collection and donated it to the USD Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The 19 objects of cultural patrimony consist of one lot of modified faunal bone, five lots of unmodified faunal bone, two lots of ceramics, three lots of organic material, six lots of unmodified shell, one lot of soil samples, and one lot of ecofacts. In 1955, these items were excavated and removed from the site known 1955:IV:16, 1955:IV:2, and 1955:IV:9 in the vicinity of south-eastern Ocotillo, Imperial County, California, by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The 16 objects of cultural patrimony consist of seven lots of unmodified faunal bone, two lots of chipped stone, one lot of groundstone, and six lots of unmodified shell. In August of 1959 and August 1967, these items were excavated and removed from the site known 1959:VIII:10, and 1967:VIII:2 in the vicinity of Pacific Beach, San Diego, California, by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The two objects of cultural patrimony consist of one lot of chipped stone and one lot of ceramics. In January and March of 1961, these items were excavated and removed from the site known 1961:I:27 and 1961:III:13 in the vicinity of San Pascual, San Diego, California, by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The one item of cultural patrimony consists of one lot of ecofact. Sometime between 1947 and 1976 these items were excavated and removed from the sites in the vicinity of San Ysidro, San Diego, California, by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The three items of cultural patrimony consist of three lots of unmodified shell. In June of 1959 these items were excavated and removed from the site known as 1959:XI:16 in the vicinity of Sorrento Valley, San Diego, California by University of California San Diego associates Dr. C.L Hubbs and party. The objects of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The four items of cultural patrimony consist of one lot of ceramics and three lots of chipped stone. In June of 1965 these items were excavated and removed from the site known as 1965:XI:11A in the vicinity of Tecate, San Diego, California by University of California San Diego associates Dr. C.L Hubbs and party. The items of cultural patrimony listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

The one sacred item is a ceramic fragment. In May of 1972 these items were excavated and removed from the site known as 1972:V:21(A) in the vicinity of the In-Ko-Pah mountains, Imperial County, California by University of California San Diego associates Dr. C.L Hubbs and party. The

sacred objects listed were incorporated into what became known as the ''Hubbs Collection.'' In 1973, Dr. Hubbs bequeathed the Hubbs Collection to the Museum of Us (formerly the San Diego Museum of Man). In March of 2004, the Museum of Us (MoU) deaccessioned the Hubbs Collection and donated it to the University of San Diego (USD) Anthropology Department, although some of the collection remained at the MoU. Given the scope of the collection and complexities related to provenance, UCSD, MoU, and USD reached an agreement to work together to facilitate NAGPRA compliance.

Determinations

The University of California San Diego has determined that:

- The 1,795 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The four sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- The 123 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 5, 2024. If competing requests for repatriation are received, the University of California San Diego must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of California is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 25, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–17254 Filed 8–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given to announce a public meeting of the ACA. All meetings of the ACA are open to the public.

DATES: The meeting will be held on Thursday, September 12, 2024, at PA CareerLink® Pittsburgh located at 914 Penn Avenue, Floor #6, Pittsburgh, PA 15222. The meeting will begin at approximately 9:00 a.m. Eastern Standard Time (EST) and end at approximately 5:00 p.m. EST. Any updates to the agenda and meeting logistics will be posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5321, Washington, DC 20210; Email: *AdvisoryCommitteeonApprenticeship@dol.gov;* Telephone: (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The ACA is a discretionary committee that was renewed by the Acting Secretary of Labor in accordance with the FACA (5 U.S.C. app. 2 sec. 10), as amended in 5 U.S.C. app. 2, and its implementing regulations (41 CFR 101–6 and 102–3). The ACA's Charter was renewed on May 11, 2023, and is active for two years. This will be the second meeting of the renewed ACA. All meeting materials, including all previous term materials, are posted here: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* All meetings are open to the public. To promote greater access, webinar and audio conference technology will be used to support public participation in the meeting. In-person space for the meeting is limited. Please send an email to *AdvisoryCommitteeonApprenticeship@dol.gov* if you plan to attend the meeting in-person, no later than Wednesday, August 28, 2024. Members of the public that are unable to join the meeting in-person are encouraged to join the meeting virtually. Both the in-person

and virtual login instructions are listed below and will be posted prominently on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby at (202) 693–3795 or via email at *huckaby.kenya@dol.gov* no later than Wednesday, August 28, 2024.

Instructions to Attend the Meeting In-Person: Send an email to *AdvisoryCommitteeonApprenticeship@dol.gov* no later than Wednesday, August 28, 2024, to request to attend the meeting in-person at PA CareerLink® Pittsburgh located at 914 Penn Avenue, Floor #6, Pittsburgh, PA 15222.

Instructions to Attend the Meeting Virtually: Virtual meeting participants have two options to access the meeting. Virtual meeting participants can access the meeting by computer or by phone. To access the meeting by computer, meeting participants will use the meeting link and event password below. To access the meeting by phone, meeting participants will use the dial-in number and access code below.

Computer Access

- *https://usdolevents.webex.com/usdolevents/j.php?MTID=m7bce04a3f9cee3579d31624e30b9e034*
- *Access code:* 2824 373 9224
- *Webinar password:* Welcome!24

Telephone Access

- *Dial-In Number:* 877–465–7975
- *Access code:* 2824 373 9224
- *Telephone password:* 93526631

Virtual meeting instructions will also be posted on posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd via email at *AdvisoryCommitteeonApprenticeship@dol.gov* using the subject line ''File Data/Comments—September 2024 ACA Meeting.'' Such submissions will be included in the record for the meeting if received by Wednesday, August 28, 2024. See below regarding members of the public wishing to speak at the ACA meeting.

Purpose of the Meeting and Topics to Be Discussed: The primary purpose of the September 2024 ACA meeting is to focus on state and local workforce initiatives that are leveraging historic federal investments to support the building of dynamic, diverse, and modern apprenticeship eco-systems. The agenda will focus on models that demonstrate the successful integration of apprenticeship with workforce and education systems that provide insights into opportunities for expansion, diversification and modernizing at a national scale. Anticipated agenda topics for this meeting include the following:

- Call to Order & Departmental Remarks
- Welcome from Local Hosts
- General Apprenticeship Updates
- State and Local Panels featuring Registered Apprenticeship Initiatives
- Public Comment
- Adjourn

The agenda and meeting logistics may be updated should priority items come before the ACA between the time of this publication and the scheduled date of the ACA meeting. All meeting updates will be posted to the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship.* Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Officer, Mr. John V. Ladd, via email at *AdvisoryCommitteeonApprenticeship@dol.gov,* using the subject line ''Request to Speak—September 2024 ACA Meeting'' by Wednesday, August 28, 2024. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

José Javier Rodríguez,

Assistant Secretary for Employment and Training, U.S. Department of Labor.

[FR Doc. 2024–17313 Filed 8–5–24; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hazardous Energy Control Standard (Lockout/Tagout)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 September 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The collections of information contained in the standard are needed to reduce injuries and deaths in the workplace that occur when employees are engaged in maintenance, repair, and other service related activities requiring the control of potentially hazardous energy. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 30, 2024 (89 FR 34274).

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.

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–OSHA.

Title of Collection: Hazardous Energy Control Standard (Lockout/Tagout).

OMB Control Number: 1218–0150.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 806,890.

Total Estimated Number of Responses: 73,530,405.

Total Estimated Annual Time Burden: 2,732,064 hours.

Total Estimated Annual Other Costs Burden: $1,442,985.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–17304 Filed 8–5–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SGS North America, Inc., for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to deny the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 21, 2024.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2006–0040). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this Federal Register notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 21, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that SGS North America, Inc. (SGS) is applying for an expansion of the current recognition as a NRTL. SGS requests the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS currently has nine facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024. A complete list of SGS's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/sgs.html.*

II. General Background on the Application

SGS submitted an application to OSHA to expand recognition as a NRTL to include two additional test standards on September 1, 2021 (OSHA–2006–0040–0079). OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 lists the test standards included in SGS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—TEST STANDARDS IN SGS'S APPLICATION FOR EXPANSION OF ITS NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
IEC 60335–2–23	Household and Similar Electrical Appliances—Safety—Part 2–23: Particular Requirements for Appliances for Skin or Hair Care.
IEC 60335–2–30	Household and Similar Electrical Appliances—Safety—Part 2–30: Particular Requirements for Room Heaters.

If OSHA issued a preliminary determination that SGS's application should be granted, it would also propose adding these two test standards to its list of appropriate test standards. As OSHA preliminarily denies this application (see below), it does not make such a proposal, but nonetheless seeks comment on whether these two test standards should be added to the list of appropriate test standards.

III. Preliminary Findings on the Application

OSHA has preliminarily determined that SGS has not submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that the test standards requested in the expansion application do not meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition. Specifically, OSHA preliminarily determines that the test standards requested in this application do not meet the requirements for appropriate test standards or alternative test standards for the NRTL Program.

Pursuant to the NRTL Program regulation, 29 CFR 1910.7, for each specified item of equipment or material to be listed, labeled or accepted, a NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform: (i) testing and examining of equipment and materials for workplace safety purposes to determine conformance with *appropriate test standards;* or (ii) experimental testing and examining of equipment and materials for workplace safety purposes to determine conformance with *appropriate test standards* or performance in a specified manner. § 1910.7(b)(1).

An ''*appropriate test standard*'' is defined in the NRTL Program regulation as a document which specifies the safety requirements for specific equipment or class of equipment and meets one of two alternative requirements. Either the document must be (1) recognized in the United States as a safety standard providing an adequate level of safety, and (2) compatible with and maintained current with periodic revisions of applicable national codes and installation standards and (3) developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or the document must be currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. § 1910.7(c).

Notwithstanding the requirements in § 1910.7(b)(1), if a testing laboratory desires to use an *alternative test standard* (that is, a test standard that is not an *appropriate test standard*), then OSHA evaluates the proposed standard to determine whether it provides an adequate level of safety before it may be used § 1910.7(d). If a test standard does not provide an adequate level of safety, it may not be used by a NRTL to perform testing or examining of equipment and materials for workplace safety purposes or experimental testing and examining of equipment and materials for workplace safety purposes.

The test standards requested in the expansion application, issued by the International Electrotechnical Commission (IEC), are not appropriate test standards under the NRTL program because they are not recognized in the United States as safety standards providing an adequate level of safety. To provide an adequate level of safety, these test standards would need to be evaluated for compliance with U.S. electrical safety requirements. The IEC develops standards that are broad technical safety solutions for electrical products, but this does not represent a complete safety standard for each member country. The process of adapting the IEC-based standard to a fully compliant U.S. national standard is typically conducted by a U.S.-based standards development organization (SDO), which considers the unique requirements for the U.S. market, along with the input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved (as set forth in § 1910.7(c)). This information-gathering process and evaluation has not been undertaken for the test standards in SGS's application (*i.e.,* these test standards have not been evaluated for compliance with U.S. electrical safety requirements). Nor have these test standards been designated by ANSI or ASTM. Therefore, they do not meet the requirements for appropriate test standards under the NRTL program.

These test standards are also not alternative test standards that may be used under the NRTL program to perform testing or examining of equipment and materials for workplace safety purposes or experimental testing and examining of equipment and materials for workplace safety purposes. Again, these test standards have not been determined to provide an adequate level of safety because they have not been evaluated for compliance with U.S. electrical safety requirements.

IV. Public Participation

OSHA welcomes public comment on SGS's application for expansion of recognition as a NRTL, and whether its application meets the requirements of 29 CFR 1910.7. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester provides justification for a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2006–0040 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will

make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant SGS's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on July 30, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–17305 Filed 8–5–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Revision of Agency Information Collections for Comments Request: Proposed Collections

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comments.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Written comments should be received on or before October 7, 2024 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dacia Rogers, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, Suite 5067; Fax No. (703) 519–8161; or email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dacia Rogers at (703) 518–6547.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0067.

Title: Corporate Credit Union Monthly Call Report and Annual Report of Officers.

Type of Review: Revision of a currently approved collection.

Abstract: Section 202(a)(1) of the Federal Credit Union Act (Act) requires federally insured credit unions to make reports of condition to the NCUA Board upon dates selected by it. Corporate credit unions report this information monthly on NCUA Form 5310, also known as the Corporate Credit Union Call Report. The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising corporate credit unions. The Federal Credit Union Act, 12 U.S.C. 1762, specifically requires federal credit unions to report the identity of credit union officials. Section 741.6(a) requires federally-insured credit unions to submit a Report of Officials annually to NCUA containing the annual certification of compliance with security requirements. The branch information is requested under the authority of § 741.6 of the NCUA Rules and Regulations. NCUA utilizes the information to monitor financial conditions in corporate credit unions, and to allocate supervision and examination resources.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 539.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024–17307 Filed 8–5–24; 8:45 am]

BILLING CODE 7535–01–P

PRESIDENT'S COMMITTEE ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

77th Meeting of the President's Committee on the Arts and the Humanities

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the President's Committee on the Arts and the Humanities. On August 15, 2024, the Committee will meet to carry out administrative functions and report on past recommendations for agency action. On August 16, 2024, the Committee will meet to deliberate on and discuss recommendations for agency action.

DATES: The meeting will be held on August 15, 2024, 1:00 p.m. ET until 4:30 p.m. ET and on August 16, 2024, 11 a.m. ET until adjourned.

ADDRESSES: On August 15, 2024, the meeting will convene at The St. Regis Hotel, 923 Black Lives Matter Plz. NW, Washington, DC 20006. On August 16, 2024, the meeting will convene at a venue in the Washington, DC metro area, and public participation will be virtual.

FOR FURTHER INFORMATION CONTACT: Jasmine Jennings, Assistant General Counsel and Alternate Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4653; *jjennings@imls.gov*.

SUPPLEMENTARY INFORMATION: The President's Committee on the Arts and the Humanities is meeting pursuant to Executive Order 14084 and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The meeting of the President's Committee on the Arts and Humanities will convene at 1 p.m. ET on August 15, 2024, and 11 a.m. ET on August 16, 2024. This meeting will be open to the public.

On August 15, 2024, the Committee will meet to carry out administrative functions and to report on past

recommendations for agency action. Any interested persons may attend in person as observers, subject to limited seating availability. On August 16, 2024, the Committee will meet to deliberate on and discuss recommendations for agency action. Any interested persons may watch the proceedings virtually as observers.

Individuals wishing to attend in person on August 15 or watch virtually on August 16 are advised to contact Alexandra Piper of the Institute of Museum and Library Services five (5) working days in advance of the meeting at *apiper@imls.gov* or write to the Committee at the Institute of Museum and Library Services, 955 L'Enfant Plaza SW, Suite 4000, Washington, DC 20024.

If you need special accommodations due to disability or would like to obtain further information in reference to the meeting, please contact Alexandra Piper at *apiper@imls.gov.*

Dated: July 31, 2024.

Brianna Ingram,

Paralegal Specialist.

[FR Doc. 2024–17300 Filed 8–5–24; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0113]

NUREG: Environmental Evaluation of Accident Tolerant Fuels With Increased Enrichment and Higher Burnup Levels

AGENCY: Nuclear Regulatory Commission.

ACTION: Final report; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–2266, ''Environmental Evaluation of Accident Tolerant Fuels with Increased Enrichment and Higher Burnup Levels.'' This study evaluates the reasonably foreseeable impacts of near-term accident tolerant fuel (ATF) technologies with increased enrichment and higher burnup levels for light-water reactors (LWRs) (*i.e.,* a bounding analysis). The final NUREG was revised based on public comments to reflect a bounding analysis of up to 10 wt% U–235 enrichment for the uranium fuel cycle and decommissioning to, among other things, add transportation impacts for half-batch reloads, and to provide clarification on the use of NUREG–2266 if exceeding 10 wt% U–235 for uranium fuel cycle and decommissioning, exceeding 8 wt% U–235 enrichment for the transportation of fuel and waste, or exceeding assembly averaged burnup levels of 80 GWd/MTU.

DATES: NUREG–2266 is available on August 6, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0113 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0113. Address questions about Docket IDs to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* NUREG–2266, ''Environmental Evaluation of Accident Tolerant Fuels with Increased Enrichment and Higher Burnup Levels'' is available in ADAMS under Accession No. ML24207A210.

FOR FURTHER INFORMATION CONTACT: Donald Palmrose, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3803; email: *Donald.Palmrose@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

To support efficient and effective licensing reviews of new ATFs and to reduce the need for a complex site-specific environmental review for each ATF license amendment request, this study evaluated the likely impacts of near-term ATF technologies with increased enrichment and higher burnup levels on the uranium fuel cycle, transportation of fuel and waste, and decommissioning for LWRs (*i.e.,* a bounding analysis). Near-term first-generation ATF technologies are coated cladding and doped pellets; a second-generation ATF technology is iron-chrome-aluminum (FeCrAl) cladding. Long-term ATF technologies are not a part of this study. The NRC staff evaluated the impact of increased enrichment and higher burnup levels by assessing and applying NRC-sponsored ATF technology reports, prior environmental reviews, transportation studies, and new or updated data sources to determine the bounding (generic) environmental impacts of deploying ATF technologies with increased enrichment and higher burnup levels in LWRs.

Based on findings in this study, the NRC staff concludes, with regard to near-term first- or second-generation ATF technologies (*i.e.,* coated cladding, doping, and FeCrAl cladding), the environmental effects associated with deploying and using ATF would be bounded by the NRC staff's prior analyses. With regard to the uranium fuel cycle and decommissioning, Table S–3, paragraph 51.51(b) of title 10 of the *Code of Federal Regulations* (10 CFR), NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel,'' and NUREG–0586, ''Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1'' bound enrichments up to 10 wt% U–235 enrichment and assembly averaged burnup up to 80 GWd/MTU. For the transportation of ATF with increased enrichment and higher burnup levels, environmental impacts of Table S–4 of 10 CFR 51.52(c) are bounding for environmental impacts up to 8 wt% U–235 and assembly averaged burnup up to 80 GWd/MTU. Additionally, if in a future licensing action where the enrichment and burnup levels are greater than the previously mentioned values, an applicant can apply the methodology and guidance of NUREG–2266 for completing the needed revised analysis for the higher enrichment and burnup levels.

The NRC staff continues to prepare to review license applications related to ATF technologies and fuel with increased enrichment and higher burnup levels. Once such licensing applications are submitted after the final publication of NUREG–2266, the NRC staff will, as appropriate, evaluate new industry developments and other subsequent ATF activities using this NUREG as the environmental baseline for considering further refinements of the ATF environmental evaluation that those licensing actions may require.

II. Additional Information

The NRC published a notice in the **Federal Register** on September 1, 2023, (88 FR 60507) requesting public comment on draft NUREG–2266, ''Environmental Evaluation of Accident Tolerant Fuels with Increased Enrichment and Higher Burnup Levels.''

The comment period closed on October 31, 2023. Two members of the public and two organizations provided comments on the draft NUREG–2266. Appendix F of the final NUREG–2266 presents the comments received on the draft NUREG–2266, with responses to the comments and indicates whether and where the final NUREG–2266 was revised as a result of a comment. Other text revisions were made for additional clarity. All changes based on public comments are noted with an associated margin mark.

III. Congressional Review Act

This NUREG–2266, ''Environmental Evaluation of Accident Tolerant Fuels with Increased Enrichment and Higher Burnup Levels,'' is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

The NRC's issuance and use of this report does not constitute backfitting as that term is defined in 10 CFR 50.109, 70.76, and 72.62, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; does not affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' and does not constitute forward fitting as that term is defined and described in MD 8.4.

Dated: July 31, 2024.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

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

[FR Doc. 2024–17312 Filed 8–5–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0133]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by September 5, 2024. A request for a hearing or petitions for leave to intervene must be filed by October 7, 2024. This monthly notice includes all amendments issued, or proposed to be issued, from June 21, 2024, to July 18, 2024. The last monthly notice was published on July 9, 2024.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0133. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2242; email: *Paula.Blechman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0133, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0133.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0133, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59

p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUESTS

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL

Docket Nos	50–454, 50–455, 50–456, 50–457.
Application date	April 25, 2024.
ADAMS Accession No	ML24116A112.
Location in Application of NSHC.	Pages 26–27 of Attachment 1.
Brief Description of Amendments.	The proposed amendments would revise the technical specifications (TSs) to remove core operating limits report (COLR) analytical method TS 5.6.5.b.5. The COLR analytical method TS 5.6.5.b.5 implements the anticipated transients without scram moderator temperature limit from the Braidwood Station, Units 1 and 2 and Byron Station, Units 1 and 2 TSs.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Joel Wiebe, 301–415–6606.

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL

Docket Nos	50–237, 50–249.
Application date	May 28, 2024.
ADAMS Accession No	ML24149A261.
Location in Application of NSHC.	Pages 25–27 of the Enclosure.
Brief Description of Amendments.	The proposed amendments would modify the Dresden Nuclear Power Station, Units 2 and 3, licensing basis by the addition of a license condition to implement the provisions of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Surinder Arora, 301–415–1421.

LICENSE AMENDMENT REQUESTS—Continued

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC	
Docket Nos	50–261, 50–400, 50–413, 50–414.
Application date	May 23, 2024.
ADAMS Accession No	ML24149A117.
Location in Application of NSHC.	Pages 5–6 of Enclosure 1.
Brief Description of Amendments.	The proposed amendments would revise technical specifications (TSs) for Catawba Nuclear Station, Units 1 and 2 (CNS); Shearon Harris Nuclear Power Plant, Unit 1 (HNP); and H. B. Robinson Steam Electric Plant, Unit No. 2 (RNP) to adopt Technical Specification Task Force (TSTF) Traveler TSTF–234–A, Revision 1, ''Add Action for More Than One [D]RPI [[Digital] Rod Position Indication] Inoperable.'' The proposed amendments would modify CNS TS 3.1.7, ''Rod Position Indication''; RNP TS 3.1.7, ''Rod Position Indication''; and HNP TS 3.1.3.2, ''Position Indication Systems—Operating,'' to add a Condition (Action for HNP) for more than one inoperable rod position indication per group. For CNS and RNP only, the proposed amendments would also modify the Action Note and provide clarification to the existing Required Actions A.1 and B.1.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 525 S. Tryon Street, Charlotte, NC 28210.
NRC Project Manager, Telephone Number.	Natreon Jordan, 301–415–7410.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No	50–298.
Application date	May 9, 2024.
ADAMS Accession No	ML24131A026.
Location in Application of NSHC.	Pages 4–5 of Attachment 1.
Brief Description of Amendment.	The proposed amendment would relocate cycle specific minimum critical power ratio values from the Cooper Nuclear Station (Cooper) Technical Specification Table 3.3.2.1–1 to the Cooper Core Operating Limits Report.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	John C. McClure, Vice President, Governmental Affairs and General Counsel Nebraska Public Power District, P.O. Box 499, Columbus, NE 68601.
NRC Project Manager, Telephone Number.	Thomas Byrd, 301 415–3719.
NextEra Energy Point Beach, LLC; Point Beach Nuclear Plant, Units 1 and 2; Manitowoc County, WI	
Docket Nos	50–266, 50–301.
Application date	June 26, 2024.
ADAMS Accession No	ML24178A265.
Location in Application of NSHC.	Pages 7–8 of the Enclosure.
Brief Description of Amendments.	The proposed amendments would modify Technical Specifications (TS) 3.6.5, ''Containment Air Temperature,'' by relocating to licensee control, limits on the containment average air temperature measurement, which account for instrument uncertainty and conforming changes to the TS Bases.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Steven Hamrick, Senior Attorney, 801 Pennsylvania Ave. NW, Suite 220 Washington, DC 20004.
NRC Project Manager, Telephone Number.	Scott Wall, 301–415–2855.
Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN	
Docket Nos	50–282, 50–306.
Application date	June 3, 2024.
ADAMS Accession No	ML24155A220 (Package).
Location in Application of NSHC.	Pages 10–12 of Enclosure 1.
Brief Description of Amendments.	The proposed amendments would revise the technical specification (TS) definition of reactor trip system (RTS) response time to allow allocation of response times in lieu of testing using methodologies proposed in the license amendment request, and revise applicability of Surveillance Requirement 3.3.1.16 to RTS trip functions in TS Table 3.3.1–1.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number.	Brent Ballard, 301–415–0680.
PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ	
Docket No	50–354.
Application date	May 20, 2024.

LICENSE AMENDMENT REQUESTS—Continued

ADAMS Accession No	ML24141A136.
Location in Application of NSHC.	Pages 26–28 of the Enclosure.
Brief Description of Amendment.	The proposed amendment would revise the technical specification surveillance requirement performance intervals from 18 months to 24 months by implementing a 24-month fuel cycle.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Francis Romano, PSEG—Services Corporation, 80 Park Plaza, T–10, Newark, NJ 07102.
NRC Project Manager, Telephone Number.	James Kim, 301–415–4125.

PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ

Docket No	50–354.
Application date	May 20, 2024.
ADAMS Accession No	ML24142A428 (Package).
Location in Application of NSHC.	Enclosure 2, Volume 2.
Brief Description of Amendment.	The proposed amendment would revise Hope Creek Generating Station Technical Specifications to Improved Standard Technical Specifications, consistent with NUREG–1433, Revision 5, ''Standard Technical Specifications—General Electric BWR/4 Plants.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Francis Romano, PSEG—Services Corporation, 80 Park Plaza, T–10, Newark, NJ 07102.
NRC Project Manager, Telephone Number.	James Kim, 301–415–4125.

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket Nos	50–348, 50–364, 50–424, 50–425.
Application date	June 28, 2024.
ADAMS Accession No	ML24180A236.
Location in Application of NSHC.	Pages E–3 and E–4 of the Enclosure.
Brief Description of Amendments.	The proposed amendments would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–589, ''Eliminate Automatic Diesel Generator Start During Shutdown,'' which is an approved change to the Standard Technical Specifications, into the Joseph M. Farley Nuclear Plant, Units 1 and 2 and the Vogtle Electric Generating Plant, Units 1 and 2, technical specifications (TSs). TSTF–589 eliminates the TS requirements for automatic diesel generator start and loading during shutdown.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number.	John Lamb, 301–415–3100.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–390, 50–391.
Application date	April 4, 2024.
ADAMS Accession No	ML24095A159.
Location in Application of NSHC.	Pages E12—E13 of the Enclosure.
Brief Description of Amendments.	The proposed amendments would revise Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification (TS) 3.7.11 to modify the TS Actions for two inoperable control room emergency air temperature control system (CREATCS) trains. The proposed changes would allow up to 96 hours to restore one CREATCS train to operable status provided mitigating actions ensure the control room temperature will not exceed 90 degrees Fahrenheit. The proposed changes also include conforming changes to TS 3.7.11, Conditions E and F. Additionally, the proposed changes would delete a previously approved temporary footnote.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number.	Kimberly Green, 301–415–1627.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCES

Arizona Public Service Company, et al; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Maricopa County, AZ	
Docket Nos	50–528, 50–529, 50–530.
Amendment Date	July 17, 2024.
ADAMS Accession No	ML24159A470.
Amendment Nos	223 (Unit 1), 223 (Unit 2), and 223 (Unit 3).
Brief Description of Amendments.	The amendments revised Conditions A and B of Technical Specification (TS) 3.5.1, ''Safety Injection Tanks (SITs)—Operating,'' and TS 3.5.2, ''Safety Injection Tanks (SITs)—Shutdown,'' and their bases using the risk-informed process for evaluations. Specifically, the changes modified the Completion Time for Condition B of TS Limiting Conditions for Operation (LCOs) 3.5.1 and 3.5.2 from 24 hours to 10 days. Additionally, this change deleted the second case of Condition A of LCOs 3.5.1 and 3.5.2 (*i.e.,* ''One SIT inoperable due to inability to verify level or pressure'').
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Constellation Energy Generation, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL	
Docket No	50–461.
Amendment Date	July 11, 2024.
ADAMS Accession No	ML24157A324.
Amendment No	254.
Brief Description of Amendment.	The amendment revised the reactor water cleanup system isolation functions that are listed in Technical Specification 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' Table 3.3.6.1–1, and Primary Containment and Drywell Isolation Instrumentation. Specifically, the change increased the allowable value for Function 4.b, Differential Flow-Timer, and renamed Function 4.b as Differential Flow Timer—High. In addition, new functions were added for a differential flow timer—high-high trip, and an associated differential flow high-high timer.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL	
Docket Nos	50–237, 50–249.
Amendment Date	June 26, 2024.
ADAMS Accession No	ML24138A057.
Amendment Nos	285 (Unit 2) and 278 (Unit 3).
Brief Description of Amendments.	The amendments adopted Technical Specifications Task Force (TSTF) Traveler 564 (TSTF–564), Revision 2, ''Safety Limit MCPR [Minimum Critical Power Ratio].'' The adoption of TSTF–564 revised the TS safety limit on MCPR.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL	
Docket Nos	50–254, 50–265.
Amendment Date	July 3, 2024.
ADAMS Accession No	ML24162A098.
Amendment Nos	301 (Unit 1) and 297 (Unit 2).
Brief Description of Amendments.	The amendments adopted 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCES—Continued

Constellation FitzPatrick, LLC and Constellation Energy Generation, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY	
Docket No	50–333.
Amendment Date	June 26, 2024.
ADAMS Accession No	ML24136A116.
Amendment No	355.
Brief Description of Amendment.	The amendment revised Technical Specifications 3.4, ''Reactor Coolant System (RCS),'' Section 3.4.3, ''Safety/Relief Valves (S/RVs).'' Specifically, Constellation Energy Generation, LLC revised a new safety function lift setpoint lower tolerance for the S/RVs as delineated in Surveillance Requirement 3.4.3.1. The change revised the lower setpoint tolerance from –3 percent to –5 percent.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2; Brunswick County, NC	
Docket Nos	50–325, 50–324.
Amendment Date	June 5, 2024.
ADAMS Accession No	ML24108A070.
Amendment Nos	313 (Unit 1) and 341 (Unit 2).
Brief Description of Amendments.	The amendments revised the license condition associated with the adoption of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors,'' that was added to the Brunswick Steam Electric Plant, Units 1 and 2 Renewed Facility Operating licenses upon the issuance of Amendment Nos. 292 (Unit 1) and 320 (Unit 2), and revised by Amendment Nos. 305 (Unit 1) and 333 (Unit 2). Specifically, the change revised the respective license condition to reflect an alternative approach for evaluating the impact of the seismic hazard in the 10 CFR 50.69 categorization process.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Pope County, AR	
Docket No	50–368.
Amendment Date	June 25, 2024.
ADAMS Accession No	ML24101A179.
Amendment No	333.
Brief Description of Amendment.	The amendment revised the technical specifications to permit the use of risk informed completion times for actions to be taken when limiting conditions for operation are not met. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF 505, Revision 2, ''Provide Risk Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b,'' dated July 2, 2018. The NRC staff issued a final model safety evaluation approving TSTF 505, Revision 2 on November 21, 2018.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No	50–298.
Amendment Date	July 3, 2024.
ADAMS Accession No	ML24134A178.
Amendment No	276.
Brief Description of Amendment.	The amendment modified Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' to allow the use of temporary fuel oil storage tanks to supplement the required fuel inventory used by the emergency diesel generators. This TS change is only applicable for the 2024 Refuel Outage 33 while in Modes 4 or 5 to allow cleaning, inspection, and repair of the permanent diesel fuel oil tanks.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No	50–298.
Amendment Date	July 17, 2024.
ADAMS Accession No	ML24183A172.
Amendment No	277.
Brief Description of Amendment.	This amendment modified Cooper Nuclear Station Technical Specification (TS) 5.5.9, ''Diesel Fuel Oil Testing Program,'' by relocating a reference to specific American Society for Testing and Materials standards for fuel oil testing to licensee-controlled documents. These changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–374, Revision 0, ''Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil,'' dated April 27, 2001 (ML011340449). The NRC approved the traveler on January 13, 2005 (ML050130309).

LICENSE AMENDMENT ISSUANCES—Continued

Public Comments Received as to Proposed NSHC (Yes/No).	No.

PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Salem County, NJ

Docket Nos	50–272, 50–311, 50–354.
Amendment Date	July 15, 2024.
ADAMS Accession No	ML24145A177.
Amendment Nos	236 (Hope Creek), 349 (Salem, Unit 1), and 331 (Salem, Unit 2).
Brief Description of Amendments.	The amendments changed the licensing basis as described in the Hope Creek Generating Station (Hope Creek) and Salem Generating Station (Salem), Units 1 and 2 Updated Final Safety Analysis Reports to account for modifications to the exclusion area boundary for Hope Creek and Salem.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–390, 50–391.
Amendment Date	July 15, 2024.
ADAMS Accession No	ML24170A800.
Amendment Nos	168 (Unit 1) and 74 (Unit 2).
Brief Description of Amendments.	The amendments permanently revised Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification Table 1.1–1, ''MODES,'' footnotes (b) and (c), to allow operation with at least 53 of 54 reactor pressure vessel head closure bolts fully tensioned.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–390, 50–391.
Amendment Date	July 2, 2024.
ADAMS Accession No	ML24131A001.
Amendment Nos	167 (Unit 1) and 73 (Unit 2).
Brief Description of Amendments.	The amendments revised Watts Bar Nuclear Plant, Units 1 and 2, technical specifications requirements for unavailable barriers by adding Limiting Condition for Operation 3.0.9. The revised technical specifications are based on Technical Specifications Task Force (TSTF) traveler TSTF–427, Revision 2, ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: July 24, 2024.

For the Nuclear Regulatory Commission.

Jamie Pelton,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–16657 Filed 8–5–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–464 and CP2024–471; MC2024–465 and CP2024–472; MC2024–466 and CP2024–473; MC2024–467 and CP2024–474]

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:* August 8, 2024.

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).:* MC2024–464 and CP2024–471; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 189 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 31, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* August 8, 2024.

2. *Docket No(s).:* MC2024–465 and CP2024–472; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 190 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 31, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* August 8, 2024.

3. *Docket No(s).:* MC2024–466 and CP2024–473; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 293 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 31, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 8, 2024.

4. *Docket No(s).:* MC2024–467 and CP2024–474; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 294 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 31, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 8, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2024–17345 Filed 8–5–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100620; File No. SR–ICC–2024–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

July 31, 2024.

I. Introduction

On June 4, 2024, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Recovery Plan and Wind-Down Plan. On June 6, 2024, ICC filed Amendment No. 1 to the proposed rule change to make certain changes to Form 19b–4 and Exhibit 1A.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 21, 2024.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing Credit Default Swap (''CDS'') contracts.[5] The proposed rule change would amend both the Recovery Plan and the Wind-Down Plan, which serve as plans for the recovery and orderly wind-down of ICC, respectively, if such recovery or wind-down is necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses incurred by ICC. The Recovery Plan is designed to establish ICC's actions to maintain its viability as a going concern by addressing any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC's viability as a going concern. The Wind-Down Plan is designed to establish how ICC could be wound down in an orderly manner in the event that it cannot continue as a going concern.

B. Recovery Plan

ICC proposes general updates and edits to its Recovery Plan to promote clarity and to ensure that the information in it is current. The proposed amendments to the Recovery Plan reflect and relate to changes that impacted ICC in the past year. To that end, the current Recovery Plan includes in the introduction a disclaimer that, unless otherwise specified, all information provided in the plan is current as of December 31, 2022. The proposed rule change would update that date to December 31, 2023.

The proposed amendments reflect and relate to changes that impacted ICC in the past year, including the addition of new ICC clearing participants (''CP'') (Intesa Sanpaolo S.P.A. and Royal Bank of Canada), the addition of British Pounds Sterling cash (''GBP'') as acceptable client-related initial margin, the removal of references to ICE Clear Europe Limited (''ICEEU'') CDS clearing as that service has closed, and a change to the Managers of the ICC Board of Managers (the ''Board'').

Section IV covers key recovery elements. Within this section, the proposed rule change would update clearing participation (IV.B), management and governance (IV.C), key

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 inserts a bullet point to the ''ICC Recovery Plan'' paragraph of the Form 19b–4 and the Exhibit 1A with the following text, ''description of Guaranty Fund Replenishment in Section VIII.B;''. Amendment No. 1 also removes the same bullet point from the ''ICC Wind-Down Plan'' paragraph of the Form 19b–4 and Exhibit 1A.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICC Recovery Plan and the ICC Wind-Down Plan; Exchange Act Release No. 100335 (June 14, 2024), 89 FR 52138 (June 21, 2024) (File No. SR–ICC–2024–004) (''Notice'').

[5] Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Recovery Plan, Wind-Down Plan, or Clearing Rules, as applicable.

performance metrics (IV.D), and collateral management (IV.E). In Section IV.B, ICC proposes to add new CP Intesa Sanpaolo S.p.A and CP Royal Bank of Canada. In Section IV.C, ICC would update the description of the non-independent managers appointed by ICE US Holding Company L.P. The proposed rule change would amend the description to remove Christopher Edmonds as an independent director of ICE Inc. He is replaced by Elizabeth King, Head of Global Clearing and Chief Regulatory Officer at Intercontinental Exchange, Inc. Currently, Sumit Roy, an independent manager nominated by the ICC risk committee and appointed by ICE Holding, is listed as a Senior Portfolio Manager at Magnetar Capital. He is now listed as former Senior Portfolio Manager at Magnetar Capital. In Section IV.D, ICC would update its revenues, volumes, and expenses for years 2022 and 2023.

In Sections IV.B and IV.E, ICC would make changes to collateral valuation [6] and to reflect the addition of GBP as acceptable margin,[7] which reflects recent ICC rule changes. In Section IV.B, ICC added language stating that acceptable forms of collateral for initial margin now include GBP. In response to the addition of GBP, ICC proposes to revise Section IV.E to clarify the description of ICC's collateral valuation process to cover all collateral types accepted by ICC. ICC previously made changes to its collateral valuation policy under its treasury policy. First, ICC changed the the way it values the collateral that Clearing Participants provide to ICC to cover their margin and guaranty fund requirements. Second, ICC made changes to address circumstances under which it would use a foreign exchange facility to convert one currency to another. ICC made changes to Section IV.E to amend its collateral valuation to reflect those changes.

The proposed rule change also would amend Section VI of the Recovery Plan, which covers interconnections and interdependencies. Specifically, ICC proposes to amend the sections covering operational (VI.A) and financial (VI.B) interdependencies. The proposed rule change would update the Material Legal Entity (''MLE'') Interrconnections Chart in the introduction to Section VI. The proposed updates to Section VI.A would reflect changes in the last year and would update the descriptions of ICC's personnel and facilities, as well as its in-house systems and third-party system. Section VI.B currently includes a ''Counterparty Chart'' that lists all of ICC's CPs and indicates which function(s) each CP performs (*i.e.,* Clearing Participant, Custodian, Depository, etc.). The proposed rule change would update this chart to reflect the addition of new CPs as discussed above.

The proposed rule change would update the description of monitoring mechanisms for CP default in Section VII.A of the Recovery Plan, which addresses ICC's stress scenarios. In Section VII.A, ICC also proposes the addition of a citation to Exchange Act Rule 17Ad–22(e)(4) (17 CFR 240.17Ad–22(e)(4)) to reflect and reference the applicable regulations more accurately.

The proposed rule change would make several updates to Section VIII of the Recovery Plan, which addresses ICC's recovery tools, primarily in Section VIII.B. In Section VIII.B, the proposed rule change first would add a reference to ICC's initial auction procedures. In various subsections of Section VIII.B, the proposed rule change would update financial information to reflect the current information available. Within Section VIII, in relation to direct infusion of cash to ICC from Parent/ICE Group, ICC would update the current description of ICC's, ICE Inc.'s, and ICE Group's respective year-end cash balances to reflect their most current consolidated balance sheets and update the management contact. ICC also adds ''and SEC'' in referencing initial margin requirements and financial resource requirements of the CFTC, so that it now also includes SEC regulations. Section X of the Recovery Plan identifies ICC's Financial Resources for Recovery. The proposed rule change would update the expected costs of recovery and wind-down, including expenses related to legal services, consulting, operations, regulatory capital requirements, and other wind-down costs to reflect current estimates and expenses.

Section XI of the Recovery Plan (financial information) provides the balance sheet and income statement for ICC and the consolidated balance sheet and income statement for ICE Inc. and its subsidiaries. The proposed rule change would update the financial information in this section to reflect the most current financial statements for both entities.

In Section XIII, which covers management information systems, the proposed rule change would update the key ICC reports and descriptions to remove references to reports that ICC no longer uses and add references to new reports. The proposed rule change would update Section XI, Appendix C, which covers banking institutions and the percentage of the guaranty fund, customer margin, and house margin held at each institution as of December 31, 2021. ICC proposes to change the date to December 31, 2023 and update the percentage of holdings for the guaranty fund, customer margin, and house margin at each banking institution. Finally, the proposed rule change would make non-substantive typographical fixes in the ICC Recovery Plan, including grammatical and formatting changes.

C. Wind-Down Plan

ICC proposes updates and edits to the Wind-Down Plan that reflect and relate to changes that have impacted ICC in the past year, as well as general updates and edits to promote clarity and to ensure that the information provided is current. The changes that impacted ICC in the past year include the addition of new CPs (Intesa Sanpaolo S.p.A. and Royal Bank of Canada), the removal of references to ICEEU as that service has closed, and a change to the Managers of the Board.

The current Wind-Down Plan includes in the introduction a disclaimer that, unless otherwise specified, all information provided in the plan is current as of December 31, 2022. The proposed rule change would update that date to December 31, 2023.

Section II of the Wind-Down Plan is an overview of the structure of ICC. Section II.A addresses ownership of ICC. ICC states that, within the ICE Group's activities, there are eight derivatives exchanges and a total of six clearing houses including ICC. ICC proposes to remove the word ''to.'' Section IV addresses membership and ICC governance. The proposed rule change would amend Section IV.B to reflect that Christopher Edmonds was not reappointed and Elizabeth King, as discussed above, was appointed as an independent director instead. Additionally, the proposed rule change would update Section IV.A to reflect the addition of two new CPs, as discussed above.

Section VII of the Wind-Down Plan discusses ICC's interconnections and interdependencies, and the impact of each on the Wind-Down Plan. For example, as explained in the introduction to this section, ICC relies

[6] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to to ICC's Treasury Operations Policies and Procedures, Exchange Act Release No. 98572 (Sep. 27, 2023); 88 FR 68211 (Oct. 3, 2023) (SR–ICC–2023–013).

[7] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to British Pounds Sterling as Client-Related Margin, Exchange Act Release No. 97489 (May 11, 2023); 88 FR 31571 (May 17, 2023) (SR–ICC–2023–003).

on affiliated entities for certain operational and financial services. The Wind-Down Plan considers certain of these affiliated entities to be ''Material Legal Entities.'' As defined in the Wind-Down Plan, a Material Legal Entity is a legal entity that is significant to ICC's activities and the delivery of clearing services.

The Wind-Down Plan identifies ICE Inc. as ICC's sole Material Legal Entity. Currently, the Wind-Down Plan explains that ICC relies on ICE Inc. for certain shared services, such as accounting, HR, facilities, and intellectually property. The proposed rule change would expand this list of examples to include corporate finance, internal audit, enterpretrise risk management, and systems operations. These additions would help ensure that the Wind-Down Plan describes the current scope of services provided to ICC by ICE Inc.

Section VII.C describes ICC's operational services, including the facilities where it operates. The proposed rule change would add to the description of facilities a description of ICC's office in Jacksonville, Florida. This description would include a list of the activities performed out of the Jacksonville facility, such as legal and compliance functions. Also in VII.C, the proposed rule change would update the number of ICC employees to reflect the current headcount, including breakdowns by various functions. Finally, the proposed rule change would update the table of ICC's third-party systems and the table of ICC's in-house systems to remove certain systems no longer in use.

Section VII.D describes financial services provided to ICC. Section VII.D contains a chart of ICC's counterparties and categorizes these counterparties by type (such as CP, custodian, investment manager). The proposed rule change would update this chart to reflect the new CPs noted above.

Section IX of the Wind-Down Plan addresses financial resources to support wind-down. ICC would update this section to reflect current financial information, including revenues and operating costs.

Finally, the proposed rule change would update Section XI, Appendix C, which covers banking institutions and the percentage of the guaranty fund, customer margin, and house margin held at each institution as of December 31, 2021. ICC proposes to change the date to December 31, 2023 and update the percentage of holdings for the guaranty fund, customer margin, and house margin at each banking institution.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[8] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [9]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[10] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[11] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[12]

After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICC. For the reasons given below, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A(b)(3)(F) of the Act [13] and Rule 17Ad–22(e)(3)(ii).[14]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed, to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[15]

As noted above, the proposed rule change primarily would update the Recovery Plan and Wind-Down Plan with current information about ICC's facilities, finances, and Board. By providing the most current information for ICC's revenues, volumes, and expenses, the proposed rule change will support ICC's ability to monitor its finances and compare its regulatory capital to its estimated recovery and wind-down costs. This in turn will help ensure ICC has the financial resources to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

Further, updating the Counterparty Chart to reflect both new CPs and the addition of GBP as acceptable margin will generally support those utilizing the Plans by providing users of the Plans with a correct overview of ICC's CPs and currencies accepted. These proposed changes would strengthen both plans by ensuring those utilizing them have information necessary to carry out recovery or an orderly wind-down, which in turn should help ICC to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

ICC's CPs provide cash and securities to ICC to satisfy their various guaranty fund and margin requirements. ICC in turn allocates these funds and securities among different financial institutions, including its accounts at the Federal Reserve Bank of Chicago and at certain depository institutions. ICC proposes to update the description of the allocation of funds among these acccounts to reflect current allocations. Like the other changes discussed above, these proposed changes would strengthen the plans by providing a correct overview of ICC's usage of its financial accounts. Users of the plans could utilize this information to carry out recovery or an orderly wind-down. Thus, these changes would help ICC to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

For the reasons stated above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A(b)(3)(F) of the Act.[16]

[8] 15 U.S.C. 78s(b)(2)(C).

[9] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[10] *Id.*

[11] *Id.*

[12] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(3)(ii).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 15 U.S.C. 78q–1(b)(3)(F).

B. Consistency With Rule 17Ad–22(e)(3)(ii)

Rule 17Ad–22(e)(3)(ii) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[17]

The proposed changes described above would support ICC's maintenance of plans for the recovery and orderly wind-down of ICC by helping ensure that the plans are updated with current, accurate financial, personnel, and Board information. The proposed rule change also updates details regarding the allocation of guaranty fund and margin among ICC's financial institutions, which helps ensure that those using the plans have current financial information and an accurate understanding of the potential resources available for recovery or an orderly wind-down.

Therefore, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Rule 17Ad–22(e)(3)(ii).[18]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[19] and Rule 17Ad–22(e)(3)(ii).[20]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[21] that the proposed rule change, as modified by Amendment No. 1 (SR–ICC–2024–004), be, and hereby is, approved.[22]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17282 Filed 8–5–24; 8:45 am]

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[17] 17 CFR 240.17Ad–22(e)(3)(ii).

[18] 17 CFR 240.17Ad–22(e)(3)(ii).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(e)(3)(ii).

[21] 15 U.S.C. 78s(b)(2).

[22] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100625; File No. SR–NYSE–2024–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7.31

July 31, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 25, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31 Rule 7.31 regarding MPL–ALO Orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31 regarding MPL–ALO Orders.

Rule 7.31(d)(3) defines a Mid-Point Liquidity Order (''MPL Order'') as a Limit Order to buy (sell) that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the PBBO or its limit price. An MPL Order is ranked Priority 3—Non-Display Orders, is valid for any session, and does not participate in auctions.

Rule 7.31(d)(3)(A) provides that an MPL Order to buy (sell) must be designated with a limit price in the MPV for the security and will be eligible to trade at the working price of the order.

Rule 7.31(d)(3)(B) provides that if there is no PBB, PBO, or the PBBO is locked or crossed, both an arriving and resting MPL Order will wait for a PBBO that is not locked or crossed before being eligible to trade. If a resting MPL Order to buy (sell) trades with an MPL Order to sell (buy) after there is an unlocked or uncrossed PBBO, the MPL Order with the later working time will be the liquidity-removing order.

Rule 7.31(d)(3)(C) provides that an Aggressing MPL Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price at or below (above) the working price of the MPL Order. Resting MPL Orders to buy (sell) will trade against all Aggressing Orders to sell (buy) priced at or below (above) the working price of the MPL Order.

Rule 7.31(d)(3)(D) provides that an MPL Order may be designated IOC (''MPL–IOC Order''). Subject to such IOC instructions, an MPL–IOC Order will follow the same trading and priority rules as an MPL Order, expect that an MPL–IOC Order will be rejected if there is no PBBO or the PBBO is locked or crossed. An MPL–IOC Order cannot be designated ALO or with a Non-Display Remove Modifier.

Rule 7.31(d)(3)(E) and the subparagraphs thereunder define the MPL–ALO Order, which is an MPL Order designated with an ALO Modifier.[4] An Aggressing[5] MPL–ALO Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order, but will not trade with resting orders to sell (buy) priced equal to the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book. *See* NYSE Rule 7.31(e)(2).

[5] An ''Aggressing Order'' is a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. A resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the Exchange Book, or when processing inbound messages. *See* Rule 7.36(a)(6).

less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order (Rule 7.31(d)(3)(E)(i)). If an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy), a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL–ALO Order will trade ahead of a resting order to sell (buy) that is not displayed at that price; if such resting order to sell (buy) is displayed, the MPL–ALO Order to buy (sell) will not be eligible to trade at that price (Rule 7.31(d)(3)(E)(ii)). An MPL–ALO Order may not be designated with a Non-Display Remove Modifier (Rule 7.31(d)(3)(E)(iii)).

Proposed Rule Change

Currently, Aggressing MPL–ALO Orders to buy (sell) may trade with resting orders priced below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order (*i.e.,* priced below (above) the MPL–ALO Order's working price), regardless of the amount of price improvement the Aggressing MPL–ALO Order would receive. The Exchange proposes to amend Rule 7.31(d)(3)(E)(i) to provide that an Aggressing MPL–ALO Order would only be eligible to trade with resting orders when it would receive price improvement over the MPL–ALO Order's working price of at least one MPV. This proposed change would not impact non-Aggressing MPL–ALO Orders (*e.g.,* MPL–ALO Orders resting on the Exchange Book). A non-Aggressing MPL–ALO Order would continue to provide liquidity at its working price unless it would not be eligible to trade as outlined in Rules 7.31(d)(3)(E)(ii)(a) and (b), as amended below.

The Exchange next proposes to amend Rule 7.31(d)(3)(E)(ii) to provide that an MPL–ALO Order not eligible to trade as described in proposed Rule 7.31(d)(3)(E)(i) would be ranked in the Exchange Book at its working price and would not trade at that price if it would lock or cross displayed interest or cross non-displayed interest on the Exchange Book. Specifically, the Exchange proposes to add new Rules 7.31(d)(3)(E)(ii)(a) and (b) to provide that resting MPL–ALO Orders would not be eligible to trade (a) at a price equal to or above (below) any sell (buy) orders that are displayed and that have a working price equal to or below (above) the working price of the MPL–ALO Order, or (b) at a price above (below) any sell (buy) orders that are not displayed and that have a working price below (above) the working price of the MPL–ALO Order. The Exchange notes that the circumstances under which such orders would not be able to trade are consistent with the Exchange's existing priority and ranking rules.

The Exchange further proposes to renumber current Rule 7.31(d)(3)(E)(ii) as Rule 7.31(d)(3)(E)(iii) and to amend the text of the rule to provide that if an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy) that is not displayed, a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL–ALO Order will trade ahead of such resting order to sell (buy). This proposed change is not intended to change the meaning of the rule, but rather to clarify that, if an MPL–ALO Order is resting at the same price as resting non-displayed interest, a subsequently arriving order that is eligible to trade with that MPL–ALO Order would, as currently, be permitted to trade ahead of such interest. The Exchange further proposes to delete the last sentence of current Rule 7.31(d)(3)(E)(ii), which provides that an MPL–ALO Order would not be eligible to trade at the price of a displayed resting order to buy (sell), as duplicative of proposed Rule 7.31(d)(3)(E)(ii)(a) described above.

The following example demonstrates how an arriving Aggressing MPL–ALO Order would trade or be ranked on the Exchange Book, as proposed:

- Assume the PBBO[6] is $10.00 × $10.05 (midpoint is $10.025). On the Exchange Book, there is a Limit Order to sell 90 shares at $10.02 (''Order 1'') and an MPL Order to sell 100 shares at $10.00 (''Order 2''). Order 1 is displayed at its working price of $10.02. Order 2 is non-displayed and has a working price at the midpoint, $10.025.
- Order 3 is an incoming MPL–ALO Order to buy 100 shares at $10.05. Order 3, as an Aggressing MPL–ALO Order, would not trade with either Order 1 or Order 2 because it would receive less than $0.01 price improvement over the midpoint. Pursuant to proposed Rule 7.31(d)(3)(E)(ii), Order 3 would be ranked on the Exchange Book at its working price, $10.025 (which is the midpoint, as the working price of an MPL–ALO Order to buy is the lower of the midpoint or the order's limit price).
- Order 4 is an incoming MPL–IOC Order to sell 100 shares at $10.00. Order 4 would not trade with Order 3 (which is now ranked on the Exchange Book at its working price) at $10.025 per proposed Rule 7.31(d)(3)(E)(ii)(a) because an execution at that price would be at a price above displayed interest on the Exchange Book (Order 1 at $10.02). Order 4, as an IOC Order, would be cancelled because it does not execute.
- Assume Order 1 is cancelled, and Order 5 is an incoming MPL–IOC Order to sell 100 shares at $10.00. Order 5 would trade with Order 3 (where Order 3 is the liquidity provider) at $10.025, consistent with proposed Rule 7.31(d)(3)(E)(iii), because the trade would execute at a price that is not above the price of any displayed or non-displayed interest on the Exchange Book, although it would be at the same price as Order 2 (non-displayed interest on the Exchange Book).[7]

The following example demonstrates how an MPL–ALO Order that is resting on the Exchange Book and subsequently becomes an Aggressing MPL–ALO Order (in this example, when the PBBO is updated) would trade, as proposed:

- Assume the PBBO is $10.00 × $10.05 (midpoint is $10.025). Order 1 is a non-displayed Limit Order to sell 100 shares at $10.03, resting on the Exchange Book at its working price of $10.03. Order 2 is an MPL–ALO Order to buy 100 shares at $10.05. Order 2 is resting non-displayed on the Exchange Book at its working price of $10.025 (which is the midpoint, as the working price of an MPL–ALO Order to buy is the lower of the midpoint or the order's limit price).
- Assume the PBBO updates to $10.03 × $10.05 (midpoint is $10.04). Order 2 reprices to the new midpoint, $10.04, and becomes an Aggressing Order because its working price has changed and the PBBO has updated. Order 2 will trade as an Aggressing Order (as the liquidity taker) with Order 1 at $10.03 because it would receive $0.01 price improvement over its working price.

Finally, the Exchange proposes to renumber current Rule 7.31(d)(3)(E)(iii) as Rule 7.31(d)(3)(E)(iv) to reflect the addition of the new rule text described above, without any changes to the text of the rule.

The Exchange believes that the proposed change, which would allow an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV, would promote

[6] ''Best Protected Bid'' or ''PBB'' means the highest Protected Bid, ''Best Protected Offer'' or ''PBO'' means the lowest Protected Offer, and ''Protected Best Bid and Offer'' or ''PBBO'' means the Best Protected Bid and the Best Protected Offer. *See* Rule 1.1(r).

[7] As noted above, Rule 7.31(d)(3)(E)(iii), as amended, reflects current Rule 7.31(d)(3)(E)(ii), which provides that an MPL–ALO Order that is resting at the same price as resting non-displayed interest would be permitted to trade with a subsequently arriving order that is eligible to trade with that MPL–ALO Order, ahead of the non-displayed interest.

higher-quality executions for member organizations and provide member organizations with greater certainty regarding the amount of price improvement such executions would receive, thereby encouraging increased order flow to the Exchange and enhanced opportunities for order execution for all market participants. The Exchange notes that evaluating the economic benefit of an execution is not a novel concept on equity exchanges.[8] Accordingly, the Exchange believes that this proposed change, which would consider the amount of price improvement that an Aggressing MPL–ALO Order would receive upon execution, would offer member organizations a similar benefit to that available on at least one other equity exchange for an order type similar to the MPL–ALO Order and could thus promote competition among equity exchanges.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because allowing an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV would promote higher-quality executions for member organizations, thereby encouraging increased order flow to the Exchange and enhanced trading opportunities for all market participants. The Exchange also believes that the proposed conforming changes to Rule 7.31(d)(3)(E) would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest by clarifying how Aggressing MPL–ALO Orders that would not be eligible to trade based on the amount of price improvement would be ranked and would trade once resting, in accordance with the Exchange's priority and ranking rules. Finally, the Exchange notes that considering the economic benefit of an execution is not a novel concept and believes that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by providing member organizations with greater certainty as to the amount of price improvement they would receive when an Aggressing MPL–ALO Order executes, as well as by promoting competition among equity exchanges.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would amend Exchange rules to permit Aggressing MPL–ALO Orders to trade only when they would receive price improvement of at least one MPV over their working price, thereby providing a minimum amount of price improvement for member organizations entering such orders. To the extent the proposed rule change promotes higher-quality executions on the Exchange, the proposed change could encourage increased order flow to the Exchange and facilitate additional trading opportunities for all market participants. In addition, at least one other equity exchange considers the economic benefit to the entering party when evaluating whether a similar order type may trade, and the Exchange's proposal would thus promote competition among exchanges by providing a minimum amount of price improvement to Aggressing MPL–ALO Orders.[12] The Exchange also believes that, to the extent the proposed change would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange is requesting the waiver because it will allow the Exchange to implement the proposed change as soon as the associated technology is available, which is anticipated to be less than 30 days from the date of this filing. The Exchange believes the proposed change would provide member organizations with greater certainty regarding the amount of price improvement their Aggressing MPL–ALO Orders would receive, thereby promoting higher-quality executions and encouraging increased order flow to the Exchange for the benefit of all market participants. For these reasons, and because the proposed

[8] *See, e.g.,* Nasdaq Stock Market LLC, Equity 4, Rule 4702(b)(5)(A) (defining the Midpoint Peg Post-Only Order, which is priced at the midpoint between the NBBO and will execute upon entry only in circumstances where economically beneficial to the party entering such order).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 8, *supra.*

[12] *See* note 8, *supra.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–41 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–2024–41. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–41 and should be submitted on or before August 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

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BILLING CODE 8011–01–P

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100630; File No. SR–SAPPHIRE–2024–03]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 100, Definitions; Rule 518, Complex Orders; and Rule 530, Limit Up-Limit Down

July 31, 2024.

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 July 24, 2024, MIAX

Sapphire, LLC (''MIAX Sapphire'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 100, Definitions; Rule 518, Complex Orders; and Rule 530, Limit Up-Limit Down.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 100 to adopt a definition for the term ''Professional Interest'' to mean, ''an order that is for the account of a person or entity that is not a Priority Customer, or, ''an order for the account of a Market Maker.'' [3] This definition is substantively identical to the definition of ''Professional Interest'' on the Exchange's affiliate, MIAX Emerald.[4]

The Exchange proposes to update citations to Rule 600(b) of Regulation NMS in Exchange Rule 518, Complex Orders; Rule 530, Limit Up-Limit Down.

In 2021, the Securities and Exchange Commission (the ''Commission'') amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.[5] As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definitions of Trading Center (formerly Rule 600(b)(78)), NMS Stock (formerly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Professional Interest'' is used in establishing complex order priority for stock-option orders. *See* Exchange Rule 518(c)(3)(ii).

[4] The term ''Professional Interest'' means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. *See* MIAX Emerald Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

Rule 600(b)(47)), and Regular Trading Hours (formerly Rule 600(b)(64)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows:

- The citation to the definition of NMS Stock in Rule 518 would be changed to Rule 600(b)(55).
- The citation to the definition of Trading Center in Rule 518 would be changed to Rule 600(b)(95).
- The citation to the definition of Regular Trading Hours in Rule 530, Limit Up-Limit Down, would be changed to Rule 600(b)(77).

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes that its proposed rule change is consistent with Section 6(b)(5)[7] requirements in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes the proposed change to adopt a definition for Professional Interest promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change would provide greater clarity to investors and the public regarding the operation of the Exchange's Rules. It is in the public interest for rules to be clear and accurate so as to avoid the potential for confusion.

Additionally, the Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that Members[8] would benefit from the increased clarity, thereby reducing potential confusion and ensuring that those subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule changes would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address competitive issues but rather would provide additional clarity in the Exchange's rule by adopting a definition for Professional Interest and by modifying Exchange rules to provide the correct citations to Rule 600(b) of Regulation NMS. Since the proposal does not substantively modify System[9] functionality or processes on the Exchange, the proposed changes will not impose any burden on competition nor are they meant to affect competition among the exchanges.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that a waiver of the operative delay would permit the Exchange to adopt a definition for Professional Interest and to promptly correct citations to Rule 600(b) of Regulation NMS in order to alleviate potential investor or public confusion and to add clarity to it rules. For these reasons, and because the proposed rule change does not raise any new or novel legal or regulatory issues, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] 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,

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–SAPPHIRE–2024–03 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–SAPPHIRE–2024–03. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–SAPPHIRE–2024–03 and should be submitted on or before August 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17276 Filed 8–5–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100622; File No. 4–443]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Add MIAX Sapphire, LLC as a Plan Sponsor

July 31, 2024.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on July 26, 2024, MIAX Sapphire, LLC (''MIAX Sapphire'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (''OLPP'' or ''Plan'').[3] The Commission approved the application of MIAX Sapphire to register as a national securities exchange on July 15, 2024.[4] One of the conditions of the Commission's approval of MIAX Sapphire was the requirement for the Exchange to join the OLLP.[5] The amendment adds MIAX Sapphire as a Plan Sponsor[6] of the OLPP.[7] The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

The OLPP establishes procedures designed to facilitate the listing and trading of standardized options contracts on the options exchanges. The amendment to the OLPP adds MIAX Sapphire as a Sponsor. The other OLPP Sponsors are BOX, Cboe, Cboe BZX, Cboe C2, Cboe EDGX, MEMX, MIAX, MIAX Emerald, MIAX PEARL, Nasdaq, Nasdaq BX, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, Nasdaq Phlx, NYSE American, NYSE Arca, and OCC. MIAX Sapphire has submitted an executed copy of the OLPP to the Commission in accordance with the procedures set forth in the OLPP regarding new Plan Sponsors. Section 7 of the OLPP provides for the entry of new Plan Sponsors to the OLPP. Specifically, Section 7 of the OLPP provides that an Eligible Exchange[8] may become a Plan Sponsor of the OLPP by: (i) executing a copy of the OLPP, as then in effect; (ii) providing each then-current Plan Sponsor with a copy of such executed OLPP; and (iii) effecting an amendment to the OLPP, as specified in Section 7(ii) of the OLPP.[9]

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC (''Amex'') (n/k/a NYSE American, LLC (''NYSE American'')), Chicago Board Options Exchange, Incorporated (''Cboe''), International Securities Exchange LLC (''ISE'') (n/k/a Nasdaq ISE, LLC (''Nasdaq ISE'')), Options Clearing Corporation (''OCC''), Philadelphia Stock Exchange, Inc. (''Phlx'') (n/k/a Nasdaq Phlx LLC (Nasdaq Phlx)), and Pacific Exchange, Inc. (''PCX'') (n/k/a NYSE Arca, Inc. (''NYSE Arca'')). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). *See also* Securities Exchange Act Release Nos. 49199 (Feb. 5, 2004), 69 FR 7030 (Feb. 12, 2004) (adding Boston Stock Exchange, Inc. as a Sponsor to the OLPP); 57546 (Mar. 21, 2008), 73 FR 16393 (Mar. 27, 2008) (adding Nasdaq Stock Market, LLC (''Nasdaq'') as a Sponsor to the OLPP); 61528 (Feb. 17, 2010), 75 FR 8415 (Feb. 24, 2010) (adding BATS Exchange, Inc. (''BATS'') (n/k/a Cboe BZX Exchange, Inc. (''Cboe BZX'')) as a Sponsor to the OLPP); 63162 (Oct. 22, 2010), 75 FR 66401 (Oct. 28, 2010) (adding C2 Options Exchange Incorporated (''C2'') (n/k/a Cboe C2 Exchange, Inc. (''Cboe C2'')) as a sponsor to the OLPP); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC (''BOX'') as a Sponsor to the OLPP); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. (''BX'') (n/k/a Nasdaq BX, Inc. (''Nasdaq BX'')) as a Sponsor to the OLPP); 70765 (Oct. 28, 2013), 78 FR 65739 (Nov. 1, 2013) (adding Topaz Exchange, LLC as a Sponsor to the OLPP (''Topaz'') (n/k/a Nasdaq GEMX, LLC (''Nasdaq GEMX''); 70764 (Oct. 28, 2013), 78 FR 65733 (Nov. 1, 2013) (adding Miami International Securities Exchange, LLC (''MIAX'') as a Sponsor to the OLPP); 76822 (Jan. 1, 2016), 81 FR 1251 (Jan. 11, 2016) (adding EDGX Exchange, Inc. (''EDGX'') (n/k/a Cboe EDGX Exchange, Inc. (''Cboe EDGX'')) as a Sponsor to the OLPP); 77323 (Mar. 8, 2016), 81 FR 13433 (Mar. 14, 2016) (adding ISE Mercury, LLC (''ISE Mercury'') (n/k/a Nasdaq MRX, LLC (''Nasdaq MRX'')) as a Sponsor to the OLPP); 79897 (Jan. 30, 2017), 82 FR 9263 (Feb. 3, 2017) (adding MIAX PEARL, LLC (''MIAX PEARL'') as a Sponsor to the OLPP), 85228 (Mar. 1, 2019), 84 FR 8355 (Mar. 7, 2019) (adding MIAX Emerald, LLC (''MIAX Emerald'') as a Sponsor to the OLPP), and 98388 (Sept. 14, 2023), 88 FR 64963 (Sept. 20, 2023)(adding MEMX LLC (''MEMX'') as a Sponsor to the OLPP).

[4] *See* Securities and Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240) (order granting registration as a national securities exchange for MIAX Sapphire).

[5] *See id.* at 58866.

[6] A ''Plan Sponsor'' is an Eligible Exchange whose participation in the OLPP has become effective pursuant to Section 7 of the OLPP.

[7] *See* Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, to Vanessa Countryman, Secretary, Commission, dated July 26, 2024 (''Amendment'').

[8] The OLPP defines an ''Eligible Exchange'' as ''a national securities exchange registered with the [Commission] in accordance with Section 6(a) of the [Act] that (1) has effective rules for the trading of options contracts issued and cleared by OCC approved in accordance with the provisions of the [Act] and the rules and regulations thereunder; and (2) is a party to the Plan for Reporting Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan'').'' *See* OLPP Section 7(i). MIAX Sapphire has represented that it has met both the requirements for being considered an Eligible Exchange. *See* Amendment, *supra* note 7 at 2.

[9] MIAX Sapphire has represented that it has executed a copy of the current Plan, amended to

Continued

Section 7(ii) of the OLPP sets forth the process by which an Eligible Exchange may effect an amendment to the OLPP to become a Plan Sponsor. Specifically, an Eligible Exchange must: (a) execute a copy of the OLPP as then in effect with the only change being the addition of the new Plan Sponsor's name in Section 9 of the OLPP; [10] and (b) submit the executed OLPP to the Commission. The OLPP then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

II. Effectiveness of the OLPP Amendment

The foregoing OLPP amendment has become effective pursuant to Rule 608(b)(3)(iii) [11] because it has been designated by the sponsors as involving solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[12] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendment is consistent with the Act and the rules thereunder. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number 4–443 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 4–443. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the plan that are filed with the Commission, and all written communications relating to the plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4–443 and should be submitted on or before August 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

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include MIAX Sapphire as a Plan Sponsor in Section 9 of the Plan, and has provided each current Plan Sponsor with a copy of the executed and amended Plan. *See* Amendment, *supra* note 7 at 2.

[10] The list of Plan Sponsors is set forth in Section 9 of the OLPP.

[11] 17 CFR 242.608(b)(3)(iii).

[12] 17 CFR 242.608(a)(1).

[13] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100626; File No. SR–NYSEAMER–2024–47]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify Rule 7.31E

July 31, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 25, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31E regarding MPL–ALO orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31E regarding MPL–ALO Orders.

Rule 7.31E(d)(3) defines a Mid-Point Liquidity Order (''MPL Order'') as a Limit Order to buy (sell) that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the PBBO or its limit price. An MPL Order is ranked Priority 3—Non-Display Orders, is valid for any session, and does not participate in auctions.

Rule 7.31E(d)(3)(A) provides that an MPL Order to buy (sell) must be designated with a limit price in the MPV for the security and will be eligible to trade at the working price of the order.

Rule 7.31E(d)(3)(B) provides that if there is no PBB, PBO, or the PBBO is locked or crossed, both an arriving and resting MPL Order will wait for a PBBO that is not locked or crossed before being eligible to trade. If a resting MPL Order to buy (sell) trades with an MPL

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Order to sell (buy) after there is an unlocked or uncrossed PBBO, the MPL Order with the later working time will be the liquidity-removing order.

Rule 7.31E(d)(3)(C) provides that an Aggressing MPL Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price at or below (above) the working price of the MPL Order. Resting MPL Orders to buy (sell) will trade against all Aggressing Orders to sell (buy) priced at or below (above) the working price of the MPL Order.

Rule 7.31E(d)(3)(D) provides that an MPL Order may be designated IOC (''MPL–IOC Order''). Subject to such IOC instructions, an MPL–IOC Order will follow the same trading and priority rules as an MPL Order, expect that an MPL–IOC Order will be rejected if there is no PBBO or the PBBO is locked or crossed. An MPL–IOC Order cannot be designated ALO or with a Non-Display Remove Modifier.

Rule 7.31E(d)(3)(E) and the subparagraphs thereunder define the MPL–ALO Order, which is an MPL Order designated with an ALO Modifier.[4] An Aggressing[5] MPL–ALO Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order, but will not trade with resting orders to sell (buy) priced equal to the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order (Rule 7.31E(d)(3)(E)(i)). If an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy), a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL–ALO Order will trade ahead of a resting order to sell (buy) that is not displayed at that price; if such resting order to sell (buy) is displayed, the MPL–ALO Order to buy (sell) will not be eligible to trade at that price (Rule 7.31E(d)(3)(E)(ii)). An MPL–ALO Order may not be designated with a Non-Display Remove Modifier (Rule 7.31E(d)(3)(E)(iii)).

Proposed Rule Change

Currently, Aggressing MPL–ALO Orders to buy (sell) may trade with resting orders priced below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order (*i.e.,* priced below (above) the MPL–ALO Order's working price), regardless of the amount of price improvement the Aggressing MPL–ALO Order would receive. The Exchange proposes to amend Rule 7.31E(d)(3)(E)(i) to provide that an Aggressing MPL–ALO Order would only be eligible to trade with resting orders when it would receive price improvement over the MPL–ALO Order's working price of at least one MPV. This proposed change would not impact non-Aggressing MPL–ALO Orders (*e.g.,* MPL–ALO Orders resting on the Exchange Book). A non-Aggressing MPL–ALO Order would continue to provide liquidity at its working price unless it would not be eligible to trade as outlined in Rules 7.31E(d)(3)(E)(ii)(a) and (b), as amended below.

The Exchange next proposes to amend Rule 7.31E(d)(3)(E)(ii) to provide that an MPL–ALO Order not eligible to trade as described in proposed Rule 7.31E(d)(3)(E)(i) would be ranked in the Exchange Book at its working price and would not trade at that price if it would lock or cross displayed interest or cross non-displayed interest on the Exchange Book. Specifically, the Exchange proposes to add new Rules 7.31E(d)(3)(E)(ii)(a) and (b) to provide that resting MPL–ALO Orders would not be eligible to trade (a) at a price equal to or above (below) any sell (buy) orders that are displayed and that have a working price equal to or below (above) the working price of the MPL–ALO Order, or (b) at a price above (below) any sell (buy) orders that are not displayed and that have a working price below (above) the working price of the MPL–ALO Order. The Exchange notes that the circumstances under which such orders would not be able to trade are consistent with the Exchange's existing priority and ranking rules.

The Exchange further proposes to renumber current Rule 7.31E(d)(3)(E)(ii) as Rule 7.31E(d)(3)(E)(iii) and to amend the text of the rule to provide that if an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy) that is not displayed, a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL–ALO Order will trade ahead of such resting order to sell (buy). This proposed change is not intended to change the meaning of the rule, but rather to clarify that, if an MPL–ALO Order is resting at the same price as resting non-displayed interest, a subsequently arriving order that is eligible to trade with that MPL–ALO Order would, as currently, be permitted to trade ahead of such interest. The Exchange further proposes to delete the last sentence of current Rule 7.31E(d)(3)(E)(ii), which provides that an MPL–ALO Order would not be eligible to trade at the price of a displayed resting order to buy (sell), as duplicative of proposed Rule 7.31E(d)(3)(E)(ii)(a) described above.

The following example demonstrates how an arriving Aggressing MPL–ALO Order would trade or be ranked on the Exchange Book, as proposed:

- Assume the PBBO[6] is $10.00 × $10.05 (midpoint is $10.025). On the Exchange Book, there is a Limit Order to sell 90 shares at $10.02 (''Order 1'') and an MPL Order to sell 100 shares at $10.00 (''Order 2''). Order 1 is displayed at its working price of $10.02. Order 2 is non-displayed and has a working price at the midpoint, $10.025.
- Order 3 is an incoming MPL–ALO Order to buy 100 shares at $10.05. Order 3, as an Aggressing MPL–ALO Order, would not trade with either Order 1 or Order 2 because it would receive less than $0.01 price improvement over the midpoint. Pursuant to proposed Rule 7.31E(d)(3)(E)(ii), Order 3 would be ranked on the Exchange Book at its working price, $10.025 (which is the midpoint, as the working price of an MPL–ALO Order to buy is the lower of the midpoint or the order's limit price).

[4] An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book. *See* NYSE American Rule 7.31E(e)(2).

[5] An ''Aggressing Order'' is a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. A resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the Exchange Book, or when processing inbound messages. *See* Rule 7.36E(a)(5).

[6] ''Best Protected Bid'' or ''PBB'' means the highest Protected Bid, ''Best Protected Offer'' or ''PBO'' means the lowest Protected Offer, and ''Protected Best Bid and Offer'' or ''PBBO'' means the Best Protected Bid and the Best Protected Offer. *See* Rule 1.1E(dd).

• Order 4 is an incoming MPL–IOC Order to sell 100 shares at $10.00. Order 4 would not trade with Order 3 (which is now ranked on the Exchange Book at its working price) at $10.025 per proposed Rule 7.31E(d)(3)(E)(ii)(a) because an execution at that price would be at a price above displayed interest on the Exchange Book (Order 1 at $10.02). Order 4, as an IOC Order, would be cancelled because it does not execute.

• Assume Order 1 is cancelled, and Order 5 is an incoming MPL–IOC Order to sell 100 shares at $10.00. Order 5 would trade with Order 3 (where Order 3 is the liquidity provider) at $10.025, consistent with proposed Rule 7.31E(d)(3)(E)(iii), because the trade would execute at a price that is not above the price of any displayed or non-displayed interest on the Exchange Book, although it would be at the same price as Order 2 (non-displayed interest on the Exchange Book).[7]

The following example demonstrates how an MPL–ALO Order that is resting on the Exchange Book and subsequently becomes an Aggressing MPL–ALO Order (in this example, when the PBBO is updated) would trade, as proposed:

• Assume the PBBO is $10.00 × $10.05 (midpoint is $10.025). Order 1 is a non-displayed Limit Order to sell 100 shares at $10.03, resting on the Exchange Book at its working price of $10.03. Order 2 is an MPL–ALO Order to buy 100 shares at $10.05. Order 2 is resting non-displayed on the Exchange Book at its working price of $10.025 (which is the midpoint, as the working price of an MPL–ALO Order to buy is the lower of the midpoint or the order's limit price).

• Assume the PBBO updates to $10.03 × $10.05 (midpoint is $10.04). Order 2 reprices to the new midpoint, $10.04, and becomes an Aggressing Order because its working price has changed and the PBBO has updated. Order 2 will trade as an Aggressing Order (as the liquidity taker) with Order 1 at $10.03 because it would receive $0.01 price improvement over its working price.

Finally, the Exchange proposes to renumber current Rule 7.31E(d)(3)(E)(iii) as Rule 7.31E(d)(3)(E)(iv) to reflect the addition of the new rule text described above, without any changes to the text of the rule.

The Exchange believes that the proposed change, which would allow an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV, would promote higher-quality executions for ETP Holders and provide ETP Holders with greater certainty regarding the amount of price improvement such executions would receive, thereby encouraging increased order flow to the Exchange and enhanced opportunities for order execution for all market participants. The Exchange notes that evaluating the economic benefit of an execution is not a novel concept on equity exchanges.[8] Accordingly, the Exchange believes that this proposed change, which would consider the amount of price improvement that an Aggressing MPL–ALO Order would receive upon execution, would offer ETP Holders a similar benefit to that available on at least one other equity exchange for an order type similar to the MPL–ALO Order and could thus promote competition among equity exchanges.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because allowing an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV would promote higher-quality executions for ETP Holders, thereby encouraging increased order flow to the Exchange and enhanced trading opportunities for all market participants. The Exchange also believes that the proposed conforming changes to Rule 7.31E(d)(3)(E) would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest by clarifying how Aggressing MPL–ALO Orders that would not be eligible to trade based on the amount of price improvement would be ranked and would trade once resting, in accordance with the Exchange's priority and ranking rules. Finally, the Exchange notes that considering the economic benefit of an execution is not a novel concept and believes that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by providing ETP Holders with greater certainty as to the amount of price improvement they would receive when an Aggressing MPL–ALO Order executes, as well as by promoting competition among equity exchanges.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because allowing an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV

[7] As noted above, Rule 7.31E(d)(3)(E)(iii), as amended, reflects current Rule 7.31E(d)(3)(E)(ii), which provides that an MPL–ALO Order that is resting at the same price as resting non-displayed interest would be permitted to trade with a subsequently arriving order that is eligible to trade with that MPL–ALO Order, ahead of the non-displayed interest.

[8] *See, e.g.,* Nasdaq Stock Market LLC, Equity 4, Rule 4702(b)(5)(A) (defining the Midpoint Peg Post-Only Order, which is priced at the midpoint between the NBBO and will execute upon entry only in circumstances where economically beneficial to the party entering such order).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 8, *supra.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

would promote higher-quality executions for ETP Holders, thereby encouraging increased order flow to the Exchange and enhanced trading opportunities for all market participants. The Exchange also believes that the proposed conforming changes to Rule 7.31E(d)(3)(E) would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest by clarifying how Aggressing MPL–ALO Orders that would not be eligible to trade based on the amount of price improvement would be ranked and would trade once resting, in accordance with the Exchange's priority and ranking rules. Finally, the Exchange notes that considering the economic benefit of an execution is not a novel concept and believes that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by providing ETP Holders with greater certainty as to the amount of price improvement they would receive when an Aggressing MPL–ALO Order executes, as well as by promoting competition among equity exchanges.[14]

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange is requesting the waiver because it will allow the Exchange to implement the proposed change as soon as the associated technology is available, which is anticipated to be less than 30 days from the date of this filing. The Exchange believes the proposed change would provide member organizations with greater certainty regarding the amount of price improvement their Aggressing MPL–ALO Orders would receive, thereby promoting higher-quality executions and encouraging increased order flow to the Exchange for the benefit of all market participants. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–47. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–47 and should be submitted on or before August 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17285 Filed 8–5–24; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* note 8, *supra.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100628; File Nos. SR–BOX–2024–03; SR–BX–2024–002; SR–C2–2024–002; SR–CBOE–2024–003; SR–CboeBYX–2024–002; SR–CboeBZX–2024–004; SR–CboeEDGA–2024–002; SR–CboeEDGX–2024–005; SR–Emerald–2024–01; SR–FINRA–2024–002; SR–GEMX–2024–02; SR–IEX–2024–01; SR–ISE–2024–02; SR–LTSE–2024–02; SR–MEMX–2024–01; SR–MIAX–2024–02; SR–MRX–2024–01; SR–NASDAQ–2024–001; SR–NYSE–2024–03; SR–NYSEAMER–2024–02; SR–NYSEARCA–2024–02; SR–NYSECHX–2024–02; SR–NYSENAT–2024–01; SR–PEARL–2024–01; SR–PEARL–2024–02; SR–PHLX–2024–01]

Self-Regulatory Organizations; BOX Exchange, LLC.; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc., Cboe Exchange, Inc.; Financial Industry Regulatory Authority; Investors' Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX, LLC; MIAX PEARL, LLC; MIAX Emerald, LLC; Miami International Securities Exchange, LLC.; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NASDAQ PHLX LLC; The Nasdaq Stock Market LLC; NYSE National, Inc., NYSE American LLC, New York Stock Exchange LLC; NYSE Arca, Inc; NYSE GEMX, LLC and NYSE Chicago, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

July 31, 2024.

On January 2, 2024, BOX Exchange, LLC., Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Investors' Exchange LLC, MEMX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, Miami International Securities Exchange, LLC., NASDAQ BX, Inc., The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Nasdaq MRX, LLC, Nasdaq ISE, LLC, NYSE National, Inc., NYSE American LLC, New York Stock Exchange LLC,[1] NYSE Arca, Inc.[2] Nasdaq GEMX, LLC,[3] NYSE Chicago, Inc.,[4] and Long-Term Stock Exchange, Inc.[5] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[6] and Rule 19b–4 thereunder,[7] proposed rule changes[8] to establish fees for Industry Members[9] related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[10] The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[11] On February 13, 2024, the proposed rule changes were published in the **Federal Register** and the Commission temporarily suspended and instituted proceedings to determine whether to approve or disapprove the proposed rule changes.[12] The Commission received six comments on the proposed rule changes and one response to those comments.[13]

Section 19(b)(2) of the Act[14] provides that, after instituting proceedings, the Commission shall issue an order approving or disapproving a proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[15] The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[16] The

[1] NYSE National, Inc., NYSE American LLC, and New York Stock Exchange LLC each filed a proposed rule change to establish fees for Industry Members related to certain historical costs of the CAT NMS Plan on January 3, 2024.

[2] NYSE Arca, Inc. filed a proposed rule change to establish fees for Industry Members related to certain historical costs of the CAT NMS Plan on January 4, 2024.

[3] Nasdaq GEMX, LLC filed a proposed rule change to establish fees for Industry Members related to certain historical costs of the CAT NMS Plan on January 5, 2024.

[4] NYSE Chicago, Inc. filed a proposed rule change to establish fees for Industry Members related to certain historical costs of the CAT NMS Plan on January 8, 2024.

[5] Long-Term Stock Exchange, Inc. filed a proposed rule change to establish fees for Industry Members related to certain historical costs of the CAT NMS Plan on January 11, 2024.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] Securities Exchange Act Release Nos. 99377 (January 17, 2024), 89 FR 10544 (February 13, 2024) (SR–BOX–2024–03); 99358 (January 17, 2024), 89 FR 10773 (February 13, 2024) (SR–BX–2024–002); 99370 (January 17, 2024), 89 FR 10430 (February 13, 2024) (SR–C2–2024–002); 99364 (January 17, 2024), 89 FR 10887 (February 13, 2024) (SR–CBOE–2024–003); 99371 (January 17, 2024), 89 FR 10963 (February 13, 2024 (SR–CboeBYX–2024–002); 99369 (January 17, 2024), 89 FR 10392 (February 13, 2024) (SR–CboeBZX–2024–004); 99374 (January 17, 2024), 89 FR 10468 (February 13, 2024) (SR–CboeEDGA–2024–002); 99376 (January 17, 2024), 89 FR 10506 (February 13, 2024) (SR–CboeEDGX–2024–005); 99373 (January 17, 2024), 89 FR 11001 (February 13, 2024) (SR–Emerald–2024–01); 99363 (January 17, 2024), 89 FR 10850 (February 13, 2024) (SR–FINRA–2024–002); 99365 (January 17, 2024), 89 FR 10278 (February 13, 2024) (SR–GEMX–2024–02); 99379 (January 17, 2024), 89 FR 11039 (February 13, 2024) (SR–IEX–2024–01); 99362 (January 17, 2024), 89 FR 10239 (February 13, 2024) (SR–ISE–2024–02); 99378 (January 17, 2024), 89 FR 10582 (February 13, 2024) (SR–LTSE–2024–02); 99356 (January 17, 2024), 89 FR 10697 (February 13, 2024) (SR–MEMX–2024–01); 99367 (January 17, 2024), 89 FR 10925 (February 13, 2024) (SR–MIAX–2024–02); 99361 (January 17, 2024), 89 FR 10201 (February 13, 2024) (SR–MRX–2024–01); 99360 (January 17, 2024), 89 FR 10812 (February 13, 2024) (SR–NASDAQ–2024–001); 99380 (January 17, 2024), 89 FR 11078 (February 13, 2024) (SR–NYSE–2024–03); 99381 (January 17, 2024), 89 FR 10620 (February 13, 2024) (SR–NYSEAMER–2024–02); 99357 (January 17, 2024), 89 FR 10735 (February 13, 2024) (SR–NYSEARCA–2024–02); 99366 (January 17, 2024), 89 FR 10315 (February 13, 2024) (SR–NYSECHX–2024–02); 99368 (January 17, 2024), 89 FR 10353 (February 13, 2024) (SR–NYSENAT–2024–01); 99375 (January 17, 2024), 89 FR 11116 (February 13, 2024) (SR–PEARL–2024–01); 99382 (January 17, 2024), 89 FR 10658 (February 13, 2024) (SR–PEARL–2024–02); and 99359 (January 17, 2024), 89 FR 10164 (February 13, 2024) (SR–PHLX–2024–01).

[9] The CAT NMS Plan defines ''Industry Member'' as ''a member of a national securities exchange or a member of a national securities association.'' *See* CAT NMS Plan, *infra* note 10, at Section 1.1.

[10] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan. The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC, which became the Company. *See* Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905 (October 3, 2019).

[11] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[12] *See supra* note 8.

[13] *See* letters from: Edward Weisbaum, Executing Broker CBOE Floor, dated February 6, 2024; Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated March 4, 2024; Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA; Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, Commission, dated March 9, 2024; and Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated June 13, 2024.

[14] 15 U.S.C 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[16] 15 U.S.C. 78s(b)(2)(B)(ii)(II)(aa).

180th day for the proposed rule changes is August 11, 2024.

The Commission is extending the 180-day time period for Commission action on each of the proposed rule changes. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the proposed rule changes.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[17] designates October 10, 2024 as the date by which the Commission shall either approve or disapprove the proposed rule changes (File Nos. SR–BOX–2024–03; SR–BX–2024–002; SR–C2–2024–002; SR–CBOE–2024–003; SR–CboeBYX–2024–002; SR–CboeBZX–2024–004; SR–CboeEDGA–2024–002; SR–CboeEDGX–2024–005; SR–Emerald–2024–01; SR–FINRA–2024–002; SR–GEMX–2024–02; SR–IEX–2024–01; SR–ISE–2024–02; SR–LTSE–2024–02; SR–MEMX–2024–01; SR–MIAX–2024–02; SR–MRX–2024–01; SR–NASDAQ–2024–001; SR–NYSE–2024–03; SR–NYSEAMER–2024–02; SR–NYSEARCA–2024–02; SR–NYSECHX–2024–02; SR–NYSENAT–2024–01; SR–PEARL–2024–01; SR–PEARL–2024–02; SR–PHLX–2024–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17283 Filed 8–5–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100631; File No. 4–698]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan Governing the Consolidated Audit Trail To Add MIAX Sapphire, LLC as a Participant

July 31, 2024.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on July 30, 2024, MIAX Sapphire, LLC (''MIAX Sapphire'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'' or ''Plan'').[3] The amendment adds MIAX Sapphire as a Participant[4] to the CAT NMS Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

The amendment to the CAT NMS Plan adds MIAX Sapphire as a Participant.[5] The CAT NMS Plan provides that any Person[6] approved by the Commission as a national securities exchange or national securities association under the Exchange Act may become a Participant by submitting to the Company[7] a completed application in the form provided by the Company.[8] As a condition to admission as a Participant, said Person shall: (i) execute a counterpart of the CAT NMS Plan, at which time Exhibit A shall be amended to reflect the status of said Person as a Participant (including said Person's address for purposes of notices delivered pursuant to the CAT NMS Plan); and (ii) pay a fee to the Company as set forth in the Plan (the ''Participation Fee'').[9] The amendment to the Plan reflecting the admission of a new Participant shall be effective only when: (x) it is approved by the Commission in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608; and (y) the prospective Participant pays the Participation Fee.[10]

MIAX Sapphire has executed a copy of the current CAT NMS Plan, amended to include MIAX Sapphire in the List of Parties (including the address of MIAX Sapphire), paid the applicable Participation Fee and provided each current Plan Participant with a copy of the executed and amended CAT NMS Plan.[11]

II. Effectiveness of the Proposed Plan Amendment

The foregoing CAT NMS Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)[12] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[13] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number 4–698 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] The Commission approved the CAT NMS Plan on November 16, 2016. *See* Securities Exchange Act Release No. 79318, 81 FR 84695 (November 23, 2016) (order approving the CAT NMS Plan).

[4] The Participants to the CAT NMS Plan are: BOX Exchange LLC; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long Term Stock Exchange, Inc.; MEMX, LLC; Miami International Securities Exchange LLC; MIAX Emerald, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE American LLC; NYSE Chicago, Inc.; and NYSE National, Inc.

[5] Defined in Section 1.1 of the CAT NMS Plan as follows: ''Participant'' means each Person identified as such on Exhibit A hereto, and any Person that becomes a Participant as permitted by this Agreement, in such Person's capacity as a Participant in the Company (it being understood that the Participants shall comprise the ''members'' of the Company (as the term ''member'' is defined in Section 18–101(11) of the Delaware Act)).

[6] Defined in Section 1.1 of the CAT NMS Plan as follows: ''Person'' means any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

[7] The ''Company'' refers to the limited liability company, Consolidated Audit Trail, LLC, which is responsible for conducting the activities of the CAT. *See* Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905 (October 3, 2019).

[8] *See* Section 3.3 of the CAT NMS Plan. MIAX Sapphire was approved as a national securities exchange on July 15, 2024. *See* Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024).

[9] *See* Section 3.3 of the CAT NMS Plan.

[10] *Id.*

[11] *See* Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, LLC, dated July 30, 2024, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission.

[12] 17 CFR 242.608(b)(3)(iii).

[13] 17 CFR 242.608(a)(1).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number 4–698. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4–698 and should be submitted on or before August 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17278 Filed 8–5–24; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100629; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among Cboe BZX Exchange, Inc., BOX Exchange, LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq GEMX, LLC, Cboe EDGX Exchange, Inc., Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, MIAX Sapphire, LLC and MEMX LLC Concerning Options-Related Sales Practice Matters

July 31, 2024.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on July 22, 2024, pursuant to Rule 17d–2 of the Act,[2] by Cboe BZX Exchange, Inc. (''BZX''), BOX Exchange, LLC (''BOX''), Cboe Exchange, Inc. (''Cboe''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), Miami International Securities Exchange, LLC (''MIAX''), The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), Nasdaq PHLX LLC (''PHLX''), Nasdaq GEMX, LLC (''GEMX''), Cboe EDGX Exchange, Inc. (''EDGX''), Nasdaq MRX, LLC (''MRX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald''), MIAX Sapphire, LLC (''MIAX Sapphire''), and MEMX LLC (''MEMX'') (collectively, ''Participating Organizations'' or ''parties'').

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] On May 23, 2000, the Commission approved an amendment to the plan that added the ISE as a participant.[12] On November 8, 2002, the Commission approved another amendment that replaced the original plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner.[13] On February 5, 2004, the Commission approved an amendment to the plan, primarily to include the BSE, which was establishing a new options trading facility to be known as BOX, as an SRO participant.[14] On March 26, 2007, the Commission approved an amendment to the plan that, among other things, provided that the National Association of Securities Dealers (''NASD'') (n/k/a FINRA) and NYSE are Designated Options Examining Authorities under the plan.[15] On March 12, 2008, the Commission approved an amendment to the plan primarily to add NASDAQ as an SRO participant.[16] On June 18, 2008, the Commission approved an amendment to the plan primarily to remove the NYSE as a Designated Options Examining Authority, leaving FINRA as the sole Designated Options Examining Authority for all common members that are members of FINRA.[17] On February 25, 2010, the Commission approved a proposed amendment to the plan to add Bats and C2 as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, the Boston Stock Exchange, Inc., to the NASDAQ OMX BX, Inc. and the Philadelphia Stock Exchange, Inc. to the NASDAQ OMX PHLX, Inc.[18] On May 11, 2012, the Commission approved an amendment to the plan to add BOX as an SRO participant and to amend Section XIII of the plan to set forth a revised procedure for adding new participants to the plan.[19] On December 5, 2012, the Commission approved an amendment to the plan to add MIAX as an SRO participant, and to change the name of NYSE Amex LLC to NYSE MKT LLC.[20] On July 26, 2013, the Commission approved an amendment to the plan to add Topaz Exchange LLC as an SRO participant.[21] On October 29, 2015, the Commission approved an amendment to the plan to add EDGX as an SRO participant and to change the name of Topaz Exchange, LLC to ISE Gemini, LLC.[22] On February 16, 2016, the Commission approved an amendment to the plan to add ISE Mercury, and remove the NYSE, as an SRO participant to the Plan.[23] On February 2, 2017, the Commission approved an amendment to the plan to add MIAX PEARL as an SRO participant to the Plan.[24] On February 12, 2019, the Commission approved an amendment to the plan to add MIAX Emerald as an SRO participant to the Plan.[25] On October 18, 2022, the Commission approved an amendment to the plan to add MEMX as a Participant to the Plan to accommodate the launch of MEMX's options facility, to reflect name changes of certain Participating Organizations, and to reflect updated rule citations.[26]

The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants. Generally, under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's ''Designated Options Examining Authority'' (''DOEA''). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period in which the firm is assigned to another SRO acting as that firm's DOEA.

III. Proposed Amendment to the Plan

On July 22, 2022, the Parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX Sapphire as a Participant to the Plan. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

Agreement by and Among Cboe BZX Exchange, Inc., BOX Exchange, LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq GEMX, LLC, Cboe EDGX Exchange, Inc., Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, MIAX Sapphire, LLC and MEMX LLC Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

This agreement (''Agreement''), by and among Cboe BZX Exchange, Inc.(''BZX''), BOX Exchange, LLC, Cboe

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

[12] *See* Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 34759 (May 31, 2000).

[13] *See* Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[14] *See* Securities Exchange Act Release No. 49197 (February 5, 2004), 69 FR 7046 (February 12, 2004).

[15] *See* Securities Exchange Act Release No. 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007).

[16] *See* Securities Exchange Act Release No. 57481 (March 12, 2008), 73 FR 14507 (March 18, 2008).

[17] *See* Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).

[18] *See* Securities Exchange Act Release No. 61589 (February 25, 2012), 75 FR 9976 (March 4, 2010).

[19] *See* Securities Exchange Act Release No. 66974 (May 11, 2012), 77 FR 29705 (May 18, 2012).

[20] *See* Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012).

[21] *See* Securities Exchange Act Release No. 70051 (July 26, 2013), 78 FR 46644 (August 1, 2013).

[22] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

[23] *See* Securities Exchange Act Release No. 77148 (February 16, 2016), 81 FR 8775 (February 22, 2016).

[24] *See* Securities Exchange Act Release No. 79929 (February 2, 2017), 82 FR 9757 (February 8, 2017).

[25] *See* Securities Exchange Act Release No. 85106 (February 12, 2019), 84 FR 4554 (February 15, 2019).

[26] *See* Securities Exchange Act Release No. 96100 (October 18, 2022), 87 FR 64285 (October 24, 2022).

Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc. (''FINRA''), Miami International Securities Exchange, LLC (''MIAX''), The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), Nasdaq PHLX LLC (''PHLX''), Nasdaq GEMX, LLC(''GEMX''), Cboe EDGX Exchange, Inc.(''EDGX''), Nasdaq MRX, LLC (''MRX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald''), *MIAX Sapphire, LLC (''MIAX Sapphire'')* and MEMX LLC (''MEMX'') hereinafter collectively referred to as the Participants, is made this [20th] *18th* day of [September, 2022] *July, 2024,* pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), which allows for plans among self-regulatory organizations to allocate regulatory responsibility. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the ''Council'').

This Agreement amends and restates the agreement entered into among the Participants on [January 2, 2019] *September 20, 2022,* entitled ''Agreement by and among Cboe BZX Exchange, Inc., BOX Options Exchange, LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., NYSE American LLC, NYSE Arca, Inc., Nasdaq PHLX LLC, Nasdaq GEMX, LLC, Cboe EDGX Exchange, Inc., Nasdaq MRX, LLC, MIAX PEARL, LLC, *MIAX Emerald, LLC* and MEMX LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.''

WHEREAS, the Participants are desirous of allocating regulatory responsibilities with respect to broker-dealers, and persons associated therewith, that are members [1] of more than one Participant (the ''Common Members'') and conduct a public business for compliance with Common Rules (as hereinafter defined) relating to the conduct by broker-dealers of accounts for listed options, index warrants, currency index warrants and currency warrants (collectively, ''Covered Securities''); and

WHEREAS, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission (''SEC'' or the ''Commission'') for its approval;

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. As used herein the term Designated Options Examining Authority (''DOEA'') shall mean: (1) FINRA insofar as it shall perform Regulatory Responsibility (as hereinafter defined) for its broker-dealer members that also are members of another Participant or (2) the Designated Examination Authority (''DEA'') pursuant to SEC Rule 17d–1 under the Securities Exchange Act (''Rule 17d–1'') for a broker-dealer that is a member of a more than one Participant (but not a member of FINRA).

II. As used herein, the term ''Regulatory Responsibility'' shall mean the examination and enforcement responsibilities relating to compliance by Common Members with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the ''Common Rules''), insofar as they apply to the conduct of accounts for Covered Securities. A list of the current Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, each Participant shall submit in writing to FINRA and each DEA performing as a DOEA for any members of such Participant any revisions to Exhibit A reflecting changes in the rules of the Participant, and confirm that all other rules of the Participant listed in Exhibit A continue to meet the definition of Common Rules as defined in this Agreement. Within 30 days from the date that FINRA and each DEA performing as a DOEA has received revisions and/or confirmation that no change has been made to Exhibit A from all Participants, FINRA and each DEA performing as a DOEA shall confirm in writing to each Participant whether the rules listed in any updated Exhibit A are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibility'' does not include, and each of the Participants shall (unless allocated pursuant to Rule 17d–2 otherwise than under this Agreement) retain full responsibility for, each of the following:

(a) Surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) Registration pursuant to its applicable rules of associated persons;

(c) Discharge of its duties and obligations as a DEA; and

(d) Evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participants agree, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. The representative from FINRA shall serve as Chair of the Council. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council

[1] In the case of BZX, NYSE American, NYSE Arca, EDGX, MIAX PEARL, MEMX, PHLX and Nasdaq, members are those persons who are options participants (as defined in the BX, BZX, NYSE American, NYSE Arca, EDGX, MIAX PEARL, MEMX, PHLX and Nasdaq Options Market Rules).

in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten-business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. FINRA shall have Regulatory Responsibility for all Common Members that are members of FINRA. For the purpose of fulfilling the Participants' Regulatory Responsibilities for Common Members that are not members of FINRA, the Participant that is the DEA shall serve as the DOEA. All Participants shall promptly notify the DOEAs no later than the next scheduled meeting of any change in membership of Common Members. A DOEA may request that a Common Member that is allocated to it be reallocated to another DOEA by giving thirty days written notice thereof. The DOEAs in their discretion may approve such request and reallocate such Common Member to another DOEA.

VII. Each DOEA shall conduct an examination of each Common Member. The Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each DOEA shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council.

VIII. Each DOEA will promptly furnish a copy of the Examination report, relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each DOEA's Regulatory Responsibility shall for each Common Member allocated to it include investigations into terminations ''for cause'' of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, ''for cause'' shall include, without limitation, terminations characterized on Form U5 under the label ''Permitted to Resign.'' ''Discharge'' or ''Other.''

X. Each DOEA shall discharge the Regulatory Responsibility for each Common Member allocated to it relative to a Covered Securities-related customer complaint [2] unless such complaint is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by email at such address as the representative shall have filed in writing with the Chair.

XII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Council.

XIII. This Agreement may be amended to add a new Participant provided that such Participant does not assume Regulatory Responsibility, solely by an amendment by FINRA and such new Participant. All other Participants expressly consent to allow FINRA to add new Participants to this Agreement as provided above. FINRA will promptly notify all Participants of any such amendments to add new Participants. All other amendments to this Agreement must be approved in writing by each Participant. All amendments, including adding a new Participant, must be filed with and approved by the SEC before they become effective.

XIV. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time by giving the Council written notice thereof at least 90 days prior to the effective date of such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, any Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above; the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XV. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

XVI. No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory Responsibility to be performed by each of them hereunder.

XVII. Pursuant to Section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement

[2] For purposes of complaints, they can be reported pursuant to Form U4, Form U5 or RE–3 and any amendments thereto.

which are not the DOEA as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA. REVISED [September 20, 2022] *July 18, 2024*

Exhibit A

Rules Enforced Under 17d–2 Agreement

Pursuant to Section II of the Agreement by and among Cboe BZX Exchange, Inc. (''BZX''), BOX Exchange, LLC (''BOX''), Cboe Exchange, Inc. (''Cboe''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), Miami International Securities Exchange, LLC (''MIAX''), The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE ARCA''), Nasdaq PHLX LLC (''PHLX''), Nasdaq GEMX, LLC (''GEMX''), Cboe EDGX Exchange, Inc. (''EDGX''), Nasdaq MRX, LLC (''MRX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald''), *MIAX Sapphire, LLC (''MIAX Sapphire'')* and MEMX LLC (''MEMX'') pursuant to Rule 17d–2 under the Securities Exchange Act of 1934 dated [September 20, 2022] *July 17, 2024* (the ''Agreement''), a revised list of the current Common Rules of each Participant, as compared to those of FINRA, applicable to the conduct of accounts for Covered Securities is set forth in this Exhibit A.

OPENING OF ACCOUNTS	
BZX	Rule 26.2.
BOX	Rule 4020.
Cboe	Rule 9.1.
C2 *	Cboe Rule 9.1.
EDGX	Rule 26.2.
ISE	Options 10, Section 6.
FINRA	Rules 2360(b)(16) and 2352.
MEMX	Rule 26.2.
MIAX	Rule 1307.
MIAX PEARL	Rule 1307.
MIAX Emerald	Rule 1307.
MIAX Sapphire	*Rule 1307*.
GEMX	Options 10, Section 6.
MRX	Options 10, Section 6.
PHLX	Options 10, Section 6.[1]
NYSE ARCA	Rules 9.2–O(a), 9.18–O(b), 9.18–E(b) and 8.4–E.
BX	Options 10, Section 6.
Nasdaq	Options 10, Section 6.

SUPERVISION	
NYSE American	Rules 411, 922 and 1104.
BZX	Rule 26.3.
BOX	Rule 4030.
Cboe	Rule 9.2.[2]
C2 *	Cboe Rule 9.2.[2]
EDGX	Rule 26.3.
ISE	Options 10, Section 7.
FINRA	Rules 2360(b)(20), 2360(b)(17)(B), 2360(b)(16)(E), 2355 and 2358.
MEMX	Rule 26.3.
MIAX	Rule 1308.
MIAX PEARL	Rule 1308.
MIAX Emerald	Rule 1308.
MIAX Sapphire	*Rule 1308*.
GEMX	Options 10, Section 7.
MRX	Options 10, Section 7.
PHLX	Options 10, Section 7.
NYSE ARCA	Rules 9.2–O(b), 9.18–O (d)(2)(G) and 8.7–E.
BX	Options 10, Section 7.
Nasdaq	Options 10, Section 7.

SUITABILITY	
NYSE American	Rules 923 and 1102.
BZX	Rule 26.4.
BOX	Rule 4040.
Cboe	Rule 9.3.
C2 *	Cboe Rule 9.3.
EDGX	Rule 26.4.
ISE	Options 10, Section 8.
FINRA	Rule 2360(b)(19) and 2353.
MEMX	Rule 26.4.
MIAX	Rule 1309.
MIAX PEARL	Rule 1309.
MIAX Emerald	Rule 1309.
MIAX Sapphire	*Rule 1309*.
GEMX	Options 10, Section 8.
MRX	Options 10, Section 8.
PHLX	Options 10, Section 8.

NYSE ARCA	Rules 9.18–O(c), 9.18–E(c) and 8.5–E.
BX	Options 10, Section 8.
Nasdaq	Options 10, Section 8.

DISCRETIONARY ACCOUNTS

NYSE American	Rules 421, 924 and 1103.
BZX	Rule 26.5.[3]
BOX	Rule 4050.
Cboe	Rule 9.4.
C2 *	Cboe Rule 9.4.
EDGX	Rule 26.5.[3]
ISE	Options 10, Section 9.
FINRA	Rules 2360(b)(18) and 2354.
MEMX	Rule 26.5.[3]
MIAX	Rule 1310.
MIAX PEARL	Rule 1310.
MIAX Emerald	Rule 1310.
MIAX Sapphire	*Rule 1310.*
GEMX	Options 10, Section 9.
MRX	Options 10, Section 9.
PHLX	Options 10, Section 9.
NYSE ARCA	Rules 9.18–O(e), 9.18–E(e) and 8.6–E.
BX	Options 10, Section 9.
Nasdaq	Options 10, Section 9.

CUSTOMER COMMUNICATIONS (ADVERTISING)

NYSE American	Rules 8.9E, 991 and 1106.
BZX	Rule 26.16.
BOX	Rule 4170.
Cboe	Rule 9.15.
C2 *	Cboe Rule 9.15.
EDGX	Rule 26.16.
ISE	Options 10, Section 20.
FINRA	Rules 2220 and 2357.
MEMX	Rule 26.16.
MIAX	Rule 1322.
MIAX PEARL	Rule 1322.
MIAX Emerald	Rule 1322.
MIAX Sapphire	*Rule 1322.*
GEMX	Options 10, Section 20.
MRX	Options 10, Section 20.
PHLX	Options 10, Section 20.
NYSE ARCA	Rules 9.21–O(a), 9.21–O(b), 9.28–O*(c)* and 9.28–E.
BX	Options 10, Section 20.
Nasdaq	Options 10, Section 20.

CUSTOMER COMPLAINTS

NYSE American	Rules 8.8E, 932 and 1105.
BZX	Rule 26.17.
BOX	Rule 4190.
Cboe	Rule 9.17.
C2 *	Cboe Rule 9.17.
EDGX	Rule 26.17.
ISE	Options 10, Section 22.
FINRA	FINRA Rules 2360(b)(17)(A) and 2356.
MEMX	Rule 26.17.
MIAX	Rule 1324.
MIAX PEARL	Rule 1324.
MIAX Emerald	Rule 1324.
MIAX Sapphire	*Rule 1324.*
GEMX	Options 10, Section 22.
MRX	Options 10, Section 22.
PHLX	Options 10, Section 22.
NYSE ARCA	Rules 9.18–O(l), 9.18–E(l) and 8.8–E.
BX	Options 10, Section 22.
Nasdaq	Options 10, Section 22.

CUSTOMER STATEMENTS

NYSE American	Rules 419 and 930.
BZX	Rule 26.7.
BOX	Rule 4070.
Cboe	Rule 9.6.
C2 *	Cboe Rule 9.6.

EDGX	Rule 26.7.
ISE	Options 10, Section 11.
FINRA	Rule 2360(b)(15).
MEMX	Rule 26.7.
MIAX	Rule 1312.
MIAX PEARL	Rule 1312.
MIAX Emerald	Rule 1312.
MIAX Sapphire	*Rule 1312.*
GEMX	Options 10, Section 11.
MRX	Options 10, Section 11.
PHLX	Options 10, Section 11.
NYSE ARCA	Rules 9.18–O(j) and 9.18–E(j).
BX	Options 10, Section 11.
Nasdaq	Options 10, Section 11.

CONFIRMATIONS

NYSE American	Rule 925.
BZX	Rule 26.6.
BOX	Rule 4060.
Cboe	Rule 9.5.
C2 *	Cboe Rule 9.5.
EDGX	Rule 26.6.
ISE	Options 10, Section 10.
FINRA	Rule 2360(b)(12).
MEMX	Rule 26.6.
MIAX	Rule 1311.
MIAX PEARL	Rule 1311.
MIAX Emerald	Rule 1311.
MIAX Sapphire	*Rule 1311.*
GEMX	Options 10, Section 10.
MRX	Options 10, Section 10.
PHLX	Options 10, Section 10.
NYSE ARCA	Rules 9.18–O(f) and 9.18–E(f).
BX	Options 10, Section 10.
Nasdaq	Options 10, Section 10.

ALLOCATION OF EXERCISE ASSIGNMENT NOTICES

NYSE American	Rule 981.
BZX	Rule 23.2.
BOX	Rule 9010.
Cboe	Rule 6.21.
C2 *	Cboe Rule 6.21.
EDGX	Rule 23.2.
ISE	Options 6B, Section 2.
FINRA	Rule 2360(b)(23)(C).
MEMX	Rule 23.2.
MIAX	Rule 701.
MIAX PEARL	Rule 701.
MIAX Emerald	Rule 701.
MIAX Sapphire	*Rule 701.*
GEMX	Options 6B, Section 2.
MRX	Options 6B, Section 2.
PHLX	Options 6B, Section 2.
NYSE ARCA	Rule 6.25–O(a).
BX	Options 6B, Section 2.
Nasdaq	Options 6B, Section 2.

DISCLOSURE DOCUMENTS

NYSE American	Rules 921 and 926.
BZX	Rule 26.10.
BOX	Rule 4100.
Cboe	Rule 9.9.
C2 *	Cboe Rule 9.9.
EDGX	Rule 26.10.
ISE	Options 10, Section 13.
FINRA	Rule 2360(b)(11).
MEMX	Rule 26.10.
MIAX	Rule 1315.
MIAX PEARL	Rule 1315.
MIAX Emerald	Rule 1315.
MIAX Sapphire	*Rule 1315.*
GEMX	Options 10, Section 13.
MRX	Options 10, Section 13.
PHLX	Options 10, Section 13.

NYSE ARCA	Rules 9.18–O(g) and 9.18–E(g).
BX	Options 10, Section 13.
Nasdaq	Options 10, Section 13.

BRANCH OFFICES OF MEMBER ORGANIZATIONS

NYSE American	Rule 922(d).[4]
BOX	Rule 4010(b).
Cboe	Rule 3.40.
C2 *	Cboe Rule 3.40.
ISE	Options 10, Section 5.
FINRA	Rules 2360(b)(20)(B) and 2355.
MIAX	Rule 1306.
MIAX PEARL	Rule 1306.
MIAX Emerald	Rule 1306.
MIAX Sapphire	*Rule 1306*.
GEMX	Options 10, Section 5.
MRX	Options 10, Section 5.
PHLX	N/A.
NYSE ARCA	Rules 9.18–O(m) and 9.18–E(m).
BX	Options 10, Section 5.
Nasdaq	Options 10, Section 5.

PROHIBITION AGAINST GUARANTEES

NYSE American	Rule 390.
BZX	Rule 26.13.
BOX	Rule 4130.
Cboe	Rule 9.12.
C2 *	Cboe Rule 9.12.
EDGX	Rule 26.13.
ISE	Options 10, Section 16.
FINRA	Rule 2150(b).
MEMX	Rule 26.13.
MIAX	Rule 1318.
MIAX PEARL	Rule 1318.
MIAX Emerald	Rule 1318.
MIAX Sapphire	*Rule 1318*.
GEMX	Options 10, Section 16.
MRX	Options 10, Section 16.
PHLX	General 9, Section 54(b).
NYSE ARCA	Rules 9.1–O(e), 9.1–E(e) and 9.2150–E(b).
BX	Options 10, Section 16.
Nasdaq	Options 10, Section 16.

SHARING IN ACCOUNTS

NYSE American	Rule 390.
BZX	Rule 26.14.[5]
BOX	Rule 4140.
Cboe	Rule 9.12(b).
C2 *	Cboe Rule 9.12(b).
EDGX	Rule 26.14.[5]
ISE	Options 10, Section 17.[6]
FINRA	Rule 2150(c).
MEMX	Rule 26.14.[5]
MIAX	Rule 1319.
MIAX PEARL	Rule 1319.
MIAX Emerald	Rule 1319.
MIAX Sapphire	*Rule 1319*.
GEMX	Options 10, Section 17.[6]
MRX	Options 10, Section 17.[6]
PHLX	N/A.
NYSE ARCA	Rules 9.1–O(f) and 9.2150–E(c).
BX	Options 10, Section 17.[6]
Nasdaq	Options 10, Section 17.[6]

REGISTRATION OF ROP

NYSE American	Rules 920 and 2.1220(a)(7)(A).
BZX	Rule 17.2(g)(1), (2), (6) and (7).
BOX	Rule 2020(c)(1).
Cboe	Rule 3.36.
C2 *	Cboe Rule 3.36.
EDGX	Rule 17.2(g)(1), (2), (6) and (7).
ISE	Options 10, Section 2.
FINRA	Rule 1220(a)(8).

MEMX	Rule 17.2(g)(1), (2), (6) and (7).
MIAX	Rule 1301.
MIAX PEARL	Rule 1301.
MIAX Emerald	Rule 1301.
MIAX Sapphire	*Rule 1301.*
GEMX	Options 10, Section 2.
MRX	Options 10, Section 2.
PHLX	Options 10, Section 2.
NYSE ARCA	Rules 9.26–O, 9.26–E and 2.1220(a)(7)(A).
BX	Options 10, Section 2.
Nasdaq	Options 10, Section 2.

CERTIFICATION OF REGISTERED PERSONNEL

NYSE American	Rules 920 and 1220(b).
BZX	Rule 2.5 Interpretation .01(c) and 11.4(e).
BOX	IM–2040–3.
Cboe	Rule 3.37.
C2 *	Cboe Rule 3.37.
EDGX	Rule 2.5 Interpretation .01(c) and 11.4(e).
ISE	Options 10, Section 3.
FINRA	Rule 1220(b) and FINRA By-Laws Article V Sections 2 and 3.
MEMX	Rule 2.5 Interpretation .01(c) and 11.4(e).
MIAX	Rule 1302.
MIAX PEARL	Rule 1302.
MIAX Emerald	Rule 1302.
MIAX Sapphire	*Rule 1302.*
GEMX	Options 10, Section 3.
MRX	Options 10, Section 3.
PHLX	Options 10, Section 6.
NYSE ARCA	Rules 9.27–O(a), 9.27–E(a) and 2.1220(b).
BX	Options 10, Section 3.
Nasdaq	Options 10, Section 3.

[1] FINRA shall not have any Regulatory Responsibility regarding foreign currency option requirements specified in any of the PHLX rules in this Exhibit A.
[2] FINRA shall not have any Regulatory Responsibility regarding receipt of written reports by April 1 of each year pursuant to Cboe Rule 9.8(g).
[3] FINRA shall not have any Regulatory Responsibility to enforce this rule as to time and price discretion in institutional accounts.
[4] FINRA shall not have any Regulatory Responsibility to enforce this rule as to time and price discretion in institutional accounts.
[5] FINRA shall not have any Regulatory Responsibility regarding MEMX's, BZX's, and EDGX's requirements to the extent such rules do not contain an exemption addressing immediate family.
[6] FINRA shall not have any Regulatory Responsibility regarding Nasdaq's, BX's, ISE's, GEMX's and MRX's requirements to the extent its rule does not permit sharing in the profits and losses of an account upon prior written consent from the customer, or contain an exemption addressing immediate family.
* Cboe Options rule incorporated by reference into C2 Rulebook.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–966 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 *S7–966.* 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 (*https://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of BZX, BOX, C2, ISE, FINRA, MIAX, Nasdaq, BX, NYSE American, NYSE Arca, PHLX, GEMX, EDGX, MRX, MIAX PEARL, MIAX Emerald, MIAX Sapphire, and MEMX. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number *S7–966* and should be submitted on or before August 27, 2024.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants. The Plan, as amended, will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and

will continue to promote, investor protection.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add MIAX Sapphire as a Participant to the Plan. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.[27] Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. S7–966.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan, as amended, filed with the Commission pursuant to Rule 17d–2 on July 22, 2024, is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOEA as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOEA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17281 Filed 8–5–24; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Securities Exchange Act Release No. 96100 (October 18, 2022), 87 FR 64285 (October 24, 2022).

[28] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100624; File No. SR–NYSECHX–2024–25]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31

July 31, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 25, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31 regarding MPL–ALO Orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31 regarding MPL–ALO Orders.

Rule 7.31(d)(3) defines a Mid-Point Liquidity Order (''MPL Order'') as a Limit Order to buy (sell) that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the PBBO or its limit price. An MPL Order is ranked Priority 3—Non-Display Orders and is valid for any session.

Rule 7.31(d)(3)(A) provides that an MPL Order to buy (sell) must be designated with a limit price in the MPV for the security and will be eligible to trade at the working price of the order.

Rule 7.31(d)(3)(B) provides that if there is no PBB, PBO, or the PBBO is locked or crossed, both an arriving and resting MPL Order will wait for a PBBO that is not locked or crossed before being eligible to trade. If a resting MPL Order to buy (sell) trades with an MPL Order to sell (buy) after there is an unlocked or uncrossed PBBO, the MPL Order with the later working time will be the liquidity-removing order.

Rule 7.31(d)(3)(C) provides that an Aggressing MPL Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price at or below (above) the working price of the MPL Order. Resting MPL Orders to buy (sell) will trade against all Aggressing Orders to sell (buy) priced at or below (above) the working price of the MPL Order.

Rule 7.31(d)(3)(D) provides that an MPL Order may be designated IOC (''MPL–IOC Order''). Subject to such IOC instructions, an MPL–IOC Order will follow the same trading and priority rules as an MPL Order, expect that an MPL–IOC Order will be rejected if there is no PBBO or the PBBO is locked or crossed. An MPL–IOC Order cannot be designated ALO or with a Non-Display Remove Modifier.

Rule 7.31(d)(3)(E) and the subparagraphs thereunder define the MPL–ALO Order, which is an MPL Order designated with an ALO Modifier.[4] An Aggressing [5] MPL–ALO Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order, but will not trade with resting orders to sell (buy) priced equal to the less aggressive of the midpoint of the PBBO or the limit price of the MPL–

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book. *See* NYSE Chicago Rule 7.31(e)(2).

[5] An ''Aggressing Order'' is a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. A resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the Exchange Book, or when processing inbound messages. *See* Rule 7.36(a)(5).

ALO Order (Rule 7.31(d)(3)(E)(i)). If an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy), a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL–ALO Order will trade ahead of a resting order to sell (buy) that is not displayed at that price; if such resting order to sell (buy) is displayed, the MPL–ALO Order to buy (sell) will not be eligible to trade at that price (Rule 7.31(d)(3)(E)(ii)). An MPL–ALO Order may not be designated with a Non-Display Remove Modifier (Rule 7.31(d)(3)(E)(iii)).

Proposed Rule Change

Currently, Aggressing MPL–ALO Orders to buy (sell) may trade with resting orders priced below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order (*i.e.,* priced below (above) the MPL–ALO Order's working price), regardless of the amount of price improvement the Aggressing MPL–ALO Order would receive. The Exchange proposes to amend Rule 7.31(d)(3)(E)(i) to provide that an Aggressing MPL–ALO Order would only be eligible to trade with resting orders when it would receive price improvement over the MPL–ALO Order's working price of at least one MPV. This proposed change would not impact non-Aggressing MPL–ALO Orders (*e.g.,* MPL–ALO Orders resting on the Exchange Book). A non-Aggressing MPL–ALO Order would continue to provide liquidity at its working price unless it would not be eligible to trade as outlined in Rules 7.31(d)(3)(E)(ii)(a) and (b), as amended below.

The Exchange next proposes to amend Rule 7.31(d)(3)(E)(ii) to provide that an MPL–ALO Order not eligible to trade as described in proposed Rule 7.31(d)(3)(E)(i) would be ranked in the Exchange Book at its working price and would not trade at that price if it would lock or cross displayed interest or cross non-displayed interest on the Exchange Book. Specifically, the Exchange proposes to add new Rules 7.31(d)(3)(E)(ii)(a) and (b) to provide that resting MPL–ALO Orders would not be eligible to trade (a) at a price equal to or above (below) any sell (buy) orders that are displayed and that have a working price equal to or below (above) the working price of the MPL–ALO Order, or (b) at a price above (below) any sell (buy) orders that are not displayed and that have a working price below (above) the working price of the MPL–ALO Order. The Exchange notes that the circumstances under which such orders would not be able to trade are consistent with the Exchange's existing priority and ranking rules.

The Exchange further proposes to renumber current Rule 7.31(d)(3)(E)(ii) as Rule 7.31(d)(3)(E)(iii) and to amend the text of the rule to provide that if an MPL–ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy) that is not displayed, a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL–ALO Order will trade ahead of such resting order to sell (buy). This proposed change is not intended to change the meaning of the rule, but rather to clarify that, if an MPL–ALO Order is resting at the same price as resting non-displayed interest, a subsequently arriving order that is eligible to trade with that MPL–ALO Order would, as currently, be permitted to trade ahead of such interest. The Exchange further proposes to delete the last sentence of current Rule 7.31(d)(3)(E)(ii), which provides that an MPL–ALO Order would not be eligible to trade at the price of a displayed resting order to buy (sell), as duplicative of proposed Rule 7.31(d)(3)(E)(ii)(a) described above.

The following example demonstrates how an arriving Aggressing MPL–ALO Order would trade or be ranked on the Exchange Book, as proposed:

- Assume the PBBO[6] is $10.00 × $10.05 (midpoint is $10.025). On the Exchange Book, there is a Limit Order to sell 90 shares at $10.02 (''Order 1'') and an MPL Order to sell 100 shares at $10.00 (''Order 2''). Order 1 is displayed at its working price of $10.02. Order 2 is non-displayed and has a working price at the midpoint, $10.025.
- Order 3 is an incoming MPL–ALO Order to buy 100 shares at $10.05. Order 3, as an Aggressing MPL–ALO Order, would not trade with either Order 1 or Order 2 because it would receive less than $0.01 price improvement over the midpoint. Pursuant to proposed Rule 7.31(d)(3)(E)(ii), Order 3 would be ranked on the Exchange Book at its working price, $10.025 (which is the midpoint, as the working price of an MPL–ALO Order to buy is the lower of the midpoint or the order's limit price).
- Order 4 is an incoming MPL–IOC Order to sell 100 shares at $10.00. Order 4 would not trade with Order 3 (which is now ranked on the Exchange Book at its working price) at $10.025 per proposed Rule 7.31(d)(3)(E)(ii)(a) because an execution at that price would be at a price above displayed interest on the Exchange Book (Order 1 at $10.02). Order 4, as an IOC Order, would be cancelled because it does not execute.
- Assume Order 1 is cancelled, and Order 5 is an incoming MPL–IOC Order to sell 100 shares at $10.00. Order 5 would trade with Order 3 (where Order 3 is the liquidity provider) at $10.025, consistent with proposed Rule 7.31(d)(3)(E)(iii), because the trade would execute at a price that is not above the price of any displayed or non-displayed interest on the Exchange Book, although it would be at the same price as Order 2 (non-displayed interest on the Exchange Book).[7]

The following example demonstrates how an MPL–ALO Order that is resting on the Exchange Book and subsequently becomes an Aggressing MPL–ALO Order (in this example, when the PBBO is updated) would trade, as proposed:

- Assume the PBBO is $10.00 × $10.05 (midpoint is $10.025). Order 1 is a non-displayed Limit Order to sell 100 shares at $10.03, resting on the Exchange Book at its working price of $10.03. Order 2 is an MPL–ALO Order to buy 100 shares at $10.05. Order 2 is resting non-displayed on the Exchange Book at its working price of $10.025 (which is the midpoint, as the working price of an MPL–ALO Order to buy is the lower of the midpoint or the order's limit price).
- Assume the PBBO updates to $10.03 × $10.05 (midpoint is $10.04). Order 2 reprices to the new midpoint, $10.04, and becomes an Aggressing Order because its working price has changed and the PBBO has updated. Order 2 will trade as an Aggressing Order (as the liquidity taker) with Order 1 at $10.03 because it would receive $0.01 price improvement over its working price.

Finally, the Exchange proposes to renumber current Rule 7.31(d)(3)(E)(iii) as Rule 7.31(d)(3)(E)(iv) to reflect the addition of the new rule text described above, without any changes to the text of the rule.

The Exchange believes that the proposed change, which would allow an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV, would promote

[6] ''Best Protected Bid'' or ''PBB'' means the highest Protected Bid, ''Best Protected Offer'' or ''PBO'' means the lowest Protected Offer, and ''Protected Best Bid and Offer'' or ''PBBO'' means the Best Protected Bid and the Best Protected Offer, as those terms are defined in Rule 600(b)(57) of Regulation NMS. *See* Rule 1.1(n).

[7] As noted above, Rule 7.31(d)(3)(E)(iii), as amended, reflects current Rule 7.31(d)(3)(E)(ii), which provides that an MPL–ALO Order that is resting at the same price as resting non-displayed interest would be permitted to trade with a subsequently arriving order that is eligible to trade with that MPL–ALO Order, ahead of the non-displayed interest.

higher-quality executions for Participants and provide Participants with greater certainty regarding the amount of price improvement such executions would receive, thereby encouraging increased order flow to the Exchange and enhanced opportunities for order execution for all market participants. The Exchange notes that evaluating the economic benefit of an execution is not a novel concept on equity exchanges.[8] Accordingly, the Exchange believes that this proposed change, which would consider the amount of price improvement that an Aggressing MPL–ALO Order would receive upon execution, would offer Participants a similar benefit to that available on at least one other equity exchange for an order type similar to the MPL–ALO Order and could thus promote competition among equity exchanges.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because allowing an Aggressing MPL–ALO Order to trade only when it would receive price improvement over its working price of at least one MPV would promote higher-quality executions for Participants, thereby encouraging increased order flow to the Exchange and enhanced trading opportunities for all market participants. The Exchange also believes that the proposed conforming changes to Rule 7.31(d)(3)(E) would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest by clarifying how Aggressing MPL–ALO Orders that would not be eligible to trade based on the amount of price improvement would be ranked and would trade once resting, in accordance with the Exchange's priority and ranking rules. Finally, the Exchange notes that considering the economic benefit of an execution is not a novel concept and believes that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by providing Participants with greater certainty as to the amount of price improvement they would receive when an Aggressing MPL–ALO Order executes, as well as by promoting competition among equity exchanges.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would amend Exchange rules to permit Aggressing MPL–ALO Orders to trade only when they would receive price improvement of at least one MPV over their working price, thereby providing a minimum amount of price improvement for Participants entering such orders. To the extent the proposed rule change promotes higher-quality executions on the Exchange, the proposed change could encourage increased order flow to the Exchange and facilitate additional trading opportunities for all market participants. In addition, at least one other equity exchange considers the economic benefit to the entering party when evaluating whether a similar order type may trade, and the Exchange's proposal would thus promote competition among exchanges by providing a minimum amount of price improvement to Aggressing MPL–ALO Orders.[12] The Exchange also believes that, to the extent the proposed change would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange is requesting the waiver because it will allow the Exchange to implement the proposed change as soon as the associated technology is available, which is anticipated to be less than 30 days from the date of this filing. The Exchange believes the proposed change would provide member organizations with greater certainty regarding the amount of price improvement their Aggressing MPL–ALO Orders would receive, thereby promoting higher-quality executions and encouraging increased order flow to the Exchange for the benefit of all market participants. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the

[8] *See, e.g.,* Nasdaq Stock Market LLC, Equity 4, Rule 4702(b)(5)(A) (defining the Midpoint Peg Post-Only Order, which is priced at the midpoint between the NBBO and will execute upon entry only in circumstances where economically beneficial to the party entering such order).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 8, *supra.*

[12] *See* note 8, *supra.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2024–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2024–25. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2024–25 and should be submitted on or before August 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17277 Filed 8–5–24; 8:45 am]

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[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100627; File No. SR–FINRA–2024–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

July 31, 2024.

On January 2, 2024, the Financial Industry Regulatory Authority filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change [3] to establish fees for Industry Members [4] related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[5] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[6] On February 13, 2024, the proposed rule change was published in the **Federal Register** and the Commission temporarily suspended and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] The Commission received four comments on the proposed rule change.[8]

Section 19(b)(2) of the Act [9] provides that, after instituting proceedings, the Commission shall issue an order approving or disapproving a proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[10] The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[11] The 180th day for the proposed rule change is August 11, 2024.

The Commission is extending the 180-day time period for Commission action on the proposed rule change. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 99372 (January 17, 2024), 89 FR 11153 (February 13, 2024).

[4] The CAT NMS Plan defines ''Industry Member'' as ''a member of a national securities exchange or a member of a national securities association.'' *See* CAT NMS Plan, *infra* note 10, at Section 1.1.

[5] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan. The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC, which became the Company. *See* Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905 (October 3, 2019).

[6] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[7] *See supra* note 3.

[8] *See* letters from: Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated March 4, 2024; Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission, dated March 5, 2024; and Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, Commission, dated March 9, 2024.

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[11] 15 U.S.C. 78s(b)(2)(B)(ii)(II)(aa).

Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates October 10, 2024 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–FINRA–2024–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17286 Filed 8–5–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100623; File No. 4–678]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amended Proposed Plan for the Allocation of Regulatory Responsibilities Among the Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, MIAX Pearl, LLC, MIAX Emerald, LLC, and MIAX Sapphire, LLC

July 31, 2024.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on July 22, 2024, pursuant to Rule 17d–2 of the Act,[2] by the Miami International Securities Exchange, LLC (''MIAX''), MIAX Pearl, LLC (''MIAX Pearl''), MIAX Emerald, LLC (''MIAX Emerald''), MIAX Sapphire, LLC (''MIAX Sapphire'') and the Financial Industry Regulatory Authority, Inc. (''FINRA'') (together, the ''Parties''). The Plan replaces and supersedes the agreement entered into between FINRA, MIAX, MIAX Pearl, and MIAX Emerald on September 2, 2020, entitled ''Agreement among Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.'' [3]

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (''Act''),[4] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[5] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act [6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On November 19, 2014, the Commission declared effective the Plan entered into between FINRA and MIAX for allocating regulatory responsibility pursuant to Rule 17d–2.[11] The Plan is intended to reduce regulatory duplication for firms that are common members of both MIAX and FINRA. The plan reduces regulatory duplication for firms that are members of MIAX and FINRA by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations. Included in the Plan is an exhibit that lists every MIAX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MIAX members that are also members of FINRA and the associated persons therewith. On January 12, 2017, the parties submitted a proposed amendment to the Plan to add MIAX

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] *See* Securities Exchange Act Release No. 56645 (September 8, 2020), 85 FR 56645 (September 14, 2020).

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014).

Pearl as a Participant to the Plan.[12] On June 28, 2018, the parties submitted a proposed amendment to the Plan to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, as well as certain provisions of Regulation SHO.[13] On December 20, 2018, the parties submitted a proposed amendment to the Plan to add MIAX Emerald as a Participant to the Plan.[14] On September 2, 2020, the parties submitted a proposed amendment to the Plan to add MIAX Pearl equities rules and certain federal securities laws.[15]

III. Proposed Amendment to the Plan

On July 22, 2024, the parties submitted a proposed amendment to the Plan (''Amended Plan''). The primary purpose of the Amended Plan is to add MIAX Sapphire as a Participant to the Plan. The text of the proposed Amended Plan is as follows (additions are *italicized;* deletions are [bracketed]):

AGREEMENT AMONG FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,

MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC, MIAX PEARL, LLC MIAX EMERALD, LLC AND MIAX [EMERALD]SAPPHIRE, LLC PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and among the Financial Industry Regulatory Authority, Inc. (''FINRA''), Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX Pearl[EARL]''), [and] MIAX Emerald, LLC (''MIAX Emerald'') *and MIAX Sapphire, LLC (''MIAX Sapphire'')* is made this [2nd] *17th* day of [September, 2020] *July, 2024* (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA, MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* may be referred to individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates the agreement entered into between FINRA, MIAX, *MIAX Pearl* and MIAX [PEARL] *Emerald* on [December 19, 2018] *September 2, 2020,* entitled ''Agreement [between] *among* Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, *MIAX PEARL, LLC* and MIAX [PEARL] *Emerald,* LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

WHEREAS, the parties desire to reduce duplication in the examination and surveillance of their Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, the parties desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, the parties hereby agree as follows:

1. **Definitions.** Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''MIAX Rules,'' ''MIAX P*earl*[EARL] Rules'', ''MIAX Emerald Rules'' ''MIAX Sapphire Rules'' or ''FINRA Rules'' shall mean: (i) the rules of MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald] *Sapphire,* respectively, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''Common Rules'' shall mean MIAX Rules, MIAX P*earl*[EARL] Rules [and], MIAX Emerald *Rules and MIAX Sapphire* Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination or surveillance for compliance with such provisions and rules would not require FINRA to develop one or more new examination or surveillance standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Common Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, MIAX P*earl*[EARL] or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., *NYSE* Chicago [Stock Exchange], Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, *MIAX PEARL, LLC,* Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors' Exchange LLC and Long-Term Stock Exchange, Inc. [effective May 26] *approved by the Commission on September 23,* 2020, as may be amended from time to time. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald,] *Sapphire* (ii) incorporation by reference of other MIAX, MIAX P*earl*[EARL] Rules [or], MIAX Emerald Rules *or MIAX Sapphire* that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald,] *Sapphire* (iv) prior written approval of MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald] *Sapphire* and (v) payment of fees or fines to MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald] *Sapphire.*

(c) ''Common Members'' shall mean members of FINRA and at least one of MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald] *Sapphire.*

(d) ''Effective Date'' shall be the date this Agreement is approved by the Commission.

(e) ''Enforcement Responsibilities'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''Regulatory Responsibilities'' shall mean the examination responsibilities, surveillance responsibilities and Enforcement Responsibilities relating to compliance by the Common Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and

[12] *See* Securities Exchange Act Release No. 79974 (February 6, 2017), 82 FR 10417 (February 10, 2017).

[13] *See* Securities Exchange Act Release No. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018).

[14] *See* Securities Exchange Act Release No. 85189 (February 25, 2019), 84 FR 7153 (March 1, 2019).

[15] *See* Securities Exchange Act Release No. 56645 (September 8, 2020), 85 FR 56645 (September 14, 2020).

other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. **Regulatory and Enforcement Responsibilities.** FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Common Members. Attached as Exhibit 1 to this Agreement and made part hereof, MIAX, MIAX P*earl*[EARL] [and], MIAX Emerald *and MIAX Sapphire* furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are MIAX Rules, MIAX P*earl*[EARL] Rules, *MIAX Emerald Rules* and MIAX [Emerald] *Sapphire* Rules are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in the rules of the parties, MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall submit an updated list of Common Rules to FINRA for review which shall add MIAX Rules, MIAX P*earl*[EARL] Rules, *MIAX Emerald Rules* or MIAX [Emerald] *Sapphire* Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete MIAX Rules, MIAX P*earl*[EARL] Rules, *MIAX Emerald Rules* or MIAX [Emerald] *Sapphire* Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be MIAX Rules, MIAX P*earl*[EARL] Rules, *MIAX Emerald Rules* or MIAX [Emerald] *Sapphire* Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving MIAX's, MIAX P*earl*[EARL]'s, *MIAX Emerald's* and MIAX [Emerald's] *Sapphire's* own marketplace;

(b) registration pursuant to their applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of their duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any MIAX Rules, MIAX P*earl*[EARL] Rules [or], MIAX Emerald Rules, *or MIAX Sapphire Rules* that are not Common Rules as provided in paragraph 6.

3. **Common Members.** Prior to the Effective Date, MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall furnish FINRA with a current list of Common Members, which shall be updated no less frequently than once each quarter.

4. **No Charge.** There shall be no charge to MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* with ninety (90) days advance written notice in the event FINRA decides to impose any charges to MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. **Applicability of Certain Laws, Rules, Regulations or Orders.** Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule or order is inconsistent with one or more provisions of this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. **Notification of Violations.** In the event that FINRA becomes aware of apparent violations of any MIAX Rules, MIAX P*earl*[EARL] Rules [or], MIAX Emerald Rules[,] *or MIAX Sapphire Rules* which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* of those apparent violations for such response as MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* deem appropriate. In the event that MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald] *Sapphire* becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Common Member is the subject of an investigation relating to a transaction on MIAX, MIAX P*earl*[EARL], *MIAX Emerald* or MIAX [Emerald] *Sapphire,* MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* may in their discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. **Continued Assistance.**

(a) FINRA shall make available to MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* any information it obtains about Common Members which reflects adversely on their financial condition. MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence [,] and used only for the purposes of carrying out their respective regulatory obligations. No party shall assert regulatory or other privileges as against any other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information among the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. **Statutory Disqualifications.** When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Common Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* advised of its actions in this regard for such subsequent proceedings as MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* may initiate.

9. **Customer Complaints.** MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* shall forward to FINRA copies of all customer complaints involving Common Members received by MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. **Advertising.** FINRA shall assume responsibility to review the advertising of Common Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. **No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of any party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Common Members, as any party, in its sole discretion, shall deem appropriate or necessary.

12. **Termination.** This Agreement may be terminated by any party at any time upon the approval of the Commission after one (1) year's written notice to the other parties (or such shorter time as agreed by the parties), except as provided in paragraph 4.

13. **Arbitration.** In the event of a dispute among the parties as to the operation of this Agreement, the parties hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other parties. In the event of a dispute among the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. **Separate Agreement.** This Agreement is wholly separate from the following agreement: (1) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among Cboe BZX Exchange, Inc., BOX [Options] Exchange, LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, [FINRA, MIAX, NYSE] *Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, NYSE* American LLC, NYSE Arca, Inc., The Nasdaq Stock Market LLC, Nasdaq BX, Inc., [the] Nasdaq PHLX LLC, Nasdaq GEMX, LLC, Cboe EDGX Exchange, Inc., Nasdaq MRX, LLC, MIAX PEARL, LLC [and], MIAX Emerald, LLC *and MEMX LLC* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered as approved by the SEC on [February 12, 2019] *October 18, 2022,* and as may be amended from time to time; and (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among *NYSE American LLC,* Cboe BZX Exchange, Inc., [BOX Options Exchange, LLC,] Cboe *EDGX* Exchange, Inc., Cboe C2 Exchange, Inc., *Cboe Exchange, Inc.,* Nasdaq ISE, LLC, [FINRA, MIAX, NYSE American LLC,]*Financial Industry Regulatory Authority, Inc.,* NYSE Arca, Inc., The Nasdaq Stock Market LLC, *BOX Exchange LLC,* Nasdaq BX, Inc., [the] Nasdaq PHLX LLC, *Miami International Securities Exchange, LLC,* Nasdaq GEMX, LLC, [Cboe EDGX Exchange, Inc.,] Nasdaq MRX, LLC, MIAX PEARL, LLC [and], MIAX Emerald, *LLC and MEMX* LLC involving the allocation of regulatory responsibilities with respect to SRO market surveillance of common members activities with regard to certain common rules relating to listed options approved by the SEC on [February 11, 2019] *November 23, 2022,* and as may be amended from time to time.

15. **Notification of Members.** The parties shall notify Common Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. **Amendment.** This Agreement may be amended in writing provided that the changes are approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. **Limitation of Liability.** None of the parties nor any of their respective directors, governors, officers or employees shall be liable to any other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by any party and caused by the willful misconduct of another party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by any party hereto with respect to any of the responsibilities to be performed by them hereunder.

18. **Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA, MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve MIAX, MIAX P*earl*[EARL], *MIAX Emerald* and MIAX [Emerald] *Sapphire* of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such

counterparts together shall constitute one and the same instrument.

Exhibit 1

Miami International Securities Exchange, LLC, MIAX PEARL, LLC, *MIAX Emerald, LLC* and MIAX [Emerald] *Sapphire,* LLC Rules Certification for 17d–2 Agreement with FINRA Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX [PEARL] *Pearl*''), [and] MIAX Emerald, LLC (''MIAX Emerald''*) and MIAX Sapphire, LLC (''MIAX Sapphire*'') hereby certify that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA [(NASD)] Rule, Exchange Act provision or SEC rule identified (''Common Rules'').

[#] Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MIAX, MIAX [PEARL] *Pearl* [or], MIAX Emerald *or MIAX Sapphire,* (ii) incorporation by reference of other MIAX, MIAX [PEARL] *Pearl, MIAX Emerald* or MIAX [Emerald] *Sapphire* Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by MIAX, MIAX [PEARL] *Pearl* [or], MIAX Emerald *or MIAX Sapphire,* (iv) prior written approval of MIAX, MIAX [PEARL] *Pearl* [or], MIAX Emerald *or MIAX Sapphire,* and (v) payment of fees or fines to MIAX, MIAX [PEARL] *Pearl* Options, *MIAX Emerald* or MIAX [Emerald] *Sapphire.*

MIAX [RULES] ***Rules***	MIAX [PEARL] RULES] ***Pearl Rules***	MIAX [EMERALD RULES] ***Emerald Rules***	***MIAX Sapphire Rules***	FINRA [(NASD) RULES EXCHANGE ACT PROVISION OR SEC RULE] ***Rules, Exchange Action Provisions, or SEC Rules***
Rule 301 Just and Equitable Principles of Trade [1].	*MIAX* Rule 301 [Just and Equitable Principles of Trade] *is incorporated by reference into Chapter III of the MIAX Pearl Rulebook* [1].	*MIAX* Rule 301 [Just and Equitable Principles of Trade] *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook* [1].	*MIAX Rule 301 is incorporated by reference into Chapter III of the MIAX Sapphire Options Rulebook* [1].	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.
Rule 303 Prevention of the Misuse of Material Nonpublic Information [1 #].	*MIAX* Rule 303 [Prevention of the Misuse of Material Nonpublic Information] *is incorporated by reference into Chapter III of the MIAX Pearl Rulebook* [1 #].	*MIAX* Rule 303 [Prevention of the Misuse of Material Nonpublic Information] *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook* [1 #].	*MIAX Rule 303 is incorporated by reference into Chapter III of the MIAX Sapphire Rulebook* [1 #].	Section 15(g) of the Exchange Act and FINRA Rule 3110(b)(1) Supervision.
Rule 315 Anti-Money Laundering Compliance Program [#].	*MIAX* Rule 315 [Anti-Money Laundering Compliance Program] *is incorporated by reference into Chapter III of the MIAX Pearl Rulebook* [#].	*MIAX* Rule 315 [Anti-Money Laundering Compliance Program] *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook* [#].	*MIAX Rule 315 is incorporated by reference into Chapter III of the MIAX Sapphire Rulebook* [#].	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 318(a) Manipulation ..	*MIAX* Rule 318(a) [Manipulation] *is incorporated by reference into Chapter III of the MIAX Pearl Rulebook.*	*MIAX* Rule 318(a) [Manipulation] *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook.*	*MIAX Rule 318(a) is incorporated by reference into Chapter III of the MIAX Sapphire Rulebook.*	FINRA Rule 2020 Use of Manipulative, Deceptive or [o]*O*ther Fraudulent Devices.
Rule 318(b) Manipulation ..	*MIAX* Rule 318(b) [Manipulation] is incorporated by reference into Chapter III of the MIAX Pearl Rulebook.	*MIAX* Rule 318(b) *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook.*	*MIAX Rule 318(b) is incorporated by reference into Chapter III of the MIAX Sapphire Rulebook.*	FINRA Rule 6140(d) Other Trading Practices.
Rule 319 Forwarding of Proxy and Other Issuer-Related Materials.	*MIAX* Rule 319 [Forwarding of Proxy and Other Issuer-Related Materials] *is incorporated by reference into Chapter III of the MIAX Pearl Rulebook.*	*MIAX* Rule 319 [Forwarding of Proxy and Other Issuer-Related Materials] *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook.*	*MIAX Rule 319 is incorporated by reference into Chapter III of the MIAX Sapphire Rulebook.*	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.
Rule 320 Trading Ahead of Research Reports.	*MIAX* Rule 320 [Trading Ahead of Research Reports] *is incorporated by reference into Chapter III of the MIAX Pearl Rulebook.*	*MIAX* Rule 320 [Trading Ahead of Research Reports] *is incorporated by reference into Chapter III of the MIAX Emerald Rulebook.*	*MIAX Rule 320 is incorporated by reference into Chapter III of the MIAX Sapphire Rulebook.*	FINRA Rule 5280 Trading Ahead of Research Reports.

MIAX [RULES] ***Rules***	MIAX [PEARL] RULES] ***Pearl Rules***	MIAX [EMERALD RULES] ***Emerald Rules***	***MIAX Sapphire Rules***	FINRA [(NASD) RULES EXCHANGE ACT PROVISION OR SEC RULE] ***Rules, Exchange Action Provisions, or SEC Rules***
Rule 800(a), (b) and (d) Maintenance, Retention and Furnishing of Books, Records and Other Information [1] [#].	*MIAX* Rule 800(a), (b) and (d) [Maintenance, Retention and Furnishing of Books, Records and Other Information] *is incorporated by reference into Chapter VIII of the MIAX Pearl Rulebook* [1] [#].	*MIAX* Rule 800(a), (b) and (d) [Maintenance, Retention and Furnishing of Books, Records and Other Information] *is incorporated by reference into Chapter VIII of the MIAX Emerald Rulebook* [1] [#].	*MIAX Rule 800(a), (b) and (d) is incorporated by reference into Chapter VIII of the MIAX Sapphire Rulebook* [1] [#].	FINRA Rule 4511 General Requirements * and Section 17 of the Exchange Act and the rules thereunder.[#]
Rule 1900 Registration Requirements [#].	Rule 3100 Registration Requirements [#].	Rule 1900 Registration Requirements [#].	*Rule 1900 Registration Requirements* [#].	FINRA Rule 1210 Registration Requirements; FINRA By-Laws Article V, Sec. 2 Application for Registration; and FINRA By-Laws Article V, Sec. 3 Notification by Member to the Corporation and Association Person of Termination; Amendments to Notification.
Rule 1901 Registration Categories [#].	Rule 3101 Registration Categories [#].	Rule 1901 Registration Categories [#].	*Rule 1901 Registration Categories* [#].	Rule 1220 Registration Categories.[2]
Rule 1902(a), (b)(1)–(4) and Interpretations and Policies .01 Associated Persons Exempt from Registration.	Rule 3102(a), (b)(1)–(4) and Interpretations and Policies .01 Associated Persons Exempt from Registration.	Rule 1902(a), (b)(1)–(4) and Interpretations and Policies .01 Associated Persons Exempt from Registration.	*Rule 1902(a), (b)(1)–(4) and Interpretations and Policies .01 Associated Persons Exempt from Registration.*	FINRA Rule 1230 Associated Persons Exempt from Registration.
Rule 1903 Continuing Education [#] [3].	Rule 3103 Continuing Education [#] [3].	Rule 1903 Continuing Education Requirements # [3].	*Rule 1903 Continuing Education Requirements* # [4].	FINRA Rule 1240 Continuing Education Requirements.
Rule 1904 Electronic Filing Requirements for Uniform Forms [#].	*Rule 3104. Electronic Filing Requirements for Uniform Forms* [#].	*Rule 1904. Electronic Filing Requirements for Uniform Forms* [#].	*Rule 1904. Electronic Filing Requirements for Uniform Forms* [#].	*FINRA Rule 1010 Electronic Filing Requirements for Uniform Forms.*
Rule 1321 Transfer of Accounts.	*MIAX* Rule 1321 [Transfer of Accounts] *is incorporated by reference into Chapter XIII of the MIAX Pearl Rulebook.*	*MIAX* Rule 1321 [Transfer of Accounts] *is incorporated by reference into Chapter XIII of the MIAX Emerald Rulebook.*	*MIAX Rule 1321 Transfer of Accounts is incorporated by reference into Chapter XIII of the MIAX Sapphire Rulebook.*	FINRA Rule 11870 Customer Account Transfer Contracts.
Rule 1325 Telemarketing ..	*MIAX* Rule 1325 [Telemarketing] *is incorporated by reference into Chapter XIII of the MIAX Pearl Rulebook.*	*MIAX* Rule 1325 [Telemarketing] *is incorporated by reference into Chapter XIII of the MIAX Emerald Rulebook.*	*MIAX Rule 1325 is incorporated by reference into Chapter XIII of the MIAX Sapphire Rulebook.*	FINRA Rule 3230 Telemarketing.
	Rule 2100 Business Conduct of Members *.			FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.*
	Rule 2101 Violations Prohibited * [#].			FINRA Rule 2010 Standards of Commercial Honor * and Principles of Trade and FINRA Rule 3110 Supervision.*
	Rule 2102 Use of Fraudulent Devices *.			FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices.*
	Rule 2104 Communications with the Public.			FINRA Rule 2210 Communications with the Public.
	Rule 2105 Know Your Customer.			FINRA Rule 2090 Know Your Customer.

MIAX [RULES] ***Rules***	MIAX [PEARL] RULES] ***Pearl Rules***	MIAX [EMERALD RULES] ***Emerald Rules***	***MIAX Sapphire Rules***	FINRA [(NASD) RULES EXCHANGE ACT PROVISION OR SEC RULE] ***Rules, Exchange Action Provisions, or SEC Rules***
	Rule 2106 Fair Dealing with Customers.			FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device,* FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade,* FINRA Rule 2111(a) and SM .06 Suitability, FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts, and FINRA Rule 3240(a) Borrowing From or Lending to Customers.
	Rule 2107 Suitability			FINRA Rule 2111 Suitability.
	Rule 2108(a) The Prompt Receipt and Delivery of Securities.			FINRA Rule 11860 COD Orders.
	Rule 2108(b) The Prompt Receipt and Delivery of Securities.			SEC Regulation SHO.
	Rule 2109 Charges for Services Performed.			FINRA Rule 2122 Charges for Services Performed.
	Rule 2110 Use of Information *Obtained in a Fiduciary Capacity*.			FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
	Rule 2111 Publication of Transactions and Quotations #.			FINRA Rule 5210 Publication of Transactions and Quotations.
	Rule 2112 Offers at Stated Prices.			FINRA Rule 5220 Offers at Stated Prices.
	Rule 2113 Payments Involving Publications that Influence the Market Price of a Security.			FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security.
	Rule 2114 Customer Confirmations.			FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b–10 Confirmation of Transactions.
	Rule 2115 Disclosure of Control Relationship with Issuer.			FINRA Rule 2262 Disclosure of Control Relationship with Issuer.
	Rule 2116 Discretionary Accounts.			FINRA Rule 3260 Discretionary Accounts.
	Rule 2117 Improper Use of Customer's Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.			FINRA Rule 2150 Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
	Rule 2118 Influencing or Rewarding Employees of Others.			FINRA Rule 3220 Influencing or Rewarding Employees of Others.
	Rule 2119 Telemarketing ..			FINRA Rule 3230 Telemarketing.
	Rule 2200 General Requirements #.			Section 17 of the Exchange Act and rules thereunder and FINRA Rule 4511[(a) and (c)] General Requirements.[5]
	Rule 2201 Customer Account Information.			Rule 4512 Customer Account Information.

MIAX [RULES] ***Rules***	MIAX [PEARL] RULES] ***Pearl Rules***	MIAX [EMERALD RULES] ***Emerald Rules***	***MIAX Sapphire Rules***	FINRA [(NASD) RULES EXCHANGE ACT PROVISION OR SEC RULE] ***Rules, Exchange Action Provisions, or SEC Rules***
	Rule 2203 Record of Written Complaints.			FINRA Rule 4513 Records of Written Customer Complaints.
	Rule 2204 Disclosure of Financial Condition.			FINRA Rule 2261 Disclosure of Financial Condition.
	Rule 2300 Supervision #			FINRA Rule 3110 Supervision.*
	Rule 2301 Supervisory Control System.			FINRA Rule 3120 Supervisory Control System.*
	Rule 2302 Annual Certification of Compliance and Supervisory Processes.			*FINRA Rule 3130 Annual Certification of Compliance and Supervisory Processes.*
	Rule 2303 Prevention of the Misuse of Material, Non-Public Information *#.			Section 15(g) of the Exchange Act * and FINRA Rule 3110(b)(1) Supervision.*
	Rule 2304 Anti-Money Laundering Compliance Program 6 #.			FINRA Rule 3310 Anti-Money Laundering Compliance Program.
	Rule 2305 Transactions for or by Associated Persons.			*FINRA Rule 3210 Accounts At Other Broker-Dealers and Financial Institutions.*
	Rule 2622[(e)(3) & (4)] *(h)(2)(A)(i)(c) and (d)* Limit Up-Limit Down Plan and Trading Halts.			FINRA Rule 6190(a) & (b) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility.
	Rule 2623 Short Sales #			FINRA Rule 6182 Trade Reporting of Short Sales.
	Rule 2624. Locking or Crossing Quotations in NMS Stocks **.*			*FINRA Rule 6240 Prohibition from Locking or Crossing Quotations in NMS Stocks* **.*
	Rule 2700 Market Manipulation.			FINRA Rule 5210 Publication of Transactions and Quotations, FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices *, FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade *, and FINRA Rule 6140(a) Other Trading Practices.
	Rule 2701 Fictitious Transactions.			FINRA Rule 6140 Other Trading Practices and FINRA Rule 5210 Supplementary Material .02 Self-Trades.
	Rule 2702 Excessive Sales By an Equity Member.			FINRA Rule 6140(c) Other Trading Practices.
	Rule 2703 Manipulative Transactions.			FINRA Rule 6140 Other Trading Practices.
	Rule 2704 Dissemination of False Information.			FINRA Rule 6140(e) Other Trading Practices.
	Rule 2705 Prohibition Against Trading Ahead of Customer Orders# **.			FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders.**
	Rule 2708 Trade Shredding.			FINRA Rule 5290 Order Entry and Execution Practices.

MIAX [RULES] ***Rules***	MIAX [PEARL] RULES] ***Pearl Rules***	MIAX [EMERALD RULES] ***Emerald Rules***	***MIAX Sapphire Rules***	FINRA [(NASD) RULES EXCHANGE ACT PROVISION OR SEC RULE] ***Rules, Exchange Action Provisions, or SEC Rules***
	Rule 2710 Best Execution and Interpositioning **. Rule 2712 Trading Ahead of Research Reports **. Rule 2714 Front Running of Block Transactions **. Rule 2802 Forwarding of Proxy and Other Issuer-Related Materials.			FINRA Rule 5310 Best Execution and Interpositioning.** FINRA Rule 5280 Trading Ahead of Research Reports.** FINRA Rule 5270 Front Running of Block Transactions.** FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.

[1] FINRA shall only have Regulatory Responsibilities regarding the rule and not the interpretations and policies.

[2] FINRA shall only have Regulatory Responsibilities regarding MIAX [and], MIAX Emerald, *MIAX Sapphire* Rules 1901 or MIAX Pearl Rule 3101 to the extent that MIAX, MIAX Pearl, *MIAX Emerald* or MIAX [Emerald] *Sapphire* recognize the same categories of principal and representative registration.

[3] *FINRA Rule 1240.01 allows for eligible persons to make their election to participate in the continuing education program under Rule 1240(c) either (1) between January 31, 2022, and March 15, 2022; or (2) between March 15, 2023, and December 31, 2023. In contrast, Interpretations and Policies .01 to MIAX and MIAX Emerald Rules 1903 and Interpretations and Policies .01 to MIAX Pearl Rule 3103 allows for eligible persons to make their election to participate in the continuing education programs under MIAX and MIAX Emerald Rules 1903(c) and MIAX Pearl Rule 3103(c) by July 1, 2022 or (2) between September 18, 2023, and December 31, 2023. Therefore, FINRA will not accept Regulatory Responsibilities for Interpretations and Policies .01 to MIAX and MIAX Pearl Rules 1903 or Interpretations and Policies .01 to MIAX Emerald Rule 1903 between March 16, 2022 and September 17, 2023. In addition, Interpretations and Policies .01 to MIAX and MIAX Emerald Rules 1903 and Interpretations and Policies .01 to MIAX Pearl Rule 3103 require eligible persons who elect to participate in the continuing education programs under MIAX and MIAX Emerald Rules 1903(c), or MIAX Pearl Rule 3103(c), between September 18, 2023, and December 31, 2023, to complete any prescribed 2022 and 2023 continuing education content by March 31, 2024. In contrast, FINRA Rule 1240.01 requires individuals enrolled in the continuing education program under FINRA Rule 1240(c) in both 2022 and 2023 to complete their prescribed 2022 and 2023 continuing education content by: (1) March 31, 2024; or (2) between May 22, 2024, and July 1, 2024 (where such individuals did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024). In addition, FINRA Rule 1240.01 provides that individuals enrolled in the continuing education program under FINRA Rule 1240(c) who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024 and May 22, 2024 will be deemed to have completed such content by July 1, 2024. As a result, FINRA shall not have Regulatory Responsibilities for Interpretations and Policies .01 to MIAX or MIAX Emerald Rules 1903 and Interpretations and Policies .01 to MIAX Pearl Rule 3103 beyond March 31, 2024 as it relates to eligible persons (who participate in the continuing education programs under MIAX or MIAX Emerald Rules 1903(c), or MIAX Pearl Rule 3103(c)) completion of the prescribed 2022 and 2023 continuing education content.*

[4] *FINRA shall not have Regulatory Responsibilities for Interpretations and Policies .01 of MIAX Sapphire Rule 1903.*

[5] FINRA shall not have Regulatory Responsibilities regarding requirements to keep records ''in conformity with . . . Exchange Rules;'' responsibility for such requirement remains with MIAX [PEARL] *Pearl.*

[6] FINRA shall only have Regulatory Responsibilities regarding the rule and not the interpretations and policies.

In addition, the following provisions shall be part of this 17d–2 Agreement:

- SEA Rule 200 of Regulation SHO—Definition of Short Sales and Marking Requirements **
- SEA Rule 201 of Regulation SHO—Circuit Breaker **
- SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements **
- SEA Rule 204 of Regulation SHO—Close-Out Requirement **
- SEA Rule 101 of Regulation M—Activities by Distribution Participants **
- SEA Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution **
- SEA Rule 103 of Regulation M—Nasdaq Passive Market Making **
- SEA Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering **
- SEA Rule 105 of Regulation M—Short Selling in Connection With a Public Offering **
- SEA Rule 604 of Regulation NMS—Display of Customer Limit Orders **
- SEA Rule 606 of Regulation NMS—Disclosure of Routing Information **
- SEA Rule 610(d) of Regulation NMS—Locking or Crossing Quotations **
- SEA Rule 611 of Regulation NMS—Order Protection Rule **
- SEA Rule 10b–5 Employment of Manipulative and Deceptive Devices *
- SEA Rule 17a–3/17a–4—Records to Be Made by Certain Exchange Members, Brokers, and Dealers/Records to Be Preserved by Certain Exchange Members, Brokers, and Dealers *
- SEA Rule 14e–4—Prohibited Transactions in Connection with Partial Tender Offers ^

^ FINRA shall perform surveillance for SEA Rule 14e–4(a)(1)(ii)(D).

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., [and] Investors' Exchange LLC and the Long-Term Stock Exchange, Inc. [effective May 26, 2020,] *as approved by the SEC on September 23, 2020,* as may be amended from time to time.

** FINRA shall perform the surveillance responsibilities for the double star rules for MIAX [PEARL] *Pearl* Equities. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–678 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 4–678. 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 (*https://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA, MIAX, MIAX Pearl, MIAX Emerald, and MIAX Sapphire. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number 4–678 and should be submitted on or before August 27, 2024.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act [16] and Rule 17d–2(c) thereunder [17] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by FINRA and at least one of MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to common members. Furthermore, because MIAX, MIAX Pearl, MIAX Emerald, MIAX Sapphire and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, MIAX, MIAX Pearl, MIAX Emerald, MIAX Sapphire and FINRA have allocated regulatory responsibility for those MIAX, MIAX Pearl, MIAX Emerald, and MIAX Sapphire rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a common member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The common rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the parties from time to time.

According to the Amended Plan, MIAX, MIAX Pearl, MIAX Emerald, and MIAX Sapphire will review the Certification at least annually, or more frequently if required by changes in either the rules of MIAX, MIAX Pearl, MIAX Emerald, MIAX Sapphire, or FINRA, and, if necessary, submit to FINRA an updated list of common rules to add MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rules not included on the then-current list of common rules that are substantially similar to FINRA rules; delete MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rules included in the then-current list of common rules that no longer qualify as common rules; and confirm that the remaining rules on the list of common rules continue to be MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rules that qualify as common rules.[18] FINRA will then confirm in writing whether the rules listed in any updated list are common rules as defined in the Amended Plan. Under the Amended Plan, MIAX, MIAX Pearl, MIAX Emerald, MIAX Sapphire also will provide FINRA with a current list of common members and shall update the list no less frequently than once each quarter.[19] The Commission believes that these provisions are designed to provide for continuing communication between the parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all MIAX, MIAX Pearl, MIAX Emerald, and MIAX Sapphire rules that are substantially similar to the rules of FINRA for common members of FINRA and MIAX, FINRA and MIAX Pearl, FINRA and MIAX Emerald, and FINRA and MIAX Sapphire. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the parties are only adding to, deleting from, or confirming changes to MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rules in the Certification in conformance with the definition of common rules provided in the Amended Plan. However, should the parties decide to add a MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rule to the Certification that is not substantially similar to a FINRA rule; delete a MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a MIAX, MIAX Pearl, MIAX Emerald, or MIAX Sapphire rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[20]

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that

[16] 15 U.S.C. 78q(d).

[17] 17 CFR 240.17d–2(c).

[18] *See* paragraph 2 of the Amended Plan.

[19] *See* paragraph 3 of the Amended Plan.

[20] The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, common members, also would constitute an amendment to the Amended Plan.

appropriate notice and comment can take place after the proposed amendment is effective. In particular, the purpose of the amendment is to add MIAX Sapphire as a Participant to the Plan. The Commission notes that the most recent prior amendment to the Plan was published for comment and the Commission did not receive any comments thereon.[21] The Commission believes that the current amendment to the Plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that the amended Plan should become effective without any undue delay.

IV. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–678. The parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–678, between the FINRA, MIAX, MIAX Pearl, MIAX Emerald, and MIAX Sapphire, filed pursuant to Rule 17d–2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that MIAX, MIAX Pearl, MIAX Emerald, and MIAX Sapphire are each relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–678.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–17275 Filed 8–5–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Request for Public Comment

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before October 7, 2024.

ADDRESSES: Send all comments to Curtis B. Rich, Management Analyst, 202–205–7030. *Curtis.rich@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf.*

The U.S. Small Business Administration will collect, analyze, and interpret information gathered through this generic clearance to identify services' accessibility, navigation, and use by customers, and make improvements in service delivery based on customer insights gathered through developing an understanding of the customer experience interacting with Government. The results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *https://www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

SBA will only submit collections if they meet the following criteria:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes.
- The agency will follow the procedures specified in OMB Circular A–11 Section 280 for the required quarterly reporting to OMB of trust data and experience driver data from surveys.
- Outside of the quarterly reporting mentioned in the bullet immediately above, if the agency intends to release journey maps, user personas, reports, or other data-related summaries stemming from this collection, the agency must include appropriate caveats around those summaries, noting that conclusions should not be generalized beyond the sample, considering the sample size and response rates. The agency must submit the data summary itself (*e.g.,* the report) and the caveat language mentioned above to OMB before it releases them outside the agency. OMB will engage in a passback process with the agency.

Public responses to these individual collections will provide insights in improving services offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Generic Clearance for SBA Customer Experience Data Collections.

Description of Respondents: Generic Customer Base.

Form Number: N/A.

Total Estimated Annual Responses: 2,001,550.

Total Estimated Annual Hour Burden: 101,125.

Curtis Rich,

Management Analyst.

[FR Doc. 2024–17337 Filed 8–5–24; 8:45 am]

BILLING CODE 8026–09–P

[21] *See* Securities Exchange Act Release No. 56645 (September 8, 2020), 85 FR 56645 (September 14, 2020).

[22] 17 CFR 200.30–3(a)(34).

DEPARTMENT OF STATE

[Public Notice: 12479]

60-Day Notice of Proposed Information Collection: Request for Overseas United States Citizen Vital Records Services

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *October 7, 2024.*

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2024–0026 in the Search field. Then click the ''Comment Now'' button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.
- *Email: Passport-Form-Comments@State.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Overseas U.S. Citizen Vital Records Services.
- *OMB Control Number:* 1405–0253.
- *Type of Request:* Revision of a currently approved collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS–5542.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 18,346.
- *Estimated Number of Responses:* 18,346.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 12,230 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Request for Overseas U.S. Citizen Vital Records Services is submitted to the Office of Record Management to request certified or authenticated copies of overseas U.S. citizen vital records such as Consular Reports of Birth/Death Abroad, Certificates of Witness to Marriage, and Panama Canal Zone documents pursuant to authorized requests. Requests for correction, amendment, or replacement of such vital records may be made using this form also.

Methodology

A PDF fillable form is available on the Department's website, *travel.state.gov,* where it can be printed for manual signature and submission. The Request for Overseas U.S. Citizen Vital Records Services form may be submitted by mail to request certified or authenticated copies of overseas U.S. citizen vital records maintained by the Office of Record Management.

Amanda E Smith,

Managing Director for Passport Support Operations, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2024–17296 Filed 8–5–24; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 12482]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization (IMO) Marine Environmental Protection Committee (MEPC) 82 Meeting

The Department of State will conduct a public meeting at 1:00 p.m. on Tuesday, September 24, 2024, both in-person at Coast Guard Headquarters in Washington DC, and via teleconference. The primary purpose of the meeting is to prepare for the eighty-second session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC 82) to be held in London, United Kingdom, from Monday, September 30, 2024, to Friday, October 04, 2024.

Members of the public may participate up to the capacity of the teleconference line, which will handle 500 participants, or up to the seating capacity of the room if attending in-person.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other bodies
—Consideration and adoption of amendments to mandatory instruments
—Harmful aquatic organisms in ballast water
—Air pollution prevention
—Energy efficiency of ships
—Reduction of GHG emissions from ships
—Follow-up work emanating from the Action Plan to address marine plastic litter from ships
—Reduction of underwater radiated noise from ships
—Pollution prevention and response
—Reports of other sub-committees
—Identification and protection of Special Areas, ECAs and PSSAs
—Application of the Committees' method of work
—Work programme of the Committee and subsidiary bodies
—Election of the Chair and Vice Chair for 2025
—Any other business
—Consideration of the report of the Committee

Please note: The IMO may, on short notice, adjust the MEPC 82 agenda to accommodate any constraints associated with the meeting. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to participate should contact the meeting coordinator, LCDR

Emily K. Rowan at *emily.k.rowan@uscg.mil,* by phone at (202) 372–1376, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509 no later than September 10, 2024, 14 days prior to the meeting. Requests made after September 10, 2024, might not be able to be accommodated. The meeting coordinator will provide the teleconference information, facilitate the building security process, and requests for reasonable accommodation. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon advanced request).

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Leslie W. Hunt,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2024–17352 Filed 8–5–24; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 12470]

60-Day Notice of Proposed Information Collection: Qualtrics Survey Platform

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 7, 2024.

ADDRESSES: You may submit comments by the following method:

- *Web:* Persons with access to the internet may comment on this notice by coming to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2024–0025'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, may be sent to Natalie Donahue, Chief of the MELI Unit, Bureau of Educational and Cultural Affairs (ECA), 2200 C Street NW, Washington, DC 20037 who may be reached at *ecaevaluation@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Qualtrics Survey Platform.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs (ECA/P/MELI).
- *Form Number:* DS–7101.
- *Respondents:* Implementing partners of ECA grants and cooperative agreements.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 250 per year (most respondents will have 1–2 cohorts per calendar year; though there are some that will survey more frequently).
- *Average Time per Response:* 3.5 hours.
- *Total Estimated Burden Time:* 875 hours.
- *Frequency:* Estimated 1–2 times per year.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The U.S. State Department is required to collect periodic program performance reports. As a part of these reporting requirements, ECA requires implementing partners to provide performance monitoring data in the form of a post-program survey. The Qualtrics survey platform will be utilized by ECA and implementing partners to standardize post-program survey data collection, aggregation, and reporting both internally and externally. The Qualtrics platform will consolidate data from all ECA programs onto a single survey platform, streamlining the survey creation process, ensuring the reliability of data, and automatically aggregating and visualizing program performance data.

Methodology

ECA will be responsible for providing the username and login information for each implementing partner who will use the Qualtrics platform for the post-program surveys required to meet the performance monitoring reporting requirements outlined in the award. ECA will also be responsible for providing the suite of survey questions within Qualtrics to ease the burden of setup for the implementing partners. The implementing partners will be responsible for selecting the required survey questions, inserting any custom survey questions they would like to ask, creating the mailing list of respondents, and launching the survey.

Sheila Casey,

Acting Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–17317 Filed 8–5–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 519 (Sub-No. 4)]

Notice of National Grain Car Council Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of National Grain Car Council meeting.

SUMMARY: Notice is hereby given of a meeting of the National Grain Car Council (NGCC), pursuant to the Federal Advisory Committee Act.

DATES: The meeting will be held on Tuesday, August 27, 2024, beginning at 1:00 p.m. (CDT), and is expected to conclude at 5:00 p.m. (CDT).

ADDRESSES: The meeting will be held at the InterContinental Kansas City at the

Plaza. 401 Ward Pkwy., Kansas City, MO 64112. Phone: (816) 756–1500.

Virtual Meeting Access: To register for the virtual broadcast, go to the following link: *https://us02web.zoom.us/meeting/register/tZwof-6pqD0pEtKQwd6VNxomO5_MRJtJ470m.*

Upon registration, you will receive a confirmation email with log-on details. Registration is available at any time prior to or during the meeting.

FOR FURTHER INFORMATION CONTACT: Alan Cassiday at (202) 245–0308, (717) 215–0635, or *alan.cassiday@stb.gov.*

SUPPLEMENTARY INFORMATION: The NGCC was established by the Interstate Commerce Commission (ICC) as a working group to facilitate private-sector solutions and provide recommendations to the ICC (and now the Surface Transportation Board (Board)) on matters affecting rail grain car availability and transportation. *Nat'l Grain Car Supply—Conf. of Interested Parties,* EP 519 (ICC served Jan. 7, 1994).

The general purpose of this meeting is to discuss rail carrier preparedness to transport the 2024 grain harvest. Agenda items include the following: remarks by NGCC Chair Jon Harman, Board Chairman Robert E. Primus, Board Vice Chairman and NGCC Co-Chair Karen J. Hedlund, and Board Members Patrick J. Fuchs and Michelle A. Schultz; reports by member groups on expectations for the upcoming harvest, domestic and foreign markets, the supply of rail cars, and rail service; and market and industry updates. The full agenda will be posted on the Board's website at *https://prod.stb.gov/resources/stakeholder-committees/grain-car-council.*

The meeting will be conducted pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management, 41 CFR 102–3; the NGCC charter; and Board procedures.

If you require an accommodation under the Americans with Disabilities Act for this meeting, please call (202) 245–0308 by August 21.

Public Attendance: This meeting is open to the public on a space-available first come first serve basis.

Public Comments: Members of the public may submit written comments to the NGCC at any time. Comments should be addressed to Alan Cassiday, Designated Federal Officer for the NGCC, at *alan.cassiday@stb.gov.* Any further communications about this meeting will be announced through the Board's website, *www.stb.gov.*

Decided: July 31, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2024–17287 Filed 8–5–24; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Conforming Amendments to Reinstated Exclusions: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: Effective July 1, 2024, the U.S. International Trade Commission (USITC) implemented certain changes to statistical reporting categories in the Harmonized Tariff Schedule of the United States (HTSUS). As a result of these changes, USTR is making conforming amendments to two extended exclusions associated with the Section 301 investigation of China Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

DATES: The conforming amendments announced in the Annex to this notice are applicable as of July 1, 2024. Customs and Border Protection (CBP) will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Senior Associate General Counsel Philip Butler or Assistant General Counsel Rachel Hasandras at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Effective July 1, 2024, the USITC implemented certain changes to ten-digit statistical reporting categories of the HTSUS in accordance with its responsibility under section 484(f) of the Tariff Act of 1930, 19 U.S.C. 1484(f). Two of the extended exclusions in the Section 301 investigation of China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation, as set out at 89 FR 46948 (May 30, 2024), are affected by the amended statistical reporting categories.

B. Conforming Amendments to Reinstated Exclusion Extensions

To maintain the pre-existing product coverage of the China 301 actions, two conforming amendments to the corresponding note provision in the HTSUS are required. In particular, the Annex to this notice makes conforming amendments to U.S. notes 20(vvv)(iv)(10) and 20(vvv)(iv)(11) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex at 89 FR 46948 (May 30, 2024).

Annex

Effective with respect to goods entered for consumption, or withdrawn from the warehouse for consumption, on or after 12:01 a.m. eastern standard time on July 1, 2024, note 20(vvv)(iv)(10) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting ''described in statistical reporting number 3926.90.9989 effective July 1, 2024'' after ''July 1, 2020''; and note 20(vvv)(iv)(11) to subchapter III of chapter 99 of the HTSUS is modified by inserting ''described in statistical reporting number 3926.90.9989 effective July 1, 2024'' after ''July 1, 2020''.

Juan Millan,

Acting General Counsel, Office of the United States Trade Representative.

[FR Doc. 2024–17360 Filed 8–5–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Interchange in Georgia, Interstate 16 (I–16) at Old Cuyler Road, Bryan County, Georgia

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitations on claims for judicial review of action by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final. This final agency action relates to a proposed new interchange project, the I–16 at Old Cuyler Road Interchange Project, along I–16 at Old Cuyler Road southeast of the existing County Road (CR) 11/Jernigan Road overpass. On the south side, the project will tie into a realigned Cuyler Road; on the north side, the project will terminate at the existing Old Cuyler Road intersection with Jernigan Road in

Bryan County, Georgia. The length of the proposed project is approximately 1.2 miles. The FHWA's Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for the proposed interchange.

DATES: By this notice, FHWA is advising the public of the final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 3, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Sabrina David, Division Administrator, Georgia Division, Federal Highway Administration, 75 Ted Turner Drive, Suite 1000, Atlanta, Georgia 30303; telephone 404–562–3630; email: *Sabrina.David@dot.gov.* FHWA's normal business hours are 8:00 a.m. to 5:00 p.m. (eastern time) Monday through Friday. For Georgia Department of Transportation (GDOT): Mr. Russell McMurray, Commissioner, Georgia Department of Transportation, 600 West Peachtree Street, 22nd Floor, Atlanta, Georgia 30308; telephone (404) 631–1990; email: *RMcMurray@dot.ga.gov.* GDOT's normal business hours are 8:00 a.m. to 5:00 p.m. (eastern time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken a final agency action subject to 23 U.S.C. 139(l)(1) by issuing a FONSI for the following new highway project in the State of Georgia: The I–16 at Old Cuyler Road Interchange Project located in Bryan County, Georgia. The Selected Alternative will construct a new interchange along I–16 at Old Cuyler Road. Old Cuyler and Cuyler Roads will be realigned and reconstructed over I–16, including the construction of a new bridge over I–16. The new interchange project will also tie into a new frontage road just east of Jernigan Road and will extend this road along the south side of I–16 to a multi-lane roundabout with the realigned Cuyler Road. Multi-lane roundabouts will also be located at the eastbound and westbound I–16 ramp termini. The length of the construction is approximately 1.2 miles.

The purpose of the project is listed below:

- Provide new, direct vehicular access to I–16, which will serve current and projected future vehicular and truck traffic.
- Provide congestion relief for the existing I–16/US 280 interchange to the west, which is not anticipated to have sufficient capacity to accommodate projected traffic volumes by 2047.
- Accelerate project delivery.

The FHWA's action, related actions by other Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on January 9, 2024, the FONSI issued on July 24, 2024, and other documents in the project file. The EA, FONSI and other project records are available by contacting FHWA or the Georgia Department of Transportation at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The EA and FONSI can also be reviewed and downloaded from the project website at *https://bit.ly/US280-16atOldCuylerRd.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.
4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
5. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
8. *Wetlands and Water Resources:* Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].
10. *Executive Orders:* E.O. 14096 Revitalizing Our Nation's Commitment to Environmental Justice for All; E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13045 Protection of Children From Environmental Health Risks and Safety Risks; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Sabrina S. David,

Division Administrator, Atlanta, Georgia.

[FR Doc. 2024–17358 Filed 8–5–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2024–0003]

Proposed Information Collections; Comment Request (No. 93)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the continuing or proposed information collections listed below in this document.

DATES: We must receive your written comments on or before October 7, 2024.

ADDRESSES: You may send comments on the information collections described in this document using one of these two methods:

- *Internet*—To submit comments electronically, use the comment form for

this document posted on the ''*Regulations.gov*'' e-rulemaking website at *https://www.regulations.gov* within Docket No. TTB–2024–0003.

• *Mail*—Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form number or recordkeeping requirement number (if any), and OMB control number in your comment.

You may view copies of this document, the relevant TTB forms, and any comments received at *https://www.regulations.gov* within Docket No. TTB–2024–0003. TTB has posted a link to that docket on its website at *https://www.ttb.gov/rrd/information-collection-notices.* You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB's Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or complete the Regulations and Rulings Division contact form at *https://www.ttb.gov/contact-rrd.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0006

Title: Volatile Fruit-Flavor Concentrate Plants—Applications and Related Records.

TTB Form Number: TTB F 5520.3.

TTB Recordkeeping Number: TTB REC 5520/2.

Abstract: Volatile fruit-flavor concentrates contain alcohol when made by an evaporative process from the mash or juice of a fruit. However, under the Internal Revenue Code (IRC) at 26 U.S.C. 5511, alcohol excise taxes and most other provisions of chapter 51 of the IRC do not apply to such concentrates if the manufacturers file applications, keep records, and meet certain statutory and regulatory requirements. Under that IRC authority, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR part 18 require volatile fruit-flavor concentrate manufacturers to register using form TTB F 5520.3 and file amendments to their registrations using that form or a letterhead application (depending on circumstances). Additionally, concentrate manufacturers are required to maintain a record file of all approved registrations and related supporting documents. TTB uses the collected information to identify concentrate manufacturers and their operations to ensure that the tax provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

• *Number of Respondents:* 55.

• *Average Responses per Respondent:* 1 (one) per year.

• *Number of Responses:* 55.

• *Average per-Response Burden:* 2 hours.

• *Total Burden:* 110 hours.

OMB Control No. 1513–0022

Title: Volatile Fruit-Flavor Concentrate Manufacturers—Annual Report and Usual and Customary Business Records (TTB REC 5520/1).

TTB Form Number: TTB F 5520.2.

TTB Recordkeeping Number: TTB F 5520/1.

Abstract: Volatile fruit-flavor concentrates contain alcohol when made by an evaporative process from the mash or juice of a fruit. However, under the IRC at 26 U.S.C. 5511, alcohol excise taxes and most other provisions of chapter 51 of the IRC do not apply to such concentrates if the manufacturers meet certain statutory and regulatory requirements. Under that IRC authority, the TTB regulations in 27 CFR part 18 require manufacturers of volatile fruit-flavor concentrates to submit an annual summary report, using form TTB F 5520.2 in order to account for all volatile fruit-flavor concentrates produced, removed, or made unfit for beverage use. Such manufacturers compile this report from usual and customary business, which, under the regulations, respondents must retain for 3 years. TTB uses the collected information to ensure that the tax provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

• *Number of Respondents:* 55.

• *Average Responses per Respondent:* 1 (one) per year.

• *Number of Responses:* 55.

• *Average Per-response Burden:* 20 minutes.

• *Total Burden:* 18 hours.

OMB Control No. 1513–0042

Title: Drawback on Distilled Spirits Exported.

TTB Form Number: TTB F 5110.30.

Abstract: Under the IRC at 26 U.S.C. 5062(b), on the exportation of distilled spirits produced, bottled, or packaged in

casks or bulk containers in the United States on which Federal excise tax has been paid or determined, and are in bulk containers or in bottles packed in cases or other containers, the bottler or packager of the spirits may file a claim for the drawback (refund) of the tax. Section 5062(b) also authorizes the Secretary to issue regulations governing such export drawback claims, including requirements for notices, bonds, and evidence showing tax payment or determination and export of the spirits in question. The TTB regulations in 27 CFR part 28 require that export drawback claimants use TTB F 5110.30 to submit such claims to TTB. The form collects information regarding the claimant, a description of the distilled spirits exported along with the amount exported, and the amount of drawback claimed. The information collected is used by exporters to obtain drawback of taxes on articles exported, and TTB uses the information on TTB F 5110.30 and its attached documents to verify and substantiate the drawback claim.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 18 per year.
- *Number of Responses:* 360.
- *Average Per-response Burden:* 2 hours.
- *Total Burden:* 720 hours.

OMB Control No. 1513–0043

Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

TTB Form Number: TTB F 5110.31.

Abstract: The IRC at 26 U.S.C. 7652 imposes on Puerto Rican distilled spirits shipped to the United States for consumption or sale a tax equal to the internal revenue (excise) tax imposed in the United States on distilled spirits of domestic manufacture. However, the IRC at 26 U.S.C. 5232 provides that distilled spirits imported or brought into the United States in bulk containers may, under regulations prescribed by the Secretary, be withdrawn from Customs custody and transferred to the bonded premises of a domestic distilled spirits plant without payment of the internal revenue tax imposed on such spirits. The IRC at 26 U.S.C. 5314 also states that spirits may be withdrawn from the bonded premises of a distilled spirits plant in Puerto Rico pursuant to an authorization issued under the laws of Puerto Rico. Under those IRC authorities, TTB has issued regulations in 27 CFR part 26, Liquors and Articles from Puerto Rico and the Virgin Islands, which require respondents to use form TTB F 5110.31 to apply for and receive permission to ship Puerto Rican distilled spirits to the United States without payment of Federal excise tax. The form identifies the specific spirits to be shipped, the amount of spirits shipped and received, and the shipment's consignor in Puerto Rico and consignee in the United States. The collected information is necessary to protect the revenue.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of responses per respondent and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 10.
- *Average Responses per Respondent:* 58 per year.
- *Number of Responses:* 580.
- *Average Per-response Burden:* 0.75 hour.
- *Total Burden:* 435 hours.

OMB Control No. 1513–0047

Title: Distilled Spirits Production Records (TTB REC 5110/01) and Monthly Report of Production Operations.

TTB Form Number: TTB F 5110.40.

TTB Recordkeeping Number: TTB REC 5110/01.

Abstract: The IRC at 26 U.S.C. 5001 sets forth, in general, the Federal excise tax rates for distilled spirits produced in or imported into the United States. The IRC at 26 U.S.C. 5207 also requires distilled spirit plant (DSP) proprietors to maintain records of production, storage, denaturation, and processing activities and to submit reports covering those operations, as the Secretary prescribes by regulation. The TTB regulations in 27 CFR part 19 require DSP proprietors to keep records regarding the materials used to produce distilled spirits, the amount of spirits produced, the withdrawal of spirits from the production account, and the production of spirits byproducts. The regulations in part 19 also require these records to be retained for at least three years. In addition, DSP proprietors must submit monthly reports of production operations using TTB F 5110.40. The form collects information about the types and amounts of distilled spirits produced, the amounts of certain types of materials used in the production of the spirits, and the disposition of the spirits. TTB uses the collected information to account for the amount of distilled spirits produced at a DSP and to determine the proprietor's resulting excise tax liability and the amount of bond coverage needed if such coverage is required.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of DSPs in the United States, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

- *Number of Respondents:* 4,800.
- *Average Responses per Respondent:* 12 per year.
- *Number of Responses:* 57,600.
- *Average Per-response Burden:* 2 hours.
- *Total Burden:* 115,200 hours.

OMB Control No. 1513–0065

Title: Wholesale Dealers Records of Receipt of Alcohol Beverages, Disposition of Distilled Spirits, and Monthly Summary Reports (TTB REC 5170/2).

TTB Recordkeeping Number: TTB REC 5170/2.

Abstract: The IRC at 26 U.S.C. 5121 requires wholesale dealers in liquors to keep daily records of all distilled spirits received and disposed of, and, at the Secretary's discretion, to submit periodic summaries of those daily records. Section 5121 also requires wholesale dealers in liquors and wholesale dealers in beer to keep daily records of all wine and beer received. In addition, section 5121 authorizes the Secretary to issue regulations regarding the keeping and submission of these records and summary reports by such wholesale dealers. The IRC at 26 U.S.C. 5123 also sets forth retention and inspection requirements for the required wholesale dealer records and reports. Under these IRC authorities, TTB has issued regulations applicable to wholesale dealers, which are contained in 27 CFR part 31. These regulations require wholesale dealers to keep usual

and customary business records, such as consignment and purchase invoices, documenting their daily receipt and disposition of distilled spirits and their daily receipt of wine and beer. TTB, at its discretion, also may require a particular wholesale liquor dealer to submit monthly summary reports regarding all distilled spirits received and disposed of on a daily basis. In addition, the TTB regulations require that wholesaler dealers retain the required records and copies of any required monthly summary reports at their place of business, available for inspection, for at least 3 years.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 30,400 for recordkeeping; 50 for monthly summary reports.
- *Average Responses per Respondent:* 1 for recordkeeping; 12 for monthly summary reports.
- *Number of Responses:* 30,400 for recordkeeping; 600 for monthly summary reports.
- *Average Per-response Burden:* None for usual and customary recordkeeping; 2 hours for monthly summary reports.
- *Total Burden:* The keeping of usual and customary business records imposes no burden on respondents per the Office of Management and Budget regulations at 5 CFR 1320.3(b)(2). For monthly summary reports, the estimated total burden is 1,200 hours.

OMB Control No. 1513–0088

Title: Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims (TTB REC 5000/24).

TTB Recordkeeping Number: TTB REC 5000/24.

Abstract: TTB is responsible for the collection of Federal excise taxes imposed on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes, and firearms and ammunition, and also for the collection of special occupational taxes related to tobacco products and cigarette papers and tubes. The IRC (26 U.S.C.) requires that such taxes be collected on the basis of a return, and it requires taxpayers to maintain records that document the information provided on such returns. The IRC also allows for the filing of claims for the abatement, credit, remission, or refund (drawback) of taxes under certain circumstances, and it requires claimants to maintain records to support such claims. TTB uses the collected information maintained in these records to confirm the amount of excise and special occupational taxes rightly due, and to verify respondent computations on tax returns or the correctness of claims for refund or other adjustments to tax liabilities.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

- *Number of Respondents:* 67,000.
- *Average Responses per Respondent:* 8 per year.
- *Number of Responses:* 536,000.
- *Average Per-response Burden:* 1 hour.
- *Total Burden:* 536,000 hours.

OMB Control No. 1513–0094

Title: Federal Firearms and Ammunition Quarterly Excise Tax Return.

TTB Form Number: TTB F 5300.26.

Abstract: The IRC at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols, revolvers, other firearms, and shells and cartridges (ammunition) by manufacturers, producers, and importers of such articles. The IRC, at 26 U.S.C. 6001, 6011, and 6302, also authorizes the Secretary to issue regulations regarding IRC-based taxes, returns and records, including the mode and time for collecting taxes due. Under this authority, the TTB regulations in 27 CFR part 53 require persons who have firearms and/or ammunition excise tax liability to submit a quarterly tax return using form TTB F 5300.26. The information collected on this return is necessary to identify the taxpayer, the amount and type of taxes due, and the amount of payments made. TTB uses the return information to determine whether the taxpayer has paid the correct amount of tax and to take additional action, such as assessment or refund, as necessary.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

- *Number of Respondents:* 635.
- *Average Responses per Respondent:* 4.
- *Number of Responses:* 2,540
- *Average Per-response Burden:* 7 hours.
- *Total Burden:* 17,780 hours.

OMB Control No. 1513–0130

Title: Report of Removal, Transfer, or Sale of Processed Tobacco.

TTB Form Number: TTB F 5250.2.

Abstract: The IRC at 26 U.S.C. 5722 requires importers and manufacturers of tobacco products, processed tobacco, or cigarette papers and tubes to make reports containing such information, in such form, at such times, and for such periods as the Secretary prescribes by regulation. While processed tobacco is not subject to Federal excise tax under the IRC, tobacco products subject to such taxes may be manufactured using processed tobacco. To protect the revenue by preventing diversion of processed tobacco to illegal, unpermitted tobacco product manufacturers, TTB has issued regulations that require persons holding TTB permits as importers or manufacturers of processed tobacco or tobacco products to report all removals, transfers, or sales of processed tobacco made for export or for shipment to any domestic entity that does not hold such a permit or a permit to operate as an export warehouse proprietor. In general, respondents must report each such shipment by the close of the next business day using form TTB F 5250.2. However, exporters may apply to TTB to report removals made for export using a monthly summary report. TTB F 5250.2 and the monthly summary report require information identifying the TTB permit holder making the processed tobacco shipment, the type and quantity of processed tobacco shipped, the person(s) purchasing (or receiving) and delivering the processed tobacco, and the destination address of the shipment.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the estimated number of annual respondents, responses, and burden hours associated with this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

- *Number of Respondents:* 32.
- *Average Responses per Respondent:* 156 per year.
- *Number of Responses:* 4,992.

• *Average Per-response Burden:* 0.54 hour.
• *Total Burden:* 2,696 hours.

OMB Control No. 1513–0132

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: TTB uses the surveys, focus groups, usability tests, and other information collections approved under this generic clearance to gather timely feedback from its customers and stakeholders regarding its programs and services. TTB analyzes the collected information to help improve its programs and service delivery to ensure that regulated persons and others have effective, efficient, and satisfactory experiences when interacting with the agency.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

• *Number of Respondents:* 25,000.
• *Average Responses per Respondent:* 1 (one).
• *Number of Responses:* 25,000.
• *Average Per-response Burden:* 1 hour.
• *Total Burden:* 25,000 hours.

OMB Control No. 1513–0135

Title: Specific and Continuing Export Bonds for Distilled Spirits or Wine.

TTB Form Numbers: TTB F 5100.25 and TTB F 5100.30.

Abstract: The IRC at 26 U.S.C. 5175, 5214, and 5362 authorizes exporters (other than proprietors of distilled spirits plants or bonded wine premises) to withdraw distilled spirits and wine without payment of tax for export, use on certain vessels or aircraft, transfer to a foreign trade zone, or transfer to a customs bonded warehouse pending exportation, subject to such regulations as the Secretary prescribes. Under that IRC authority, to protect the revenue and provide exporters with a degree of flexibility based on individual need, the TTB alcohol export regulations in 27 CFR part 28 allow exporters to file either a specific bond using TTB F 5100.25 to cover a single export shipment or a continuing bond using TTB F 5100.30 to cover export shipments made from time to time.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

• *Number of Respondents:* 20.
• *Average Responses per Respondent:* 1 (one) per year.
• *Number of Responses:* 20.
• *Average Per-response Burden:* 1 hour.
• *Total Burden:* 20 hours.

Dated: August 1, 2024.

Amy R. Greenberg,

Deputy Assistant Administrator, Headquarters Operations.

[FR Doc. 2024–17342 Filed 8–5–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Senior Executive Service Performance Review Board

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Notice.

SUMMARY: To announce a list of senior executives who comprise a standing roster that will serve on IRS's Fiscal Year 2024 Senior Executive Service (SES) Performance Review Boards.

DATES: This list is effective September 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sharnetta A. Walton, Director, Office of Executive Services at (202) 317–3817 or Rachel Winningham, Deputy Director, Office of Executive Services at (801) 620–4488, IRS, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this board shall review and evaluate the initial appraisals of career senior executives' performance and provide recommendations to the appointing authority on performance ratings, pay adjustments and performance awards. The senior executives are as follows:

Victor M. Aledo-Garcia
Todd A. Anthony
Elizabeth P. Askey
Scott A. Ballint
Michael T. Batdorf
Robert J. Bedoya
Jennifer L. Best
Orrin D. Byrd
Julia W. Caldwell
Tracey C. Carter
Andrea L. Chapman
Anthony S. Chavez
Robert Choi
James P. Clifford
Amalia C. Colbert
Erin M. Collins
Lucinda J. Comegys
Kenneth C. Corbin
Robert S. Cox
Joseph Dianto
Donald C. Drake
Sheila Eason
Randolph Edwards
Guy A. Ficco
James L. Fish
Sharyn M. Fisk
Caralee Garr
Gwen M. Garren
Teresa V. Givens
Barbara B. Gourley
Dietra D. Grant
Phyllis T. Grimes
Lisa J. Gyorda
Franklin A. Henderson
Keith A. Henley
John W. Hinman
Ronald H. Hodge
Carrie Y. Holland
Karen S. Howard
Teresa R. Hunter
Barry W. Johnson
Nikki C. Johnson
William H. Kea Jr
Lou Ann Y. Kelleher
Edward T. Killen
Emily M. Kornegay
Melanie R. Krause
Kathleen M. Kruchten
Stephen C. Lambourne
Jonathan D. Larsen
Daniel R. Lauer
Tracy L. Lee
Ronald J. Leidner Jr
Terry Lemons
Sofia Lofvenholm-Enggren
Deborah Lucas Trumbull
Robert W. Malone
Heather C. Maloy
Kevin Q. McIver
Priya B. Mhatre
Carolyn M. Morton
Bryan L. Musselman
Douglas W. O'Donnell
Victor G. Onorato
David A. Padrino
Deborah T. Palacheck
Kaschit D. Pandya
Holly O. Paz
Christopher J. Pleffner
Jonathan J. Rawlings
Scott D. Reisher
Julie A. Robbins
Bridget T. Roberts
Richard L. Rodriguez
Kimberly D. Rogers
Clifford R. Scherwinski
Frederick W. Schindler
Tracey L. Showman
Eric D. Slack
Tommy A. Smith
Kim S. Stewart
Fumino Tamaki
Richard L. Tierney
Guy A. Torres
Karen D. Truss
Rajiv K. Uppal
Alfredo Valdespino
Tiffany Y. Vertison-Cole
Scott Wallace
Kathleen E. Walters
Nicole L. Welch
Mike Wetklow
Darrell S. White

Lavena B. Williams
Maha H. Williams
Patrice C. Wilmot
Lisa S. Wilson
Nancy R. Wiltshire
Max R. Wyche

This document does not meet the Treasury's criteria for significant regulations.

Douglas W. O'Donnell,

Deputy Commissioner of Internal Revenue, Internal Revenue Service.

[FR Doc. 2024–17322 Filed 8–5–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Public Meeting of the Commission on Social Impact Partnerships

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Commission on Social Impact Partnerships (Commission) will convene for a public meeting on August 21, on Zoom from 3:00 p.m. to 4:00 p.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on August 21, 2024, from 3:00 p.m. to 4:00 p.m. Eastern Time.

ADDRESSES: The public can attend remotely via teleconference. Treasury expects to make the teleconference details available on the Social Impact Partnerships to Pay for Results Act (''SIPPRA'') website (*treasury.gov/sippra*). Members of the public who would like to attend the meeting may visit the SIPPRA website or send an email to William Girardo (*william.girardo@treasury.gov*) by 5:00 p.m. Eastern Time on Tuesday, August 20, 2024 containing each proposed attendee's email address and full name (first, middle, and last). Mr. Girardo will provide the teleconference details to each interested attendee via email. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Marcia Small Bowman, Office of Civil Rights and Equal Employment Opportunity, Department of the Treasury, at 202–622–8177 or *marcia.smallbowman@treasury.gov.*

Submission of Written Statements: The public is invited to submit written statements to the Commission. Written statements should be sent by any one of the following methods:

Electronic Statements

Email: SIPPRA@treasury.gov, Attn: Matthew Cook, Docket ID No. 03282019.

Paper Statements

Send paper statements to SIPPRA Commission, Attn: Matthew Cook, Docket ID No. 03282019, U.S. Department of the Treasury, 1801 L St. NW, Washington, DC 20006. In general, Treasury will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and photocopying in Treasury's library located at Treasury Department Annex, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The library is open on official business days between the hours of 10:00 a.m. and 4:30 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

Electronic Statements

Email: Matthew Cook, Designated Federal Officer, Office of Economic Policy, Department of the Treasury, *SIPPRA@treasury.gov* or *matthew.cook@treasury.gov.*

In general, Treasury will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and photocopying in Treasury's library located at Treasury Department Annex, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The library is open on official business days between the hours of 10:00 a.m. and 4:30 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Matthew Cook, Designated Federal Officer, Office of Economic Policy, Department of the Treasury, at *SIPPRA@treasury.gov* or 202–622–2000.

SUPPLEMENTARY INFORMATION: On February 9, 2018, the President signed the Bipartisan Budget Act of 2018, establishing the Commission under the Social Impact Partnerships to Pay for Results Act. The Commission's duties include making recommendations to the Secretary of the Treasury regarding awards of social impact partnership project grants and feasibility study grants. In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.,* and the regulations thereunder, Matthew Cook, Designated Federal Officer of the Commission, has ordered publication of this notice that the Commission will convene its next meeting on August 21, 2024 from 3:00 p.m.–4:00 p.m. Eastern Time. During this meeting, the Commission will discuss applications submitted to Treasury in response to the SIPPRA Notice of Funding Availability that Treasury published in the **Federal Register** on November 30, 2023. Treasury expects to make all documents discussed by the Commission available for public inspection and photocopying in Treasury's library in advance of the meeting. Treasury expects the Commission to make funding recommendations to Treasury at this meeting.

Eric Van Nostrand,

P.D.O. Assistant Secretary for Economic Policy Department of the Treasury.

[FR Doc. 2024–17355 Filed 8–5–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Veterans Child Care Assistance Program (VCAP)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. DATES: Comments must be received on or before October 7, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Program-specific information: Rebecca Mimnall, 202–695–9434, *vhacopra@va.gov.*

VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Child Care Assistance Program (VCAP) (VA Forms 10–380, 10–381, 10–382).

OMB Control Number: 2900–NEW. *https://www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection.)

Type of Review: New collection.

Abstract: The Veterans Child Care Assistance Program (VCAP) was established via Public Law 116–315, Section 5107a, of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020. Section 5107a provided permanent authority in 38 United States Code Section 1709C for VA to provide child care assistance to certain veterans receiving health care at VA medical facilities. This child care assistance is provided solely for the time period of the veteran's health care appointment.

VA intends to collect appropriate information from veterans in order to establish eligibility and intent to utilize VCAP. VA facilities with onsite drop-in child care centers will be able to access the current VA systems to verify veteran name and SSN for eligibility, but must maintain their contact information and the child's information for use in the child care setting for emergency and safety reasons. This information also will be used for auditing and validation purposes in the reimbursement system for those veterans submitting claims for financial reimbursement of child care expenses. Such verification is necessary to pay allowable claims, as well as monitor and prevent fraudulent claims.

VA Form 10–380—VCAP Child Registration Intake Form: The eligible veteran will complete this form to register the child or children who will be cared for on VA premises for the duration of the veteran's health care appointment.

VA Form 10–381—VCAP Appointment Certification Form: The veteran individual will complete this form to attest they are attending a certified appointment and have a qualifying veteran-child relationship for the purpose of establishing eligibility for child care assistance.

VA Form10–382—VCAP Reimbursement Claim Form: This form will be used by the veteran individual to request reimbursement for the cost of child care at licensed non-VA child care facilities. Reimbursement for child care services is limited to the time required for the veteran's health care appointment and travel to/from the eligible child care provider.

Total Annual Burden: 215,639 hours.

Total Annual Responses: 4,174,528.

VA Form 10–380:

Affected Public: Individuals or Households.

Estimated Annual Burden: 70,400 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 281,600.

VA Form 10–381:

Affected Public: Individuals or Households.

Estimated Annual Burden: 125,895 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: 13 times annually.

Estimated Number of Respondents: 290,528.

VA Form 10–382:

Affected Public: Individuals or Households.

Estimated Annual Burden: 19,344 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: 13 times annually.

Estimated Number of Respondents: 8,928.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–17353 Filed 8–5–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Tuesday,
No. 151 August 6, 2024

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 488

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 2025; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 488

[CMS–1802–F]

RIN 0938–AV30

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 2025

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule finalizes changes and updates to the policies and payment rates used under the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) for fiscal year (FY) 2025. First, we are rebasing and revising the SNF market basket to reflect a 2022 base year. Next, we update the wage index used under the SNF PPS to reflect data collected during the most recent decennial census. Additionally, we finalize several technical revisions to the code mappings used to classify patients under the Patient Driven Payment Model (PDPM) to improve payment and coding accuracy. This final rule also updates the requirements for the SNF Quality Reporting Program and the SNF Value-Based Purchasing Program. Finally, we also are revising CMS' enforcement authority for imposing civil money penalties (CMPs) and including revisions to strengthen nursing home enforcement regulations.

DATES: These regulations are effective on October 1, 2024.

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.

Christopher Palmer, (410) 786–8025, for information related to the skilled nursing facility value-based purchasing program.

Celeste Saunders, (410) 786–5603, for information related to Nursing Home Enforcement.

SUPPLEMENTARY INFORMATION:

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 Core-Based Statistical Area (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 final 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 final rule will update the SNF prospective payment rates for fiscal year (FY) 2025, 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 final rule) in the **Federal Register** before the August 1 that precedes the start of each FY. Additionally, in this final rule, we are finalizing the rebasing and revising of the SNF market basket to reflect a 2022 base year. Next, we are finalizing the update to the wage index used under the SNF PPS to reflect data collected during the most recent decennial census. We also finalize several technical revisions to the code mappings used to classify patients under the PDPM to improve payment and coding accuracy. This final rule updates the requirements for the SNF QRP, including the collection of four new items as standardized patient assessment data elements, and the modification of one item collected and submitted using the Minimum Data Set (MDS) beginning with the FY 2027 SNF QRP. We also finalize a policy that SNFs, which participate in the SNF QRP, participate in a validation process beginning with the FY 2027 SNF QRP. We also provide a summary of the

comments received on the request for information on quality measure concepts under consideration for future SNF QRP program years. This final rule also includes requirements for the Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program, including adopting a measure selection, retention, and removal policy, a technical measure updates policy, a measure minimum for FY 2028 and subsequent years, updates to the review and correction policy to accommodate new measure data sources, updates to the Extraordinary Circumstances Exception policy, and updates to the SNF VBP regulation text. We also proposed revisions to existing long-term care (LTC) enforcement regulations that would enable CMS and the States to impose CMPs to better reflect amounts that are more consistent with the type of noncompliance that occurred.

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, this final rule updates the annual rates that we published in the SNF PPS final rule for FY 2024 (88 FR 53200, August 7, 2023). In addition, this final rule includes a forecast error adjustment for FY 2025. We are also finalizing the rebasing and revising of the SNF market basket to reflect a 2022 base year. Next, we are finalizing the update of the wage index used under the SNF PPS to reflect data collected during the most recent decennial census. We are also finalizing several technical revisions to the code mappings used to classify patients under the PDPM to improve payment and coding accuracy.

We are finalizing several updates for the SNF VBP Program. We are adopting a measure selection, retention, and removal policy that aligns with policies we have adopted in other CMS quality programs. We are adopting a technical measure updates policy that allows us to incorporate technical measure updates into SNF VBP measure specifications and to update the numerical values of the performance standards for a program year if a measure's specifications were technically updated between the time that we published the performance standards for a measure and the time that we calculate SNF performance on that measure at the conclusion of the applicable performance period. We are adopting the same measure minimum we previously finalized for the FY 2027 program year for the FY 2028 program year and subsequent program years. We are adopting modifications to Phase One of our review and correction policy such that the policy applies to all SNF VBP measures regardless of the measure's data source. We are updating the SNF VBP extraordinary circumstances exception (ECE) policy to allow SNFs to request an ECE if the SNF can demonstrate that, as a result of the extraordinary circumstance, it cannot report SNF VBP data on one or more measures by the specified deadline. We are also updating the instructions for requesting an extraordinary circumstance exception (ECE). Lastly, we are adopting several updates to the SNF VBP regulation text to align with previously finalized definitions and policies.

Beginning with the FY 2027 SNF QRP, we are finalizing requirements that SNFs participating in the SNF QRP collect and submit through the MDS four new items as standardized patient assessment data elements under the social determinants of health (SDOH) category: one item for Living Situation, two items for Food, and one item for Utilities. Additionally, we are finalizing our proposal to modify the current Transportation item. We are finalizing with modification a validation process for the SNF QRP, similar to the process that we adopted for the SNF VBP beginning with the FY 2027 SNF QRP. We are also finalizing with modification amendments to the regulation text at § 413.360 to implement the validation process we are finalizing. Finally, this final rule also summarizes comments we received in response to a request for information (RFI) on quality measure concepts under consideration for future SNF QRP years.

We are finalizing revisions to CMS' existing enforcement authority to expand the number and types of CMPs that can be imposed on LTC facilities, allowing for more per-instance (PI) CMPs to be imposed in conjunction with per-day (PD) CMPs. This update also expands our authority to impose multiple PI CMPs when the same type of noncompliance is identified on more than one day. Lastly, the final revisions will enable CMS or the States to impose a CMP for the number of days of previously cited noncompliance since the last three standard surveys for which a CMP has not yet been imposed to ensure that identified noncompliance may be subject to a penalty.

C. Summary of Cost and Benefits

TABLE 1: Estimated Cost and Benefits

Proposals	Estimated Total Transfers/Costs
FY 2025 SNF PPS payment rate update	The overall economic impact of this final rule is an estimated increase of $1.4 billion in aggregate payments to SNFs during FY 2025.
FY 2027 SNF QRP changes	The overall economic impact of this final rule to SNFs is an estimated cost of $1,996,226.60 annually to SNFs beginning with the FY 2027 SNF QRP.
FY 2026 Changes Due to Removal of MDS Items No Longer Needed for Case-Mix Determination	The overall economic impact of this final rule to SNFs is an estimated savings of $14,128,696.47 annually to SNFs beginning with FY 2026.
FY 2027 Changes Due to Proposal for Participation in a Validation Process	The overall economic impact of this final rule to SNFs is an estimated cost of $813,067.95 annually to selected SNFs beginning with the FY 2027 SNF QRP.
FY 2025 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of $187.69 million in aggregate payments to SNFs during FY 2025.
FY 2025 Nursing Home Enforcement changes	The overall economic impact the changes to CMS' enforcement authority results in an estimated additional penalty amount totaling $25 million annually to LTC facilities, and $164,929 in annual administrative costs for CMS and States.

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 virtually 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. In 2014, 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) (Pub. L. 116–260, enacted December 27, 2020) amended 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 2024 (88 FR 53200, August 7, 2023), as amended by the subsequent correction document (88 FR 68486, October 4, 2023).

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.
- 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 final rule will set out the required annual updates to the per diem payment rates for SNFs for FY 2025.

III. Analysis and Responses to Public Comments on the FY 2025 SNF PPS Proposed Rule

A. General Comments on the FY 2025 SNF PPS Proposed Rule

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Some commenters expressed concerns regarding several items outside the scope of this rule or outside the scope of CMS's current authorities. These comments included issues related to the recently finalized nursing home staffing rule (outside of issues related to that rule and calculation of the SNF market basket, which are addressed later in this rule), and a request that CMS remove the 3-day qualifying hospital stay (QHS) prerequisite for Part A SNF coverage.

Response: With regard to those comments related to the recently finalized nursing home staffing rule, any such issues are out of scope for this rule and should be directed to *HealthandSafetyInquiries@cms.hhs.gov.* With regard to the request that we remove the QHS requirement for Part A SNF coverage, we maintain that we do not have the statutory authority to pursue this change at this time. Moreover, we have previously conducted analyses of the associated cost of removing the 3-day stay requirement and found that it would significantly increase Medicare outlays.

Comment: Several commenters raised concerns with therapy treatment under PDPM, specifically related to reductions in the amount of therapy furnished to SNF patients since PDPM was implemented. Some of these commenters stated that CMS should revise the existing limit on concurrent and group therapy to provide a financial penalty in cases where the facility exceeds this limit. These commenters also recommended that CMS direct its review contractors to examine the practices of facilities that changed their therapy service provision after PDPM was implemented. Additionally, commenters want CMS to release the results of any monitoring efforts around therapy provision. Some commenters stated that the therapy items in O0400 should be maintained to track therapy provision. Finally, some commenters stated that CMS should reinstate the assessment schedule that had existed prior to implementing PDPM.

Response: We appreciate commenters raising these concerns around therapy provision under PDPM, as compared the Resource Utilization Groups, Version IV (RUG–IV). We agree with commenters that the amount of therapy that is furnished to patients under PDPM is less than that delivered under RUG–IV. As we stated in the FY 2020 SNF PPS final rule, we believe that close, real-time monitoring is essential to identifying any adverse trends under PDPM. While we have identified the same reduction in therapy services and therapy staff, we believe that these findings must be considered within the context of patient outcomes. To the extent that facilities are able to maintain or improve patient outcomes, we believe that this supersedes changes in service provision, whether this be in the amount of therapy furnished or the mode in which it is furnished. We continue to monitor all aspects of PDPM and advise our review contractors on any adverse trends. With regard to implementing a specific penalty for exceeding the group and concurrent therapy threshold, based on our current data, we have not identified any widespread misuse of this limit. Should we identify such misuse, either at a provider-level or at a broader level, we will pursue an appropriate course of action.

With regard to eliminating certain therapy tracking items in O0400, while the O0400 items are able to track therapy minutes, these items only track therapy provision for the seven days up to and including the assessment reference date. We agree with the commenters that items should exist to track therapy provision over the course of a full Medicare stay, which is the purpose of the O0425 items on the assessment.

Finally, with regard to the recommendation that we reinstate something akin to the assessment schedule that was in effect under RUG–IV, given that PDPM does not reimburse on the basis of therapy minutes, we do not believe that such an increase in administrative burden on providers would have an impact on therapy provision. That being said, we strongly encourage interested parties to continue to provide suggestions on how to ensure that SNF patients receive the care they need based on their unique characteristics and goals.

Comment: One commenter requested that we consider including recreational therapy time provided to SNF residents by recreational therapists into the case-mix adjusted therapy component of PDPM, rather than having it be considered part of the nursing component. This commenter further suggested that CMS begin collecting data, as part of a demonstration project, on the utilization of recreational therapy, as a distinct and separate service, and its impact on patient care cost and quality.

Response: We appreciate the commenter raising this issue, but we do not believe there is sufficient evidence at this time regarding the efficacy of recreational therapy interventions. More notably, we do not believe there are data that would substantiate a determination of the effect on payment of such interventions, as such services were not considered separately when the PDPM was being developed, unlike physical, occupational and speech-language pathology services. That being said, we would note that Medicare Part A originally paid for institutional care in various provider settings, including SNF, on a reasonable cost basis, but now makes payment using PPS methodologies, such as the SNF PPS. To the extent that one of these SNFs furnished recreational therapy to its inpatients under the previous, reasonable cost methodology, the cost of the services would have been included in the base payments when SNF PPS payment rates were derived. Under the PPS methodology, Part A makes a comprehensive payment for the bundled package of items and services that the facility furnishes during the course of a Medicare-covered stay. This package encompasses nearly all services that the beneficiary receives during the course of the stay—including any medically necessary recreational therapy—and payment for such services is included within the facility's comprehensive SNF PPS payment for the covered Part A stay itself. With regard to developing a demonstration project focused on this particular service, we do not believe that creating such a project would substantially improve the accuracy of the SNF PPS payment rates. Moreover, in light of comments discussed previously in this section on the impact of PDPM implementation on therapy provision more generally, we believe that carving out recreational therapy as a separate discipline will not have a significant impact on access to recreational therapy services for SNF patients.

IV. SNF PPS Rate Setting Methodology and FY 2025 Payment 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 the 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 2022 (86 FR 42444 through 42463), we rebased and revised the SNF market basket, which included updating the base year from 2014 to 2018. In the SNF PPS proposed rule for FY 2025 (89 FR 23427 through 23451), we proposed to rebase and revise the SNF market basket and update the base year from 2018 to 2022. We are finalizing the 2022-based SNF market basket as proposed, as discussed in section VI.A. of this final rule. 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 IV.B.4. of this final rule.

As outlined in the proposed rule, we proposed a FY 2025 SNF market basket percentage increase of 2.8 percent based on IHS Global Inc.'s (IGI's) fourth-quarter 2023 forecast of the proposed 2022-based SNF market basket (before application of the forecast error adjustment and productivity adjustment). We also proposed that if more recent data subsequently became 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 2025 SNF market basket percentage increase, labor-related share relative importance, forecast error adjustment, or productivity adjustment in this SNF PPS final rule.

Since the proposed rule, we have updated the FY 2025 market basket percentage increase based on IGI's second quarter 2024 forecast with historical data through the first quarter of 2024. The FY 2025 growth rate of the 2022-based SNF market basket is estimated to be 3.0 percent.

2. Market Basket Update for FY 2025

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 the proposed rule, we used the percentage change in the SNF market basket to compute the update factor for FY 2025. This factor was based on the FY 2025 percentage increase in the proposed 2022-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 2025 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, 2023, through September 30, 2024, to the average market basket level for the period of October 1, 2024, through September 30, 2025. As outlined in the proposed rule, we proposed a FY 2025 SNF market basket percentage increase of 2.8 percent. For this final rule, based on IGI's second quarter 2024 forecast with historical data through the first quarter of 2024, the FY 2025 growth rate of the 2022-based SNF market basket is estimated to be 3.0 percent.

As further explained in section IV.B.3. of this final 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, 2025) which is estimated to be 0.5 percentage point, as described in section IV.B.4. of this final 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.

The following is a of the public comments received on the proposed FY 2025 SNF market basket percentage increase to the SNF PPS rates, along with our responses.

Comment: Many commenters stated that they appreciate and support the proposed net 4.1 percent payment update and forecast error adjustment; however, some commenters expressed concerns about missed forecasts and whether the market basket is appropriately capturing inflation.

Commenters cited a report from the AHA, which found that hospital employee compensation has grown by 45 percent since 2014, and workforce shortages that may persist into the future could continue to drive labor-related inflation higher. As a result, providers have turned to more expensive contract labor to sustain operations. Several commenters noted themselves or their members experiencing high rates of inflation in equipment and supplies, and questioned whether the inflation is being properly captured in the market basket.

A few commenters noted that there have now been four consecutive years of under-forecasts, and that growth in the Consumer Price Index All Urban totaled 16.8 percent between 2021 and 2023 while SNF market basket growth totaled only 15.5 percent over the same time period. Several commenters also expressed that the proposed 4.1 percent payment update will fall short of covering the costs of the finalized minimum staffing rule. Two commenters urged CMS to consider a prospective adjustment for labor inflation. Two commenters urged CMS to use more recent data to determine the FY SNF market basket update in the final rule.

Response: We recognize commenters' concerns in relation to forecast error during a high inflationary period. SNF PPS market basket updates are set prospectively, which means that the market basket update relies on a mix of both historical data for part of the period for which the update is calculated and forecasted data for the remainder. For instance, the FY 2025 market basket update in this final rule reflects historical data through the first quarter of 2024 and forecasted data through the third quarter of 2025. IHS Global Inc. (IGI) is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets. We believe that basing the prospective update on these forecasts is an appropriate method, while also acknowledging that these are expectations of trends and may differ from actual experience.

We also understand commenters' concerns regarding the minimum staffing rule not being taken into account. The 2022-based SNF market basket is a fixed-weight, Laspeyres-type price index that 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 cost weights in this final rule are based on the most recent set of complete and comprehensive cost data for the universe of SNF providers available at the time of rulemaking, and the price proxies for each cost category include expectations of the inflationary pressures for each category of expenses in the market basket. Any changes in intensity relative to the 2022-based SNF market basket will be reflected in future Medicare cost reports and thus captured in the next rebasing. We will continue to monitor Medicare cost report data for freestanding SNFs as it becomes available to assess whether the 2022-based SNF market basket cost weights continue to be appropriate in the coming years.

We recognize the challenges facing SNFs in operating during a high inflationary environment. Due to SNF payments under PPS being set prospectively, we rely on a projection of the SNF market basket that reflects both recent historical trends, as well as forecast expectations over the next 18 months. The forecast error for a market basket update is calculated as the actual market basket increase for a given year, less the forecasted market basket increase. Due to the uncertainty regarding future price trends, forecast errors can be both positive or negative. We are confident that the forecast error adjustments built into the SNF market basket update factor will account for these discrepancies over time.

The proposed FY 2025 SNF market basket percentage increase of 2.8 percent reflected the most-recent forecast available at that time of rulemaking. As stated in the SNF PPS proposed rule for FY 2025 (89 FR 23451), we also proposed that if more recent data subsequently became 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 2025 SNF market basket percentage increase, labor-related share relative importance, forecast error adjustment, or productivity adjustment in the SNF PPS final rule. For this final rule, we have incorporated the most recent historical data and forecasts provided by IGI to capture the expected price and wage pressures facing SNFs in FY 2025. For this final rule, based on IGI's second-quarter 2024 forecast with historical data through first-quarter 2024, the FY 2025 growth rate of the 2022-based SNF market basket is 3.0 percent. By incorporating the most recent estimates available of the market basket percentage increase, we believe these data reflect the best available projection of input price inflation faced by SNFs in FY 2025.

After consideration of the comments received on the FY 2025 SNF market basket proposals, we are finalizing a FY 2025 SNF market basket percentage increase of 3.0 percent (prior to the application of the forecast error adjustment and productivity adjustment, which are discussed later in this section).

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 2023 (the most recently available FY for which there is final data), the forecasted or estimated increase in the SNF market basket was 3.9 percent, and the actual increase for FY 2023 was 5.6 percent, resulting in the actual increase being 1.7 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 2025 market basket percentage increase of 3.0 percent is adjusted upward to account for the forecast error adjustment of 1.7 percentage points, resulting in a SNF market basket percentage increase of 4.7 percent, which is then reduced by the productivity adjustment of 0.5

percentage point, discussed in section IV.B.4. of this final rule. This results in a SNF market basket update for FY 2025 of 4.2 percent.

Table 2 shows the forecasted and actual market basket increases for FY 2023.

TABLE 2: Difference Between the Actual and Forecasted Market Basket Increases for FY 2023

Index	Forecasted FY 2023 Increase*	Actual FY 2023 Increase**	FY 2023 Difference
SNF	3.9	5.6	1.7

*Published in **Federal Register**; based on second quarter 2022 IGI forecast (2018-based SNF market basket).

** Based on the second quarter 2024 IGI forecast (2018-based SNF market basket), with historical data through first quarter 2024.

A discussion of the public comments received on the forecast error adjustment, along with our responses, can be found below.

Comment: Several commenters noted that while they appreciate the forecast error adjustment, forecast error adjustments are made two years after the year in question and SNFs must contend with the underpayment for two years before it is reconciled. One commenter suggested updating the method to use more timely data that would capture increased costs in recent years.

Response: While we understand that earlier forecast error adjustments might be preferable, a two-year lag is necessary because historical data for the current fiscal year are not available until after the following year's update is determined.

Comment: One commenter stated that not including Federal relief funds, the aggregate fee-for-service (FFS) Medicare margin for freestanding SNFs in 2022 was over 18 percent, the 23rd consecutive year this this margin has exceeded 10 percent. They note that high margins indicate that a reduction is needed to more closely align aggregate payments to aggregate costs.

The commenter also noted that although CMS is required by statute to update the payment rates each year by the estimated change in the market basket, CMS is not required to make automatic forecast error corrections. They maintain that they do not support forecast error adjustments for three reasons. First, in some years, such as the one addressed by the proposed rule for FY 2025, the forecast error correction results in making a larger payment increase in addition to the statutory update, even as the aggregate FFS Medicare margin is high. Second, the adjustments result in more variable updates than had no adjustment been made. Since FY 2004, when CMS implemented the adjustment, forecast error corrections have ranged from a 3.26 percent increase (in FY 2004) to a −0.8 percent reduction (in FY 2022). Eliminating the adjustment for forecast errors would result in more stable updates. Third, the adjustment results in inconsistent approaches to updates across settings: except for the updates to the capital payments to acute care hospitals, CMS does not apply forecast error adjustments to any other market basket updates.

Response: We appreciate the commenter's input and suggestions. We note that apart from the last several years of various unprecedented market shocks and resulting volatility, forecast errors have generally been relatively small and clustered near zero. We agree that forecast error adjustments have potential to introduce more variable and unstable updates. As a result, for FY 2008 and subsequent years we increased the threshold at which adjustments are triggered from 0.25 percentage point to 0.5 percentage point. Our intent in raising the threshold was to distinguish typical statistical variances from more major unanticipated impacts, such as unforeseen disruptions of the economy or unexpected inflationary patterns.

As was stated when the SNF forecast error adjustment was introduced in the FY 2004 SNF PPS final rule (68 FR 46035), our goal continues to be to ''pay the appropriate amount, to the correct provider, for the proper service, at the right time.'' Accordingly, we are optimistic that market volatility will soon subside to a point where forecast errors will not be frequently triggered. Nonetheless, we will continue to monitor the effects of forecast error adjustments, and their appropriateness in responding to unforeseen inflationary patterns. Any changes, if deemed necessary, would be proposed through notice and comment rulemaking.

After consideration of the comments received, we are finalizing the application of the proposed forecast error adjustment without modification. As stated above, based on IGI's second-quarter 2024 forecast with historical data through the first quarter of 2024, the FY 2025 growth rate of the 2022-based SNF market basket is estimated to be 3.0 percent. 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 2025 market basket percentage increase of 3.0 percent is adjusted upward to account for the forecast error adjustment of 1.7 percentage points, resulting in a SNF market basket percentage increase of 4.7 percent, which is then reduced by the productivity adjustment as discussed later in this section.

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 2025 SNF PPS final rule, the productivity adjustment (the 10-year moving average of changes in annual economy-wide private nonfarm business TFP for the period ending September 30, 2025) is projected to be 0.5 percentage point.

Comment: A few commenters noted that they are disappointed in the productivity adjustment, and that CMS should closely monitor the effect of such productivity adjustments and explore ways to use its authority to offset or waive them.

Response: Section 1888(e)(5)(B)(ii) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(xi)(II) of the Act to the SNF PPS market basket increase factor. As required by statute, the FY 2025 productivity adjustment is derived based on the 10-year moving average growth in economy-wide productivity for the period ending in FY 2025. We recognize the concerns of the commenters regarding the appropriateness of the productivity adjustment; however, we are required under section 1888(e)(5)(B)(ii) of the Act to apply the specific productivity adjustment described here in this section.

As stated previously, in the proposed rule the productivity adjustment was estimated to be 0.4 percentage point based on IGI's fourth-quarter 2024 forecast. For this final rule, based on IGI's second-quarter 2024 forecast, the productivity adjustment (the 10-year moving average of changes in annual economy-wide private nonfarm business TFP for the period ending September 30, 2025) is 0.5 percentage point.

Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2), and as outlined previously in section IV.B.1. of this final rule, the market basket percentage increase for FY 2025 for the SNF PPS is based on IGI's second quarter 2024 forecast of the SNF market basket percentage increase, which is estimated to be 3.0 percent. This market basket percentage increase is then increased by 1.7 percentage points, due to application of the forecast error adjustment outlined earlier in section IV.B.3. of this final rule. Finally, as outlined earlier in this section, we are applying a 0.5 percentage point productivity adjustment to the FY 2025 SNF market basket percentage increase. Therefore, the resulting productivity-adjusted FY 2025 SNF market basket update is equal to 4.2 percent, which reflects a market basket percentage increase of 3.0 percent, plus the 1.7 percentage points forecast error adjustment, and reduced by the 0.5 percentage point productivity adjustment. Thus, we apply a net SNF market basket update factor of 4.2 percent in our determination of the FY 2025 SNF PPS unadjusted Federal per diem rates.

5. Unadjusted Federal Per Diem Rates for FY 2025

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 proposed to use the SNF market basket, adjusted as outlined previously in sections III.B.1. through III.B.4. of the 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 proposed to further adjust the rates by a wage index budget neutrality factor, outlined in section III.D. of the 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 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. However, as further outlined in section V.A of the proposed rule, the current CBSAs are based on OMB standards contained in Bulletin 20–01, which is based on data collected during the 2010 Decennial Census. In this final rule, we are updating the SNF PPS wage index using the CBSAs defined within Bulletin 23–01.

Tables 3 and 4 reflect the proposed unadjusted Federal rates for FY 2025, prior to adjustment for case-mix.

TABLE 3: FY 2025 Unadjusted Federal Rate Per Diem—URBAN

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$73.25	$68.18	$27.35	$127.68	$96.33	$114.34

TABLE 4: FY 2025 Unadjusted Federal Rate Per Diem—RURAL

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	$83.50	$76.69	$34.46	$121.99	$92.03	$116.46

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 outlined in section IV.A. of the 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 2025 payment rates set forth in this final 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 2025 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, outlined in section VII. of this final rule, or other adjustments,

such as the variable per diem adjustment.

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TABLE 5: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—URBAN

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	$106.21	1.41	$96.13	0.64	$17.50	ES3	3.84	$490.29	3.06	$294.77
B	1.61	$117.93	1.54	$105.00	1.72	$47.04	ES2	2.90	$370.27	2.39	$230.23
C	1.78	$130.39	1.60	$109.09	2.52	$68.92	ES1	2.77	$353.67	1.74	$167.61
D	1.81	$132.58	1.45	$98.86	1.38	$37.74	HDE2	2.27	$289.83	1.26	$121.38
E	1.34	$98.16	1.33	$90.68	2.21	$60.44	HDE1	1.88	$240.04	0.91	$87.66
F	1.52	$111.34	1.51	$102.95	2.82	$77.13	HBC2	2.12	$270.68	0.68	$65.50
G	1.58	$115.74	1.55	$105.68	1.93	$52.79	HBC1	1.76	$224.72	-	-
H	1.10	$80.58	1.09	$74.32	2.7	$73.85	LDE2	1.97	$251.53	-	-
I	1.07	$78.38	1.12	$76.36	3.34	$91.35	LDE1	1.64	$209.40	-	-
J	1.34	$98.16	1.37	$93.41	2.83	$77.40	LBC2	1.63	$208.12	-	-
K	1.44	$105.48	1.46	$99.54	3.50	$95.73	LBC1	1.35	$172.37	-	-
L	1.03	$75.45	1.05	$71.59	3.98	$108.85	CDE2	1.77	$225.99	-	-
M	1.20	$87.90	1.23	$83.86	-	-	CDE1	1.53	$195.35	-	-
N	1.40	$102.55	1.42	$96.82	-	-	CBC2	1.47	$187.69	-	-
O	1.47	$107.68	1.47	$100.22	-	-	CA2	1.03	$131.51	-	-
P	1.02	$74.72	1.03	$70.23	-	-	CBC1	1.27	$162.15	-	-
Q	-	-	-	-	-	-	CA1	0.89	$113.64	-	-
R	-	-	-	-	-	-	BAB2	0.98	$125.13	-	-
S	-	-	-	-	-	-	BAB1	0.94	$120.02	-	-
T	-	-	-	-	-	-	PDE2	1.48	$188.97	-	-
U	-	-	-	-	-	-	PDE1	1.39	$177.48	-	-
V	-	-	-	-	-	-	PBC2	1.15	$146.83	-	-
W	-	-	-	-	-	-	PA2	0.67	$85.55	-	-
X	-	-	-	-	-	-	PBC1	1.07	$136.62	-	-
Y	-	-	-	-	-	-	PA1	0.62	$79.16	-	-

TABLE 6: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—RURAL

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	$121.08	1.41	$108.13	0.64	$22.05	ES3	3.84	$468.44	3.06	$281.61
B	1.61	$134.44	1.54	$118.10	1.72	$59.27	ES2	2.90	$353.77	2.39	$219.95
C	1.78	$148.63	1.60	$122.70	2.52	$86.84	ES1	2.77	$337.91	1.74	$160.13
D	1.81	$151.14	1.45	$111.20	1.38	$47.55	HDE2	2.27	$276.92	1.26	$115.96
E	1.34	$111.89	1.33	$102.00	2.21	$76.16	HDE1	1.88	$229.34	0.91	$83.75
F	1.52	$126.92	1.51	$115.80	2.82	$97.18	HBC2	2.12	$258.62	0.68	$62.58
G	1.58	$131.93	1.55	$118.87	1.93	$66.51	HBC1	1.76	$214.70	-	-
H	1.10	$91.85	1.09	$83.59	2.7	$93.04	LDE2	1.97	$240.32	-	-
I	1.07	$89.35	1.12	$85.89	3.34	$115.10	LDE1	1.64	$200.06	-	-
J	1.34	$111.89	1.37	$105.07	2.83	$97.52	LBC2	1.63	$198.84	-	-
K	1.44	$120.24	1.46	$111.97	3.50	$120.61	LBC1	1.35	$164.69	-	-
L	1.03	$86.01	1.05	$80.52	3.98	$137.15	CDE2	1.77	$215.92	-	-
M	1.20	$100.20	1.23	$94.33	-	-	CDE1	1.53	$186.64	-	-
N	1.40	$116.90	1.42	$108.90	-	-	CBC2	1.47	$179.33	-	-
O	1.47	$122.75	1.47	$112.73	-	-	CA2	1.03	$125.65	-	-
P	1.02	$85.17	1.03	$78.99	-	-	CBC1	1.27	$154.93	-	-
Q	-	-	-	-	-	-	CA1	0.89	$108.57	-	-
R	-	-	-	-	-	-	BAB2	0.98	$119.55	-	-
S	-	-	-	-	-	-	BAB1	0.94	$114.67	-	-
T	-	-	-	-	-	-	PDE2	1.48	$180.55	-	-
U	-	-	-	-	-	-	PDE1	1.39	$169.57	-	-
V	-	-	-	-	-	-	PBC2	1.15	$140.29	-	-
W	-	-	-	-	-	-	PA2	0.67	$81.73	-	-
X	-	-	-	-	-	-	PBC1	1.07	$130.53	-	-
Y	-	-	-	-	-	-	PA1	0.62	$75.63	-	-

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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 will continue this practice for FY 2025, 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 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 2025, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2020, and before October 1, 2021 (FY 2021 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 (MACs), 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 do not believe this undertaking is feasible at this time, we will continue to explore implementation of a spot audit process to improve SNF cost reports to ensure they are adequately accurate for cost development purposes, in such a manner as to permit us to establish a SNF-specific wage index in the future.

In addition, we will 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 2025 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 will continue

using the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2025, the only rural area without wage index data available is North Dakota. We have determined that the borders of 18 rural counties are local and contiguous with 8 urban counties. Therefore, under this methodology, the wage indexes for the counties of Burleigh/Morton/Oliver (CBSA 13900: 0.9020), Cass (CBSA 22020: 0.8763), Grand Forks (CBSA 24220: 0.7865), and McHenry/Renville/Ward (CBSA 33500: 0.7686) are averaged, resulting in an imputed rural wage index of 0.8334 for rural North Dakota for FY 2025. In past years for rural Puerto Rico, we did not 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 will produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas. However, because rural Puerto Rico now has hospital wage index data on which to base an area wage adjustment, we will not apply this policy for FY 2025. For urban areas without specific hospital wage index data, we will 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 2025, 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. We amended the SNF PPS regulations at 42 CFR 413.337(b)(4)(ii) to reflect this permanent cap on wage index decreases. 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. 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, we did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022 through FY 2024.

On July 21, 2023, OMB issued OMB Bulletin No. 23–01 which updates and supersedes OMB Bulletin No. 20–01 based on the decennial census. OMB Bulletin No. 23–01 revised delineations for CBSAs which are made up of counties and equivalent entities (for example, boroughs, a city and borough, and a municipality in Alaska, planning regions in Connecticut, parishes in Louisiana, municipios in Puerto Rico, and independent cities in Maryland, Missouri, Nevada, and Virginia). For FY 2025, we proposed to adopt the revised OMB delineations identified in OMB Bulletin No. 23–01 (available at *https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf*). The wage index applicable to FY 2025 is set forth in Table A and B, available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Once calculated, we will 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). Effective beginning in FY 2025, as described in section VI.A. of this final rule, we are rebasing and revising the labor-related share to reflect the relative importance of the 2022-based SNF market basket cost weights for the following 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 share of the 2022-based SNF market basket is detailed in section VI.A.4. of this final rule.

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 2025. 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 2025 than the base year weights from the SNF market basket. We calculate the labor-related relative importance for FY 2025 in four steps. First, we compute the FY 2025 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 2025 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2025 relative importance for each cost category by multiplying this ratio by the base year (2022) weight. Finally, we add the FY 2025 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 2025 labor-related relative importance.

For the proposed rule, the labor-related share for FY 2025 was based on IGI's fourth quarter 2023 forecast of the proposed 2022-based SNF market basket with historical data through third-quarter 2023. For this final rule, as proposed, we estimate the labor-related share for FY 2025 based on IGI's more recent second quarter 2024 forecast, with historical data through the first quarter of 2024. Table 7 summarizes the labor-related share for FY 2025, based on IGI's second quarter 2024 forecast of the 2022-based SNF market basket, compared to the labor-related share that was used for the FY 2024 SNF PPS final rule.

TABLE 7: Labor-Related Share, FY 2024 and FY 2025

	FY 2024 labor-related share based on 2023q2 forecast of the 2018-based SNF market basket[1]	FY 2025 labor-related share based on 2024q2 forecast of the 2022-based SNF market basket[2]
Wages and salaries	52.5	53.2
Employee benefits	9.3	9.2
Professional fees: Labor-related	3.4	3.5
Administrative & facilities support services	0.6	0.4
Installation, maintenance & repair services	0.4	0.5
All other: Labor-related services	2.0	2
Capital-related (.391)	2.9	3.2
Total	**71.1**	**72.0**

1. Published in the **Federal Register**; Based on the second quarter 2023 IHS Global Inc. forecast of the 2018-based SNF market basket.
2. Based on the second quarter 2024 IHS Global Inc. forecast of the 2022-based SNF market basket.

To calculate the labor portion of the case-mix adjusted per diem rate, we will 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 2025 labor-related share percentage provided in Table 7. The remaining portion of the rate will 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 2025 (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 2025 to the weighted average wage adjustment factor for FY 2025. For this calculation, we will use the same FY 2023 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 budget neutrality factor for FY 2025 is 1.0005.

In the proposed rule, we noted that if more recent data became available (for example, revised wage data), we would use such data, if appropriate, to determine the wage index budget neutrality factor in the SNF PPS final rule.

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 VIII. of this final rule for further discussion of the updates we are finalizing for the SNF VBP Program.

F. Adjusted Rate Computation Example

Tables 8 through 10 provide examples generally illustrating payment calculations during FY 2025 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) to compute the provider's case-mix adjusted per diem rate for FY 2025, 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 2025 SNF PPS wage index that appears in Table A available on the CMS website at *https://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 $23,032.18.

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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	$102.55	1.00	$102.55
OT	N	$96.82	1.00	$96.82
SLP	H	$73.85	1.00	$73.85
Nursing	N	$187.69	1.00	$187.69
NTA	C	$167.61	3.00	$502.83
Non-Case-Mix	-	$114.34	-	$114.34
Total PDPM Case-Mix Adj. Per Diem				$1,078.08

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	$1,078.08	$776.22	0.9876	$766.59	$301.86	$1,068.45

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	$1,068.45
2	3.0	1.0	$1,068.45
3	3.0	1.0	$1,068.45
4	1.0	1.0	$736.23
5	1.0	1.0	$736.23
6	1.0	1.0	$736.23
7	1.0	1.0	$736.23
8	1.0	1.0	$736.23
9	1.0	1.0	$736.23
10	1.0	1.0	$736.23
11	1.0	1.0	$736.23
12	1.0	1.0	$736.23
13	1.0	1.0	$736.23
14	1.0	1.0	$736.23
15	1.0	1.0	$736.23
16	1.0	1.0	$736.23
17	1.0	1.0	$736.23
18	1.0	1.0	$736.23
19	1.0	1.0	$736.23
20	1.0	1.0	$736.23
21	1.0	0.98	$732.28
22	1.0	0.98	$732.28
23	1.0	0.98	$732.28
24	1.0	0.98	$732.28
25	1.0	0.98	$732.28
26	1.0	0.98	$732.28
27	1.0	0.98	$732.28
28	1.0	0.96	$728.32
29	1.0	0.96	$728.32
30	1.0	0.96	$728.32
Total Payment			$23,032.18

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V. 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 outlined in section III.C. of the 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 Assessment Reference Date (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) (Pub. L. 117–328, enacted December 29, 2022) 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.

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 Healthcare Common Procedure Coding System (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.

Effective with items and services furnished on or after October 1, 2021, section 134 in Division CC of the CAA, 2021 established an additional fifth 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.

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.*

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 five service categories specified in the BBRA 1999 and CAA, 2021; 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).

In the proposed rule, we specifically solicited 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 considered excluding a particular service if it met our criteria for exclusion as specified previously in this section of the preamble. We requested 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 noted 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 previously 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, we stated in the proposed rule that if we identify through the current rulemaking cycle any new services that meet the criteria for exclusion from SNF consolidated billing, we will 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, 2024). By making any new exclusions in this manner, we can 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.*

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: A few commenters suggested CMS consider several items for exclusion from SNF consolidated billing which have already been suggested and considered in previous rulemaking, including: Imatinib; Erleada; Venetoclax; Dasatinib; Ponatinib; Cabozantinib; Sunitinib; Lenalidomide; and Lupron (leuprolide).

Response: We have considered each of these suggestions in previous rulemaking and we reiterate that these items cannot be excluded from SNF consolidated billing. We refer commenters to previous SNF final rules in which these suggestions were addressed, including FY 2024 (88 FR 53200, August 7, 2023) and FY 2021 (85 FR 47609 through 47610, August 5, 2020).

Comment: Commenters suggested several specific HCPCS codes for exclusion that have *not* already been addressed in previous rulemaking: Jakafi (ruxolitinib), Tafinlar (dabrafenib), Nilotinib, and Tumor Treating Fields (''TTFields'') therapy.

Response: With regard to Jakafi, Tafinlar, and Nilotinib, these three services are all targeted medications that ''target'' specific signals involved in cancer growth, but they are not chemotherapy treatments. Chemotherapy is a specific subset of cancer treatment characterized by its systemic attacking of cell growth. Likewise, Tumor Treating Fields therapy is a type of electromagnetic field therapy used to treat cancer and is not a form of chemotherapy. As these are not considered chemotherapy services, the suggestions do not fit the chemotherapy category or any other of the five service categories in which we have statutory authority to add exclusions, and therefore we may not exclude these items from SNF consolidated billing. Excluding such items would require an act of Congress to modify the law.

Comment: Commenters reiterated several general comments that are outside of the agency's statutory authority and/or have already been addressed in prior rulemaking cycles. Comments stated that CMS should modify consolidated billing rules for SNFs to use a ''price/cost threshold'' rather than base the program on specific HCPCS codes. Comments requested CMS exclude non-chemotherapy cancer treatments. Another comment requested the exclusion of HIV drugs and associated administration and other less commonly used medication and administration drugs and treatments that exceed SNF reimbursement rates.

Response: As previously specified in this section of the preamble, the authority afforded to us under the law to modify the list of services excluded from SNF consolidated billing is limited to adding or removing HCPCS codes representing high-cost low-probability services from the five specific service categories identified in the statute. Any of the modifications to consolidated billing and/or the SNF program suggested by the previously mentioned comments would require an act of Congress to modify the law.

Comment: A commenter requested that CMS consider adopting a formalized process in which entities may propose an item, service, or drug be added to the excluded list for consolidated billing on a case-by-case or permanent basis.

Response: In addition to conducting our own routine internal reviews of new and modified HCPCS codes, we solicit feedback from interested parties on consolidated billing exclusions through this annual rulemaking process. At this time, we consider this process sufficient to identify services that should be excluded.

Comment: Commenters stated general appreciation for CMS soliciting public comments to identify HCPCS codes that meet the criteria for exclusion from consolidated billing. Comments stated they would continue to try to identify such HCPCS codes.

Response: We thank commenters for their review.

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.*

VI. Other SNF PPS Issues

A. Rebasing and Revising the SNF Market Basket

Section 1888(e)(5)(A) of the Act requires the Secretary to establish a market basket that reflects the 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.

The SNF market basket is used to compute the market basket percentage increase that is used to update the SNF Federal per diem 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 the proposed rule. The SNF market basket is also used to determine the labor-related share on an annual basis.

The SNF 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 (the base period is 2022) and total base period costs are estimated for a set of mutually exclusive and exhaustive spending categories and the proportion of total costs that each category represents is calculated. 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 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.

Since the inception of the SNF PPS, the market basket used to update SNF PPS payments has been periodically rebased and revised. We last rebased and revised the market basket applicable to the SNF PPS in the FY 2022 SNF PPS final rule (86 FR 42444 through 42463) where we adopted a 2018-based SNF market basket. References to the historical market baskets used to update SNF PPS payments are listed in the FY 2022 SNF PPS final rule (86 FR 42445).

Effective for FY 2025 and subsequent fiscal years, we proposed to rebase and revise the market basket to reflect 2022 Medicare-allowable total cost data (routine, ancillary, and capital-related) from freestanding SNFs and to revise applicable cost categories and price proxies used to determine the market basket. Medicare-allowable costs are those costs that are eligible to be paid under the SNF PPS. For example, the SNF market basket excludes home health agency (HHA) costs as these costs would be paid under the HHA PPS, and therefore, these costs are not SNF PPS Medicare-allowable costs. We proposed to maintain our policy of using data from freestanding SNFs, of which about 91 percent of SNFs that submitted a Medicare cost report for 2022 are represented in our sample shown in Table 11. We believe using freestanding SNF Medicare cost report data, as opposed to the hospital-based SNF Medicare cost report data, for the cost weight calculation is most appropriate because of the complexity of hospital-based data and the representativeness of the freestanding data. Because hospital-based SNF expenses are embedded in the hospital cost report, any attempt to incorporate data from hospital-based facilities requires more complex calculations and assumptions regarding the ancillary costs related to the hospital-based SNF unit. We believe the use of freestanding SNF cost report data is technically appropriate for reflecting the cost structures of SNFs serving Medicare beneficiaries.

We proposed to use 2022 as the base year as we believe that the 2022 Medicare cost reports represent the most recent, complete set of Medicare cost report data available to develop cost weights for SNFs at the time of rulemaking. We believe it is important to regularly rebase and revise the SNF market basket to reflect more recent data. Historically, the cost weights change minimally from year to year as they represent the percent of total costs rather than cost levels; however, given the COVID–19 Public Health Emergency (PHE), we have been monitoring the Medicare cost report data to see if a more frequent rebasing schedule is necessary than our recent historical precedent of about every 4 years. Accordingly, while it has been only three years since the last SNF rebasing, we proposed to incorporate data that is more reflective of recent SNF expenses that have been impacted over the most recent few years. The 2022 Medicare cost reports are for cost reporting periods beginning on and after October 1, 2021 and before October 1, 2022. While these dates appear to reflect fiscal year data, we noted in the proposed rule that a Medicare cost report that begins in this timeframe is generally classified as a ''2022 cost report''. For example, we found that of the available 2022 Medicare cost reports for SNFs, approximately 7 percent had an October 1, 2021, begin date, approximately 75 percent of the reports had a January 1, 2022, begin date, and approximately 12 percent had a July 1, 2022 begin date. For this reason, we are defining the base year of the market basket as ''2022–based'' instead of ''FY 2022–based''.

We received approximately 22 comments on the proposed rebasing and revising of the SNF market basket. A discussion of these comments, with our responses, appears throughout this section.

Comment: Several commenters noted that they support CMS' decision to rebase the SNF market basket 1 year earlier than is typical, and that rebasing and revising the market basket more frequently than the recent historical precedent of approximately every 4

years is warranted to more accurately reflect costs faced by SNFs at this time.

Response: We thank the commenters for their support in rebasing and revising of the SNF market basket, and we will continue to monitor the data that inform the frequency of the rebasing.

Comment: One commenter stated that the need for both auditing cost reports and requiring SNFs to submit audited cost reports is especially critical this year as CMS plans to rebase the SNF market basket using cost report data from 2022. They stated that there are too many indications of flawed and possibly fraudulent data, and CMS cannot simply assume that cost report data are accurate.

Response: We recognize the commenter's concerns and reiterate that accurate and complete reporting of all data on the Medicare cost reports by SNFs help to ensure that the cost weights for the SNF market basket are reflective of the cost structure of SNFs. We also note that we analyze the Medicare cost report data to evaluate their representativeness; for example, we reweight the data reported by ownership type and urban/rural so that it reflects the universe of providers and compare it to the proposed cost weights that are based on reported data. Our analysis shows the proposed cost weights are representative across these dimensions. In addition, we also trim the data to eliminate outliers as described in section VI.A.1.a of this final rule.

As stated in the FY 2024 SNF PPS final rule (88 FR 53212), 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 (MACs), potentially far in excess of those required under the IPPS, given that there are nearly five times as many SNFs as there are IPPS hospitals. We continue to believe that the development of such an audit process could improve SNF cost reports, but we do not believe this undertaking is feasible at this time.

Final Decision: We are finalizing our proposal to rebase the SNF market basket to reflect a 2022 base year for FY 2025.

We provide a summary of the more detailed public comments received on our proposed methodology for developing the 2022-based SNF market basket and our responses in the sections that follow.

We proposed to develop cost category weights for the proposed 2022-based SNF market basket in two stages. The major types of costs underlying the proposed 2022-based SNF market basket are derived from the 2022 Medicare cost report data (CMS Form 2540–10, OMB NO. 0938–0463) for freestanding SNFs. Specifically, we used the Medicare cost reports for seven specific costs: Wages and Salaries; Employee Benefits; Contract Labor; Pharmaceuticals; Professional Liability Insurance; Home Office/Related Organization Contract Labor; and Capital-related. A residual ''All Other'' category is then estimated and reflects all remaining costs that are not captured in the seven types of costs identified above. The 2018-based SNF market basket similarly used 2018 Medicare cost report data. Second, we proposed to divide the residual ''All Other'' cost category into more detailed subcategories, using U.S. Department of Commerce Bureau of Economic Analysis' (BEA) 2017 Benchmark Input-Output (I–O) ''The Use Table (Supply-Use Framework)'' for the Nursing and Community Care Facilities industry (North American Industry Classification System (NAICS) code 623A00) aged to 2022 using applicable price proxy growth for each category of costs. Furthermore, we proposed to continue to use the same overall methodology as was used for the 2018-based SNF market basket to develop the capital related cost weights of the proposed 2022-based SNF market basket.

1. Development of Cost Categories and Weights

a. Use of Medicare Cost Report Data To Develop Major Cost Weights

In order to create a market basket that is representative of freestanding SNF providers serving Medicare patients and to help ensure accurate major cost weights (which is the percent of total Medicare-allowable costs, as defined below), we proposed to apply edits to remove reporting errors and outliers. Specifically, the SNF Medicare cost reports used to calculate the market basket cost weights exclude any providers that reported costs less than or equal to zero for the following categories: total facility costs (Worksheet B, part 1, column 18, line 100); total operating costs (Worksheet B, part 1, column 18, line 100 less Worksheet B, part 2, column 18, line 100); Medicare general inpatient routine service costs (Worksheet D, part 1, column 1, line 1); and Medicare PPS payments (Worksheet E, part 3, column 1, line 1). We also limited our sample to providers that had a Medicare cost report reporting period that was between 10 and 14 months. The final sample used included roughly 13,100 Medicare cost reports (about 90 percent of the universe of SNF Medicare cost reports for 2022). The sample of providers is representative of the national universe of providers by region (each region is represented within plus or minus 1 percentage point of universe distribution), by ownership-type (proprietary, nonprofit, and government) (within 0.8 percentage point of universe), and by urban/rural status (within 0.1 percentage point of universe). Of the providers that were excluded from our final sample, 86 percent were due to having a cost reporting period less than 10 months or greater than 14 months, 10 percent were due to total facility costs or total operating costs not being greater than zero, and 4 percent were due to Medicare general inpatient routine service costs or Medicare PPS payments not being greater than zero.

Additionally, for all of the major cost weights, except Home Office/Related Organization Contract Labor costs, the data are trimmed to remove outliers (a standard statistical process) by: (1) requiring that major expenses (such as Wages and Salaries costs) and total Medicare-allowable costs are 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 costs). We noted in the proposed rule that missing values are assumed to be zero, consistent with the methodology for how missing values are treated in the 2018-based SNF market basket methodology.

For the Home Office/Related Organization Contract Labor cost weight, we proposed to first exclude providers whose Home Office/Related Organization Contract Labor costs are greater than Medicare-allowable total costs and then apply a trim that excludes those reporters with a Home Office/Related Organization Contract Labor cost weight above the 99th percentile. This allows providers with no Home Office/Related Organization Contract Labor costs to be included in the Home Office/Related Organization Contract Labor cost weight calculation. If we were to trim the top and bottom Home Office/Related Organization Contract Labor cost weight, we would exclude providers with a cost weight of zero (84 percent of the sample) and the Medicare cost report data (Worksheet S–2 line 45) indicate that not all SNF providers have a home office. Providers

without a home office would report administrative costs that might typically be associated with a home office in the Wages and Salaries and Employee Benefits cost weights, or in the residual ''All-Other'' cost weight if they purchased these types of services from external contractors. We believe the trimming methodology that excludes those who report Home Office/Related Organization Contract Labor costs above the 99th percentile is appropriate as it removes extreme outliers while also allowing providers with zero Home Office/Related Organization Contract Labor costs, which is the majority of providers, to be included in the Home Office/Related Organization Contract Labor cost weight calculation.

The trimming process is done individually for each cost category so that providers excluded from one cost weight calculation are not automatically excluded from another cost weight calculation. We noted in the proposed rule that these trimming methods are the same types of edits performed for the 2018-based SNF market basket, as well as other PPS market baskets (including but not limited to the IPPS market basket and home health market basket). We believe this trimming process improves the accuracy of the data used to compute the major cost weights by removing possible data misreporting.

The final weights of the proposed 2022–based SNF market basket are based on weighted means. For example, the aggregate Wages and Salaries cost weight, after trimming, is equal to the sum of total Medicare-allowable wages and salaries (as defined in the ''Wages and Salaries'' section that follows) of all providers divided by the sum of total Medicare-allowable costs (as defined in the next paragraph) for all providers in the sample (as defined above in this section). This methodology is consistent with the methodology used to calculate the 2018-based SNF market basket cost weights and other PPS market basket cost weights. We noted in the proposed rule that for each of the cost weights, we evaluated the distribution of providers and costs by region, by ownership-type, and by urban/rural status. For all of the cost weights, the trimmed sample was nationally representative.

For all of the cost weights, we used Medicare-allowable total costs as the denominator (for example, Wages and Salaries cost weight = Wages and Salaries costs divided by Medicare-allowable total costs). Medicare-allowable total costs were equal to total costs (after overhead allocation) from Worksheet B part I, column 18, for lines 30, 40 through 49, 51, 52, and 71 plus estimated Medicaid drug costs, as defined below. We included estimated Medicaid drug costs in the pharmacy cost weight, as well as the denominator for total Medicare-allowable costs. This is the same methodology used for the 2018-based SNF market basket. The inclusion of Medicaid drug costs was finalized in the FY 2008 SNF PPS final rule (72 FR 43425 through 43430), and for the same reasons set forth in that final rule, we proposed to continue to use this methodology in the proposed 2022-based SNF market basket.

We describe the detailed methodology for obtaining costs for each of the eight cost categories determined from the Medicare Cost Report below. The methodology used in the 2018-based SNF market basket can be found in the FY 2022 SNF PPS final rule (86 FR 42446 through 42452).

(1) Wages and Salaries

To derive Wages and Salaries costs for the Medicare-allowable cost centers, we proposed first to calculate total facility wages and salaries costs as reported on Worksheet S–3, part II, column 3, line 1. We then proposed to remove the wages and salaries attributable to non-Medicare-allowable cost centers (that is, excluded areas), as well as a portion of overhead wages and salaries attributable to these excluded areas. Excluded area wages and salaries are equal to wages and salaries as reported on Worksheet S–3, part II, column 3, lines 3, 4, and 7 through 11 plus nursing facility and non-reimbursable salaries from Worksheet A, column 1, lines 31, 32, 50, and 60 through 63.

Overhead wages and salaries are attributable to the entire SNF facility; therefore, we proposed to include only the proportion attributable to the Medicare-allowable cost centers. We proposed to estimate the proportion of overhead wages and salaries attributable to the non-Medicare-allowable costs centers in two steps. First, we proposed to estimate the ratio of excluded area wages and salaries (as defined above) to non-overhead total facility wages and salaries (total facility wages and salaries (Worksheet S–3, part II, column 3, line 1) less total overhead wages and salaries (Worksheet S–3, Part III, column 3, line 14)). Next, we proposed to multiply total overhead wages and salaries by the ratio computed in step 1. We excluded providers whose excluded areas wages and salaries were greater than total facility wages and salaries and/or their excluded area overhead wages and salaries were greater than total facility wages and salaries (about 50 providers). This is the same methodology used to derive Wages and Salaries costs in the 2018-based SNF market basket.

(2) Employee Benefits

Medicare-allowable employee benefits are equal to total facility benefits as reported on Worksheet S–3, part II, column 3, lines 17 through 19 minus non-Medicare-allowable (that is, excluded area) employee benefits and minus a portion of overhead benefits attributable to these excluded areas. Excluded area employee benefits are derived by multiplying total excluded area wages and salaries (as defined above in the 'Wages and Salaries' section) times the ratio of total facility benefits to total facility wages and salaries. This ratio of benefits to wages and salaries is defined as total facility benefit costs to total facility wages and salary costs (as reported on Worksheet S–3, part II, column 3, line 1). Likewise, the portion of overhead benefits attributable to the excluded areas is derived by multiplying overhead wages and salaries attributable to the excluded areas (as defined in the ''Wages and Salaries'' section) times the ratio of total facility benefit costs to total facility wages and salary costs (as defined above). Similar to the Wages and Salaries costs, we excluded providers whose excluded areas benefits were greater than total facility benefits and/or their excluded area overhead benefits were greater than total facility benefits (zero providers were excluded because of this edit). This is the same methodology used to derive Employee Benefits costs in the 2018-based SNF market basket.

(3) Contract Labor

We proposed to derive Medicare-allowable contract labor costs from Worksheet S–3, part II, column 3, line 14, which reflects costs for contracted direct patient care services (that is, nursing, therapeutic, rehabilitative, or diagnostic services furnished under contract rather than by employees and management contract services). This is the same methodology used to derive the Contract Labor costs in the 2018-based SNF market basket.

(4) Pharmaceuticals

We proposed to calculate pharmaceuticals costs using the non-salary costs from the Pharmacy cost center (Worksheet B, part I, column 0, line 11 less Worksheet A, column 1, line 11) and the Drugs Charged to Patients' cost center (Worksheet B, part I, column 0, line 49 less Worksheet A, column 1, line 49). Since these drug costs were attributable to the entire SNF and not limited to Medicare-allowable services,

we proposed to adjust the drug costs by the ratio of Medicare-allowable pharmacy total costs (Worksheet B, part I, column 11, for lines 30, 40 through 49, 51, 52, and 71) to total pharmacy costs from Worksheet B, part I, column 11, line 11. Worksheet B, part I allocates the general service cost centers, which are often referred to as ''overhead costs'' (in which pharmacy costs are included) to the Medicare-allowable and non-Medicare-allowable cost centers. This adjustment was made for those providers who reported Pharmacy cost center expenses. Otherwise, we assumed the non-salary Drugs Charged to Patients costs were Medicare-allowable. Since drug costs for Medicare patients are included in the SNF PPS per diem rate, a provider with Medicare days should have also reported costs in the Drugs Charged to Patient cost center. We found a small number of providers (roughly 90) did not report Drugs Charged to Patients' costs despite reporting Medicare days (an average of about 2,000 Medicare days per provider), and therefore, these providers were excluded from the Pharmaceuticals cost weight calculations. This is the same methodology used for the 2018–based SNF market basket.

Second, as was done for the 2018-based SNF market basket, we proposed to continue to adjust the drug expenses reported on the Medicare cost report to include an estimate of total Medicaid drug costs, which are not represented in the Medicare-allowable drug cost weight. As stated previously in this section, the proposed 2022–based SNF market basket reflects total Medicare-allowable costs (that is, total costs for all payers for those services reimbursable under the SNF PPS). For the FY 2006–based SNF market basket (72 FR 43426), commenters noted that the total pharmaceutical costs reported on the Medicare cost report did not include pharmaceutical costs for dual-eligible Medicaid patients as these were directly reimbursed by Medicaid. Since all of the other cost category weights reflect expenses associated with treating Medicaid patients (including the compensation costs for dispensing these drugs), we made an adjustment to include these Medicaid drug expenses so the market basket cost weights would be calculated consistently.

Similar to the 2018–based SNF market basket, we proposed to estimate Medicaid drug costs based on data representing dual-eligible Medicaid beneficiaries. Medicaid drug costs are estimated by multiplying Medicaid dual-eligible drug costs per day times the number of Medicaid days as reported in the Medicare-allowable skilled nursing cost center (Worksheet S–3, part I, column 5, line 1) in the SNF Medicare cost report. Medicaid dual-eligible drug costs per day (where the day represents an unduplicated drug supply day) were estimated using 2022 Part D claims for those dual-eligible beneficiaries who had a Medicare SNF stay during the year. The total drug costs per unduplicated day for 2022 of $27.43 represented all drug costs (including the drug ingredient cost, the dispensing fee, vaccine administration fee and sales tax) incurred during the 2022 calendar year (CY) for those dual-eligible beneficiaries who had a SNF Medicare stay during CY 2022. Therefore, they include drug costs incurred during a Medicaid SNF stay occurring in CY 2022. By comparison, the 2018-based SNF market basket also relied on data from the Part D claims, which yielded a dual-eligible Medicaid drug cost per day of $24.48 for 2018.

We continue to believe that Medicaid dual-eligible beneficiaries are a reasonable proxy for the estimated drug costs per day incurred by Medicaid patients staying in a skilled nursing unit under a Medicaid stay. The skilled nursing unit is the Medicare-allowable unit in a SNF, which encompasses more skilled nursing and rehabilitative care compared to a nursing facility or long-term care unit. We believe that Medicaid patients receiving this skilled nursing care would on average have similar drug costs per day to dual-eligible Medicare beneficiaries who have received Medicare skilled nursing care in the skilled nursing care unit during the year. We noted in the proposed rule that our previous analysis of the Part D claims data showed that Medicare beneficiaries with a SNF stay during the year have higher drug costs than Medicare patients without a SNF stay during the year. Also, in 2022, dual-eligible beneficiaries with a SNF stay during the year had drug costs per day of $27.43, which were approximately two times higher than the drug costs per day of $15.83 for nondual-eligible beneficiaries with a SNF Part A stay during the year.

The Pharmaceuticals cost weight using only 2022 Medicare cost report data (without the inclusion of the Medicaid dual-eligible drug costs) is 2.0 percent, compared to the proposed Pharmaceuticals cost weight (including the adjustment for Medicaid dual-eligible drug costs) of 6.4 percent. The 2018–based SNF market basket had a Pharmaceuticals cost weight using only 2018 Medicare cost report data without the inclusion of the Medicaid dual-eligible drug costs of 2.6 percent and a total Pharmaceuticals cost weight of 7.5 percent. Therefore, the 1.1 percentage point decrease in the Pharmaceuticals cost weight between 2018 and 2022 is a result of a 0.5-percentage point decrease in the Medicaid dual-eligible drug cost weight (reflecting the 12 percent increase in the Medicaid dual-eligible drug costs per day, and a 14 percent decrease in Medicaid inpatient days between 2018 and 2022) and a 0.6-percentage point decrease in the Medicare cost report drug cost weight. The decrease in the Medicare cost report drug cost weight was consistent, in aggregate, across urban and rural status SNFs, as well as across for-profit, government, and nonprofit ownership type SNFs.

(5) Professional Liability Insurance

We proposed to calculate the professional liability insurance (PLI) costs from Worksheet S–2 of the Medicare cost reports as the sum of premiums; paid losses; and self-insurance (Worksheet S–2, Part I, columns 1 through 3, line 41). This was the same methodology used to derive the Professional Liability costs for the 2018-based SNF market basket.

About 60 percent of SNFs (about 7,700) reported professional liability costs. After trimming, about 6,900 (reflecting about 730,000 Skilled Nursing unit beds) were included in the calculation of the PLI cost weight for the proposed 2022-based SNF market basket. These providers treated roughly 750,000 Medicare beneficiaries and had a Medicare length of stay (LOS) of 58 days, a skilled nursing unit occupancy rate of 72 percent, and an average skilled nursing unit bed size of 106 beds, which are all consistent with the national averages. We also verified that this sample of providers are representative of the national distribution of providers by ownership-type, urban/rural status, and region.

We believe the Medicare cost report data continues to be the most appropriate data source to calculate the PLI cost weight for the proposed 2022-based SNF market basket as it is representative of SNFs serving Medicare beneficiaries and reflects PLI costs (premiums, paid losses, and self-insurance) incurred during the provider's cost reporting year. A fuller discussion of the Medicare cost report data on PLI costs compared to other sources is available in the FY 2022 SNF PPS final rule (86 FR 42448).

(6) Capital-Related

We proposed to derive the Medicare-allowable capital-related costs from Worksheet B, part II, column 18 for lines

30, 40 through 49, 51, 52, and 71. This is the same methodology to derive capital-related costs used in the 2018-based SNF market basket.

(7) Home Office/Related Organization Contract Labor Costs

We proposed to calculate Medicare-allowable Home Office/Related Organization Contract Labor costs to be equal to data reported on Worksheet S–3, part II, column 3, line 16. About 7,100 providers (about 54 percent) in 2022 reported having a home office (as reported on Worksheet S–2, part I, line 45) about the same share of providers as those in the 2018-based SNF market basket. As outlined in section V.A.1. of the proposed rule, providers without a home office can incur these expenses directly by having their own staff, for which the costs would be included in the Wages and Salaries and Employee Benefits cost weights. Alternatively, providers without a home office could also purchase related services from external contractors for which these expenses would be captured in the residual ''All-Other'' cost weight. For this reason, unlike the other major cost weights described previously, we did not exclude providers that did not report Home Office/Related Organization Contract Labor costs. This is the same methodology that was used in the 2018-based SNF market basket.

(8) All Other (Residual)

The ''All Other'' cost weight is a residual, calculated by subtracting the major cost weights (Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance, Capital-Related, and Home Office/Related Organization Contract Labor) from 100.

We did not receive public comments on our proposed major cost weights, nor their respective methodologies of derivation. For the reasons discussed above and in the FY 2025 SNF PPS proposed rule, we are finalizing the major cost weights as proposed, without modification.

Table 11 shows the major cost categories and their respective cost weights as derived from the 2022 Medicare cost reports.

TABLE 11: Major Cost Categories Derived from the SNF Medicare Cost Reports*

Major Cost Categories	2022-Based	2018-Based
Wages and Salaries	43.3	44.1
Employee Benefits	7.8	8.6
Contract Labor	10.1	7.5
Pharmaceuticals	6.4	7.5
Professional Liability Insurance	1.3	1.1
Capital-Related	8.3	8.2
Home Office/Related Organization Contract Labor	0.6	0.7
All other (residual)	22.2	22.3

*Total may not sum to 100 due to rounding.

As we did for the 2018-based SNF market basket (86 FR 42449), we proposed to allocate contract labor costs to the Wages and Salaries and Employee Benefits cost weights based on their relative proportions under the assumption that contract labor costs are composed 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. Using the 2022 Medicare cost report data, this percentage is 85 percent (1 percentage point higher than the percentage in the 2018-based SNF market basket); therefore, we proposed to allocate approximately 85 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 15 percent to the Employee Benefits cost weight.

We did not receive public comments on our proposed allocation of contract labor costs to Wages and Salaries and Employee Benefits. For the reasons discussed above and in the FY 2025 SNF PPS proposed rule, we are finalizing the allocation methodology and percentages as proposed, without modification.

Table 12 shows the Wages and Salaries and Employee Benefits cost weights after contract labor allocation for the 2022-based SNF market basket and the 2018-based SNF market basket.

TABLE 12: Wages and Salaries and Employee Benefits Cost Weights After Contract Labor Allocation

Major Cost Categories	2022-based Market Basket	2018-based Market Basket
Compensation	**61.2**	**60.2**
Wages and Salaries	51.8	50.4
Employee Benefits	9.3	9.9

Note: The cost weights are calculated using three decimal places. For presentational purposes, we are displaying one decimal; therefore, the detailed compensation cost weights may not add to the total compensation cost weight due to rounding.

Compared to the 2018-based SNF market basket, the Wages and Salaries cost weight and the Employee Benefits cost weight as calculated directly from the Medicare cost reports each decreased by 0.8 percentage point. The Contract Labor cost weight increased 2.6 percentage points and so in aggregate, the Compensation cost weight increased 1.0 percentage point from 60.2 percent to 61.2 percent.

b. Derivation of the Detailed Operating Cost Weights

To further divide the ''All Other'' residual cost weight estimated from the 2022 Medicare cost report data into more detailed cost categories, we proposed to use the 2017 Benchmark I–O ''The Use Table (Supply-Use Framework)'' for Nursing and Community Care Facilities industry (NAICS 623A00), published by the Census Bureau's, Bureau of Economic Analysis (BEA). These data are publicly available at *https://www.bea.gov/industry/input-output-accounts-data.* The BEA Benchmark I–O data are generally scheduled for publication every 5 years with 2017 being the most recent year for which data are available. The 2017 Benchmark I–O data are derived from the 2017 Economic Census and are the building blocks for BEA's economic accounts; therefore, 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 are less comprehensive and provide less detail than benchmark data. Additionally, the annual I–O data are subject to revision once benchmark data become available. For these reasons, we proposed to inflate the 2017 Benchmark I–O data aged forward to 2022 by applying the annual price changes from the respective price proxies to the appropriate market basket cost categories that are obtained from the 2017 Benchmark I–O data. Next, the relative shares of the cost shares that each cost category represents to the total residual I–O costs are calculated. These resulting 2022 cost shares of the I–O data are applied to the ''All Other'' residual cost weight to obtain detailed cost weights for the residual costs for the proposed 2022–based SNF market basket. For example, the cost for Food: Direct Purchases represents 12.8 percent of the sum of the ''All Other'' 2017 Benchmark I–O Expenditures inflated to 2022. Therefore, the Food: Direct Purchases cost weight is 2.8 percent of the proposed 2022–based SNF market basket (12.8 percent × 22.2 percent = 2.8 percent). For the 2018–based SNF market basket (86 FR 42449), we used a similar methodology utilizing the 2012 Benchmark I–O data (aged to 2018).

Using this methodology, we proposed to derive 19 detailed SNF market basket cost category weights from the proposed 2022–based SNF market basket ''All Other'' residual cost weight (22.2 percent). These categories are: (1) Fuel: Oil and Gas; (2) Electricity and Other Non-Fuel Utilities; (3) Food: Direct Purchases; (4) Food: Contract Services; (5) Chemicals; (6) Medical Instruments and Supplies; (7) Rubber and Plastics; (8) Paper and Printing Products; (9) Apparel; (10) Machinery and Equipment; (11) Miscellaneous Products; (12) Professional Fees: Labor-Related; (13) Administrative and Facilities Support Services; (14) Installation, Maintenance, and Repair Services; (15) All Other: Labor-Related Services; (16) Professional Fees: Nonlabor-Related; (17) Financial Services; (18) Telephone Services; and (19) All Other: Nonlabor-Related Services. These are the same detailed cost categories as those that were used in the 2018-based SNF market basket.

We noted in the proposed rule that the machinery and equipment expenses are for equipment that is paid for in a given year and not depreciated over the asset's useful life. Depreciation expenses for movable equipment are accounted for in the capital component of the proposed 2022–based SNF market basket (described in section V.A.1.c. of the proposed rule).

We did not receive any public comments on our proposed methodology for deriving the detailed operating cost weights. Therefore, for the reasons discussed above and in the FY 2025 SNF PPS proposed rule, we are finalizing the detailed operating cost weights and methodology as proposed, without modification.

c. Derivation of the Detailed Capital Cost Weights

Similar to the 2018–based SNF market basket, we further divided the Capital-related cost weight into: Depreciation, Interest, Lease and Other Capital-related cost weights.

We calculated the depreciation cost weight (that is, depreciation costs excluding leasing costs) using depreciation costs from Worksheet S–2, column 1, lines 20 and 21. Since the depreciation costs reflect the entire SNF facility (Medicare and non-Medicare-allowable units), we used total facility capital costs (Worksheet B, Part I, column 18, line 100) as the denominator. This methodology assumes that the depreciation of an asset is the same regardless of whether the asset was used for Medicare or non-Medicare patients. This methodology yielded depreciation costs as a percent of capital costs of 22.6 percent for 2022. We then apply this percentage to the proposed 2022-based SNF market basket Medicare-allowable Capital-related cost weight of 8.3 percent, yielding a proposed Medicare-allowable depreciation cost weight (excluding leasing expenses, which is described in more detail below) of 1.9 percent for 2022. To further disaggregate the Medicare-allowable depreciation cost weight into fixed and movable depreciation, we proposed to use the 2022 SNF Medicare cost report data for end-of-the-year capital asset balances as reported on Worksheet A–7. The 2022 SNF Medicare cost report data showed a fixed/movable split of 86/14. The 2018–based SNF market basket, which utilized the same data from the 2018 Medicare cost reports, also had a fixed/movable split of 86/14.

We derived the interest expense share of capital-related expenses from 2022 SNF Medicare cost report data, specifically from Worksheet A, column 2, line 81. Similar to the depreciation cost weight, we calculated the interest cost weight using total facility capital costs. This methodology yielded interest costs as a percent of capital costs of 17.7 percent for 2022. We then apply this percentage to the proposed 2022–based SNF market basket Medicare-allowable Capital-related cost weight of 8.3 percent, yielding a Medicare-allowable interest cost weight (excluding leasing expenses) of 1.5 percent. As done with the last rebasing (86 FR 42450), we proposed to determine the split of interest expense between for-profit and not-for-profit facilities based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit/government) from the 2022 SNF Medicare cost report data. We estimated the split between for-profit and not-for-profit interest expense to be 30/70 percent compared to the 2018-based SNF market basket with 25/75 percent.

Because the detailed data were not available in the Medicare cost reports, we used the most recent 2021 Census Bureau Service Annual Survey (SAS) data to derive the capital-related expenses attributable to leasing and other capital-related expenses. The 2018-based SNF market basket used the 2017 SAS data.

[1] *https://www.bea.gov/resources/methodologies/concepts-methods-io-accounts.*

Based on the 2021 SAS data, we determined that leasing expenses are 65 percent of total leasing and capital-related expenses costs. In the 2018-based SNF market basket, leasing costs represent 62 percent of total leasing and capital-related expenses costs. We then apply this percentage to the 2022-based SNF market basket residual Medicare-allowable capital costs of 4.9 percent derived from subtracting the Medicare-allowable depreciation cost weight and Medicare-allowable interest cost weight from the 2022-based SNF market basket of total Medicare-allowable capital cost weight (8.3 percent − 1.9 percent − 1.5 percent = 4.9 percent). This produces the 2022-based SNF Medicare-allowable leasing cost weight of 3.2 percent and all-other capital-related cost weight of 1.7 percent.

Lease expenses are not broken out as a separate cost category in the SNF market basket, but are distributed among the cost categories of depreciation, interest, and other capital-related expenses, reflecting the assumption that the underlying cost structure and price movement of leasing expenses is similar to capital costs in general. As was done with past SNF market baskets and other PPS market baskets, we assumed 10 percent of lease expenses are overhead and assigned them to the other capital-related expenses cost category. This is based on the assumption that leasing expenses include not only depreciation, interest, and other capital-related costs but also additional costs paid to the lessor. We distributed the remaining lease expenses to the three cost categories based on the proportion of depreciation, interest, and other capital-related expenses to total capital costs, excluding lease expenses.

We did not receive any public comments on our proposed methodology for deriving the detailed capital cost weights. Therefore, for the reasons discussed above and in the FY 2025 SNF PPS proposed rule, we are finalizing the detailed capital cost weights and methodology as proposed, without modification.

Table 13 shows the capital-related expense distribution (including expenses from leases) in the 2022-based SNF market basket and the 2018-based SNF market basket.

TABLE 13: Comparison of the Capital-related Expense Distribution of the 2022-based SNF Market Basket and the 2018-based SNF Market Basket

Cost Category	2022-based SNF Market Basket	2018-based SNF Market Basket
Capital-related Expenses	8.3	8.2
Total Depreciation	3.0	3.0
Total Interest	2.3	2.7
Other Capital-related Expenses	3.0	2.6

Note: The cost weights are calculated using three decimal places. For presentational purposes, we are displaying one decimal; therefore, the detailed capital cost weights may not add to the total capital-related expenses cost weight due to rounding.

Table 14 presents the 2022-based SNF market basket and the 2018-based SNF market basket cost categories and cost weights.

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TABLE 14: 2022-based SNF Market Basket and 2018-based SNF Market Basket Cost Categories and Cost Weights

Cost Category	2022-based SNF Market Basket	2018-based SNF Market Basket
Total	100.0	100.0
Compensation	61.2	60.2
Wages and Salaries[1]	51.8	50.4
Employee Benefits[1]	9.3	9.9
Utilities	2.7	1.5
Electricity and Other Non-Fuel Utilities	1.8	1.0
Fuel: Oil and Gas	0.8	0.4
Professional Liability Insurance	1.3	1.1
All Other	26.5	29.0
Other Products	16.1	17.6
Pharmaceuticals	6.4	7.5
Food: Direct Purchases	2.9	2.5
Food: Contract Services	3.4	4.3
Chemicals	0.2	0.2
Medical Instruments and Supplies	0.4	0.6
Rubber and Plastics	1.0	0.7
Paper and Printing Products	0.5	0.5
Apparel	0.4	0.5
Machinery and Equipment	0.7	0.5
Miscellaneous Products	0.2	0.3
All Other Services	10.5	11.5
Labor-Related Services	6.5	6.4
Professional Fees: Labor-Related	3.6	3.5
Installation, Maintenance, and Repair Services	0.4	0.6
Administrative and Facilities Support	0.5	0.4
All Other: Labor-Related Services	2.0	1.9
Non Labor-Related Services	4.0	5.1
Professional Fees: Nonlabor-Related	1.8	2.0
Financial Services	0.5	1.3
Telephone Services	0.4	0.3
All Other: Nonlabor-Related Services	1.3	1.5
Capital-Related Expenses	8.3	8.2
Total Depreciation	3.0	3.0
Building and Fixed Equipment	2.5	2.5
Movable Equipment	0.4	0.4
Total Interest	2.3	2.7
For-Profit SNFs	0.7	0.7
Government and Nonprofit SNFs	1.6	2.0
Other Capital-Related Expenses	3.0	2.6

Note: The cost weights are calculated using three decimal places. For presentational purposes, we are displaying one decimal, and therefore, the detailed cost weights may not add to the aggregate cost weights or to 100.0 due to rounding.
1. Contract labor is distributed to wages and salaries and employee benefits based on the share of total compensation that each category represents.

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2. Price Proxies Used To Measure Operating Cost Category Growth

After developing the 27 cost weights for the 2022-based SNF market basket, we selected the most appropriate wage and price proxies currently available to represent the rate of change for each cost category. With four exceptions (three for the capital-related expenses cost categories and one for PLI), we base the wage and price proxies on Bureau of Labor Statistics (BLS) data, and group them into one of the following BLS categories:

- *Employment Cost Indexes.* 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.* Producer Price Indexes (PPIs) 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.* 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 producer level, or if no appropriate PPIs are available.

We evaluate the price proxies using the criteria of reliability, timeliness, availability, and relevance:

- *Reliability.* 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.* 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.* 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.* Relevance means that the proxy is applicable and representative of the cost category weight to which it is applied.

We believe that the CPIs, PPIs, and ECIs that we have selected 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 19 lists all price proxies for the 2022-based SNF market basket. Below is a detailed explanation of the price proxies we proposed to use for each operating cost category.

a. Wages and Salaries

We proposed to use the ECI for Wages and Salaries for Private Industry Workers in Nursing Care Facilities (NAICS 6231; BLS series code CIU2026231000000I) to measure price growth of this category. NAICS 623 includes facilities that provide a mix of health and social services, with many of the health services requiring some level of nursing services. Within NAICS 623 is NAICS 6231, which includes nursing care facilities primarily engaged in providing inpatient nursing and rehabilitative services. These facilities, which are most comparable to Medicare-certified SNFs, provide skilled nursing and continuous personal care services for an extended period of time, and, therefore, have a permanent core staff of registered or licensed practical nurses. This is the same index used in the 2018-based SNF market basket.

b. Employee Benefits

We proposed to use the ECI for Benefits for Nursing Care Facilities (NAICS 6231) to measure price growth of this category. The ECI for Benefits for Nursing Care Facilities is calculated using BLS's total compensation (BLS series ID CIU2016231000000I) for nursing care facilities series and the relative importance of wages and salaries within total compensation. We believe this constructed ECI series is technically appropriate for the reason stated previously in the Wages and Salaries price proxy section of this final rule. This is the same index used in the 2018-based SNF market basket.

c. Electricity and Other Non-Fuel Utilities

We proposed to use the PPI Commodity for Commercial Electric Power (BLS series code WPU0542) to measure the price growth of this cost category as Electricity costs account for 93 percent of these expenses. This is the same index used for the Electricity cost category in the 2018-based SNF market basket.

d. Fuel: Oil and Gas

We proposed to use a blended proxy composed of the PPI Industry for Petroleum Refineries (NAICS 324110) (BLS series code PCU32411–32411), the PPI Commodity for Natural Gas (NAICS 221200)(BLS series code WPU0531), and the PPI for Other Petroleum and Coal Products manufacturing (NAICS 324190)(BLS series code PCU32419–32419).

Our analysis of 2017 Benchmark I–O data for Nursing and Community Care Facilities found that these three NAICS industries account for approximately 93 percent of SNF Fuel: Oil and Gas expenses. The remaining 7 percent of SNF Fuel: Oil and Gas expenses are for two other incidental NAICS industries including Coal Mining and Petrochemical Manufacturing. We proposed to create a blended index based on the three NAICS Fuel: Oil and Gas expenses listed above that account for 93 percent of SNF Fuel: Oil and Gas expenses. We created this blend based on each NAICS' expenses as a share of their sum. These expenses as a share of their sum are listed in Table 15.

The 2018-based SNF market basket used a blended Fuel: Oil and Gas proxy that was based on 2012 Benchmark I–O data. We believe the Fuel: Oil and Gas blended index for the 2022-based SNF market basket is technically appropriate as it reflects more recent data on SNFs purchasing patterns. Table 15 provides the weights for the 2022- and 2018-based blended Fuel: Oil and Gas index.

TABLE 15: Fuel: Oil and Gas Blended Index Weights

NAICS	Price Proxy	2022-based Index	2018-based Index
221200	PPI Commodity for Natural Gas	7%	7%
324110	PPI Industry for Petroleum Refineries	72%	61%
324190	PPI for Other Petroleum and Coal Products manufacturing	21%	32%
	Total	100%	100%

e. Professional Liability Insurance

We proposed to use the CMS Hospital Professional Liability Insurance Index to measure price growth of this category. We were unable to find a reliable data source that collects SNF-specific PLI data. Therefore, we proposed to use the CMS Hospital Professional Liability Index, which tracks price changes for commercial insurance premiums for a fixed level of coverage, holding non-price factors constant (such as a change in the level of coverage). This is the same index used in the 2018-based SNF market basket. We believe this is an appropriate proxy to measure the price growth associated of SNF PLI as it captures the price inflation associated with other medical institutions that serve Medicare patients.

Comment: One commenter mentioned a 2006 case study on the nursing home liability insurance market in Florida that relied on information from the National Conference of State Legislatures Health Policy Tracking Service and suggested that CMS should be looking for credible sources of information about SNF liability insurance rather than using the CMS Hospital Professional Liability Insurance Index as this market basket's price proxy.

Response: The criteria we use to evaluate and select price proxies are: timeliness (published and available on a regular basis, preferably at least quarterly, with little lag), reliability (consistent historical time-series as well as being technically and methodologically sound), availability (the proxy is publicly available), and relevance (the proxy is applicable and representative of the cost category weight to which it is applied). While we are unaware of any data sources that would meet these criteria and serve as an appropriate substitute at this time, we are interested in information on this topic and will continue to search for, and remain open to, any credible data source that meets the aforementioned criteria. Nonetheless, we continue to believe that the CMS Hospital Professional Liability Insurance Index is an appropriate price proxy as it captures the price inflation associated with other medical institutions that serve Medicare patients, which includes hospital-based SNFs. Any changes to this price proxy in the future would be set forth through notice and comment rulemaking.

f. Pharmaceuticals

We proposed to use the PPI Commodity for Pharmaceuticals for Human Use, Prescription (BLS series code WPUSI07003) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

g. Food: Direct Purchases

We proposed to use the PPI Commodity for Processed Foods and Feeds (BLS series code WPU02) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

h. Food: Contract Services

We proposed to use the CPI All Urban for Food Away From Home (All Urban Consumers) (BLS series code CUUR0000SEFV) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

i. Chemicals

For measuring price change in the Chemicals cost category, we proposed to use a blended PPI composed of the Industry PPIs for Other Basic Organic Chemical Manufacturing (NAICS 325190) (BLS series code PCU32519–32519), Soap and Cleaning Compound Manufacturing (NAICS 325610) (BLS series code PCU32561–32561), and All Other Chemical Product and Preparation Manufacturing (NAICS 3259A0) (BLS series code PCU325998325998).

Using the 2017 Benchmark I–O data, we found that these three NAICS industries accounted for approximately 95 percent of SNF chemical expenses. The remaining 5 percent of SNF chemical expenses are for three other incidental NAICS chemicals industries such as Paint and Coating Manufacturing. We proposed to create a blended index based on the three NAICS chemical expenses listed above that account for 95 percent of SNF chemical expenses. We create this blend based on each NAICS' expenses as a share of their sum. These expenses as a share of their sum are listed in Table 16.

The 2018-based SNF market basket used a blended chemical proxy that was based on 2012 Benchmark I–O data. We believe the chemical blended index for the 2022-based SNF market basket is technically appropriate as it reflects more recent data on SNFs purchasing patterns. Table B6 provides the weights for the 2022-based blended chemical index and the 2018-based blended chemical index.

TABLE 16: Chemical Blended Index Weights

NAICS	Price Proxy	2022-based Index	2018-based Index
325190	PPI for Other Basic Organic Chemical Manufacturing	49%	34%
325610	PPI for Soap and Cleaning Compound Manufacturing	9%	21%
325998	PPI for Other Miscellaneous Chemical Product Manufacturing	42%	45%
	Total	100%	100%

j. Medical Instruments and Supplies

For measuring price change in the Medical Instruments and Supplies cost category, we proposed to use a blended proxy. The 2017 Benchmark I–O data shows 62 percent of medical instruments and supply costs are for Surgical and medical instrument manufacturing costs (NAICS 339112) and 38 percent are for Surgical appliance and supplies manufacturing costs (NAICS 339113). To proxy the price changes associated with NAICS 339112, we proposed using the PPI—Commodity—Surgical and medical instruments (BLS series code WPU1562). To proxy the price changes associated with NAICS 339113, we proposed to use 50 percent for the PPI—Commodity—Medical and surgical appliances and supplies (BLS series code WPU1563) and 50 percent for the PPI Commodity data for Miscellaneous products—Personal safety equipment and clothing (BLS series code WPU1571). The latter price proxy would reflect personal protective equipment including but not limited to face shields and protective clothing. The 2017 Benchmark I–O data does not provide specific expenses for personal protective equipment (which would be reflected in the NAICS 339113 expenses); however, we recognize that this category reflects costs faced by SNFs. In absence of any specific cost data on personal protective equipment, we proposed to include the PPI Commodity data for Miscellaneous products—Personal safety equipment and clothing (BLS series code WPU1571) in the blended proxy for Medical Instruments and Supplies cost category with a weight of 19 percent (that is, 50 percent of the NAICS 339113 expenses as a percent of the sum of NAICS 339113 and NAICS 339112 expenses from the I–O).

The 2018-based SNF market basket used a blended Medical Instruments and Supplies proxy that was based on 2012 Benchmark I–O data. We believe the blended index for the 2022-based SNF market basket is technically appropriate as it reflects more recent data on SNFs purchasing patterns. Table 17 provides the Medical Instruments and Supplies cost weight blended price proxy.

TABLE 17: Medical Instruments and Supplies Blended Index Weights

NAICS	Price Proxy	2022-based Index	2018-based Index
339112	PPI - Commodity - Surgical and medical instruments (WUI1562)	62%	46%
339113	PPI - Commodity - Medical and surgical appliances and supplies (WPU1563)	19%	27%
	PPI Commodity data for Miscellaneous products-Personal safety equipment and clothing (WPU1571)	19%	27%
Total		100%	100%

k. Rubber and Plastics

We proposed to use the PPI Commodity for Rubber and Plastic Products (BLS series code WPU07) to measure price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

l. Paper and Printing Products

We proposed to use a 86/14 blend of the PPI Commodity for Converted Paper and Paperboard Products (BLS series code WPU0915) and the PPI Commodity for Publications Printed Matter and Printing Material (BLS Series Code WPU094) to measure the price growth of this cost category. The 2017 Benchmark I–O data shows that 86 percent of paper and printing expenses are for paper manufacturing (NAICS 322) and the remaining expenses are for Printing (NAICS 323110). The 2018-based SNF market basket used the PPI Commodity for Converted Paper and Paperboard Products (BLS series code WPU0915) to measure the price growth of this cost category.

m. Apparel

We proposed to use the PPI Commodity for Apparel (BLS series code WPU0381) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

n. Machinery and Equipment

We proposed to use the PPI Commodity for Machinery and Equipment (BLS series code WPU11) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

o. Miscellaneous Products

For measuring price change in the Miscellaneous Products cost category, we proposed to use the PPI Commodity for Finished Goods less Food and Energy (BLS series code WPUFD4131). Both food and energy are already adequately represented in separate cost categories and should not also be reflected in this cost category. This is the same index used in the 2018-based SNF market basket.

p. Professional Fees: Labor-Related

We proposed 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 index used in the 2018-based SNF market basket.

q. Administrative and Facilities Support Services

We proposed 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 index used in the 2018-based SNF market basket.

r. Installation, Maintenance and Repair Services

We proposed to use the ECI for Total Compensation for All Civilian Workers in Installation, Maintenance, and Repair (BLS series code CIU1010000430000I) to measure the price growth of this new cost category. This is the same index used in the 2018-based SNF market basket.

s. All Other: Labor-Related Services

We proposed 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 index used in the 2018-based SNF market basket.

t. Professional Fees: Non-Labor-Related

We proposed 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 index used in the 2018-based SNF market basket.

u. Financial Services

We proposed 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 index used in the 2018-based SNF market basket.

v. Telephone Services

We proposed to use the CPI All Urban for Telephone Services (BLS series code CUUR0000SEED) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

w. All Other: Non-Labor-Related Services

We proposed to use the CPI All Urban for All Items Less Food and Energy (BLS series code CUUR0000SA0L1E) to measure the price growth of this cost category. This is the same index used in the 2018-based SNF market basket.

After consideration of the public comments we received, for the reasons discussed above and in the FY 2025 SNF PPS proposed rule, we are finalizing the price proxies of the operating cost categories as proposed, without modification.

3. Price Proxies Used To Measure Capital Cost Category Growth

We proposed to apply the same capital price proxies as were used in the 2018-based SNF market basket, and below is a detailed explanation of the price proxies used for each capital cost category. We also proposed to continue to vintage weight the capital price proxies for Depreciation and Interest to capture the long-term consumption of capital. This vintage weighting method is the same method that was used for the 2018-based SNF market basket and is described below.

- *Depreciation—Building and Fixed Equipment:* We proposed to use the BEA Chained Price Index for Private Fixed Investment in Structures, Nonresidential, Hospitals and Special Care (BEA Table 5.4.4. Price Indexes for Private Fixed Investment in Structures by Type). This BEA index is intended to capture prices for construction of facilities such as hospitals, nursing homes, hospices, and rehabilitation centers. This is the same index used in the 2018-based SNF market basket.

- *Depreciation—Movable Equipment:* We proposed to use the PPI Commodity for Machinery and Equipment (BLS series code WPU11). This price index reflects price inflation associated with a variety of machinery and equipment that would be utilized by SNFs, including but not limited to medical equipment, communication equipment, and computers. This is the same index used in the 2018-based SNF market basket.

- *Nonprofit Interest:* We proposed to use the average yield on Municipal Bonds (Bond Buyer 20-bond index). This is the same index used in the 2018-based SNF market basket.

- *For-Profit Interest:* For the For-Profit Interest cost category, we proposed to use the iBoxx AAA Corporate Bond Yield index. This is the same index used in the 2018-based SNF market basket.

- *Other Capital:* Since this category includes fees for insurances, taxes, and other capital-related costs, we proposed to use the CPI for Rent of Primary Residence (BLS series code CUUS0000SEHA), which would reflect the price growth of these costs. This is the same index used in the 2018-based SNF market basket.

We believe that these price proxies are the most appropriate proxies for SNF capital costs that meet our selection criteria of relevance, timeliness, availability, and reliability.

As stated previously in this final rule, we proposed to continue to vintage weight the capital price proxies for Depreciation and Interest to capture the long-term consumption of capital. To capture the long-term nature, the price proxies are vintage-weighted and the vintage weights are calculated using a two-step process. First, we determine the expected useful life of capital and debt instruments held by SNFs. Second, we identify the proportion of expenditures within a cost category that is attributable to each individual year over the useful life of the relevant capital assets, or the vintage weights.

We rely on Bureau of Economic Analysis (BEA) fixed asset data to derive the useful lives of both fixed and movable capital, which is the same data source used to derive the useful lives for the 2018–based SNF market basket. The specifics of the data sources used are explained below.

a. Calculating Useful Lives for Movable and Fixed Assets

Estimates of useful lives for movable and fixed assets for the 2022–based SNF market basket are 9 and 27 years, respectively. These estimates are based on three data sources from the BEA: (1) current-cost average age; (2) historical-cost average age; and (3) industry-specific current cost net stocks of assets.

BEA current-cost and historical-cost average age data by asset type are not available by industry but are published at the aggregate level for all industries. The BEA does publish current-cost net capital stocks at the detailed asset level for specific industries. There are 64 detailed movable assets (including intellectual property) and there are 32 detailed fixed assets in the BEA estimates. Since we seek aggregate useful life estimates applicable to SNFs, we developed a methodology to approximate movable and fixed asset ages for nursing and residential care services (NAICS 623) using the published BEA data. For the 2022–based SNF market basket, we use the current-cost average age for each asset type from the BEA fixed assets Table 2.9 for all assets and weight them using current-cost net stock levels for each of these asset types in the nursing and residential care services industry, NAICS 6230. For example, nonelectro medical equipment current-cost net stock (accounting for about 29 percent of total movable equipment current-cost net stock in 2022 is multiplied by an average age of 4.8 years for nonelectro medical equipment for all industries. Current-cost net stock levels are available for download from the BEA website at *https://apps.bea.gov/iTable/index_FA.cfm.* We then aggregate the ''weighted'' current-cost net stock levels (average age multiplied by current-cost net stock) into movable and fixed assets for NAICS 6230. We then adjust the average ages for movable and fixed assets by the ratio of historical-cost average age (Table 2.10) to current-cost average age (Table 2.9).

This produces historical cost average age data for fixed (structures) and movable (equipment and intellectual property) assets specific to NAICS 6230 of 13.6 and 4.4 years for 2022, respectively. This reflects the average age of an asset at a given point in time, whereas we want to estimate a useful life of the asset. To do this, we multiply each of the average age estimates by two to convert to average useful lives with the assumption that the average age reflects the midpoint of useful life and is normally distributed (about half of the assets are below the average at a given

point in time, and half above the average at a given point in time). This produces estimates of likely useful lives of 27.2 and 8.8 years for fixed and movable assets, which we round to 27 and 9 years, respectively. We proposed an interest vintage weight time span of 25 years, obtained by weighting the fixed and movable vintage weights (27 years and 9 years, respectively) by the fixed and movable split (86 percent and 14 percent, respectively). This is the same methodology used for the 2018–based SNF market basket, which had useful lives of 26 years and 9 years for fixed and movable assets, respectively.

b. Constructing Vintage Weights

Given the expected useful life of capital (fixed and movable assets) and debt instruments, we must determine the proportion of capital expenditures attributable to each year of the expected useful life for each of the three asset types: building and fixed equipment, movable equipment, and interest. These proportions represent the vintage weights. We were not able to find a historical time series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the National Nursing Home Survey (NNHS) conducted by the National Center for Health Statistics (NCHS) for 1962 through 1999. For 2000 through 2018, we extrapolated the 1999 bed data forward using measurements of the moving average rate of growth in the number of beds as reported in SNF Medicare cost report data on Worksheet S–3, part I, column 1, line 8. A more detailed discussion of this methodology was published in the FY 2022 SNF final rule (86 FR 42457). We proposed to continue this methodology for the 2022–based SNF market basket by extrapolating the 2018 bed data forward using the average growth in the number of beds over the 2019 to 2022 time period. We then proposed to use the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe that this assumption is reasonable because the number of beds reflects the size of a SNF, and as a SNF adds beds, it also likely adds fixed capital.

As was done for the 2018–based SNF market basket (as well as prior market baskets), we proposed to estimate movable equipment purchases based on the ratio of ancillary costs to routine costs. The time series of the ratio of ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment purchase patterns. The assumption here is that as ancillary costs increase compared to routine costs, the SNF caseload becomes more complex and would require more movable equipment. The lack of movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. A more detailed discussion of this methodology was published in the FY 2008 SNF final rule (72 FR 43428). We believe the resulting two time series, determined from beds and the ratio of ancillary to routine costs, reflect real capital purchases of building and fixed equipment and movable equipment over time.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from 1963 through 2022 determined above to nominal capital purchase series using their respective price proxies (the BEA Chained Price Index for Nonresidential Construction for Hospitals & Special Care Facilities and the PPI for Machinery and Equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 2022. Nominal capital purchases are needed for interest vintage weights to capture the value of debt instruments.

Once we created these capital purchase time series for 1963 through 2022, we averaged different periods to obtain an average capital purchase pattern over time: (1) for building and fixed equipment, we averaged 34, 27–year periods; (2) for movable equipment, we averaged 52, 9–year periods; and (3) for interest, we averaged 36, 25–year periods. We calculate the vintage weight for a given year by dividing the capital purchase amount in any given year by the total amount of purchases during the expected useful life of the equipment or debt instrument.

We did not receive any public comments on our proposed price proxies used for each of the detailed capital cost categories or on our methodology for deriving the vintage weights. For the reasons discussed above and in the FY 2025 SNF PPS proposed rule, we are finalizing the price proxies of the capital cost categories, the vintage weights, and the methodology for deriving the vintage weights, as proposed without modification.

The vintage weights for the 2022–based SNF market basket and the 2018-based SNF market basket are presented in Table 18.

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TABLE 18: 2022-Based Vintage Weights and 2018-Based Vintage Weights

Year[1]	Building and Fixed Equipment		Movable Equipment		Interest	
	2022-based 27 years	2018-Based 26 years	2022-based 9 years	2018-Based 9 years	2022-based 25 years	2018-Based 24 years
1	0.049	0.049	0.106	0.135	0.026	0.027
2	0.048	0.050	0.121	0.140	0.027	0.028
3	0.048	0.049	0.119	0.128	0.028	0.029
4	0.046	0.047	0.103	0.112	0.030	0.031
5	0.045	0.045	0.117	0.119	0.031	0.032
6	0.043	0.043	0.124	0.111	0.033	0.034
7	0.042	0.041	0.101	0.084	0.035	0.036
8	0.042	0.040	0.093	0.080	0.038	0.037
9	0.039	0.037	0.115	0.091	0.041	0.038
10	0.037	0.035			0.043	0.040
11	0.038	0.036			0.045	0.043
12	0.039	0.036			0.045	0.047
13	0.038	0.036			0.044	0.049
14	0.038	0.036			0.044	0.051
15	0.038	0.035			0.045	0.050
16	0.036	0.036			0.045	0.048
17	0.034	0.036			0.045	0.048
18	0.033	0.038			0.045	0.048
19	0.033	0.037			0.043	0.048
20	0.032	0.036			0.042	0.048
21	0.031	0.035			0.042	0.047
22	0.030	0.035			0.043	0.047
23	0.030	0.035			0.044	0.047
24	0.028	0.033			0.045	0.049
25	0.027	0.032			0.051	
26	0.027	0.032				
27	0.027					
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: The vintage weights are calculated using thirteen decimals. For presentation purposes, we are displaying three decimals and therefore, the detail vintage weights may not add to 1.000 due to rounding.

[1] Year 1 represents the vintage weight applied to the farthest year while the vintage weight for year 27, for example, would apply to the most recent year.

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 18 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 *https://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 this IPPS FY 2010 Proposed Rule.''

After consideration of public comments, we are finalizing the 2022-based SNF market basket as proposed. Table 19 shows all the price proxies for the 2022-based SNF market basket.

TABLE 19: Price Proxies for the 2022-based SNF Market Basket

Cost Category	Weight	Price proxy
Total	100.0	
Compensation	61.2	
Wages and Salaries[1]	51.8	ECI for Wages and Salaries for Private Industry Workers in Nursing Care Facilities
Employee Benefits[1]	9.3	ECI for Total Benefits for Private Industry Workers in Nursing Care Facilities
Utilities	2.7	
Electricity and Other Non-Fuel Utilities	1.8	PPI Commodity for Commercial Electric Power
Fuel: Oil and Gas	0.8	Blend of PPIs
Professional Liability Insurance	1.3	CMS Professional Liability Insurance Premium Index
All Other	26.5	
Other Products	16.1	
Pharmaceuticals	6.4	PPI Commodity for Pharmaceuticals for Human Use, Prescription
Food: Direct Purchase	2.9	PPI Commodity for Processed Foods and Feeds
Food: Contract Purchase	3.4	CPI for Food Away From Home (All Urban Consumers)
Chemicals	0.2	Blend of PPIs
Medical Instruments and Supplies	0.4	Blend of PPIs
Rubber and Plastics	1.0	PPI Commodity for Rubber and Plastic Products
Paper and Printing Products	0.5	Blend of PPIs
Apparel	0.4	PPI Commodity for Apparel
Machinery and Equipment	0.7	PPI Commodity for Machinery and Equipment
Miscellaneous Products	0.2	PPI Commodity for Finished Goods Less Food and Energy
All Other Services	10.5	
Labor-Related Services	6.5	
Professional Fees: Labor-Related	3.6	ECI for Total Compensation for Private Industry Workers in Professional and Related
Installation, Maintenance, and Repair Services	0.4	ECI for Total Compensation for All Civilian workers in Installation, Maintenance, and Repair
Administrative and Facilities Support	0.5	ECI for Total Compensation for Private Industry Workers in Office and Administrative Support
All Other: Labor-Related Services	2.0	ECI for Total Compensation for Private Industry Workers in Service Occupations
Non Labor-Related Services	4.0	
Professional Fees: Nonlabor-Related	1.8	ECI for Total Compensation for Private Industry Workers in Professional and Related
Financial Services	0.5	ECI for Total Compensation for Private Industry Workers in Financial Activities
Telephone Services	0.4	CPI for Telephone Services
All Other: Nonlabor-Related Services	1.3	CPI for All Items Less Food and Energy
Capital-Related Expenses	8.3	
Total Depreciation	3.0	
Building and Fixed Equipment	2.5	BEA's Chained Price Index for Private Fixed Investment in Structures, Nonresidential, Hospitals and Special Care – vintage weighted 27 years
Movable Equipment	0.4	PPI Commodity for Machinery and Equipment – vintage weighted 9 years
Total Interest	2.3	
For-Profit SNFs	0.7	iBoxx – Average yield on Aaa bond – vintage weighted 25 years
Government and Nonprofit SNFs	1.6	Bond Buyer – Average yield on Domestic Municipal Bonds – vintage weighted 25 years
Other Capital-Related Expenses	3.0	CPI for Rent of Primary Residence

Note: The cost weights are calculated using three decimal places. For presentation purposes, we are displaying one decimal, and therefore, the detailed cost weights may not add to the aggregate cost weights or to 100.0 due to rounding.

[1] Contract labor is distributed to wages and salaries and employee benefits based on the share of total compensation that each category represents.

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4. Labor-Related Share

We define the labor-related share (LRS) as those expenses that are labor-intensive and vary with, or are influenced by, the local labor market. Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Effective for FY 2025, we proposed to revise and update the labor-related share to reflect the relative importance of the 2022-based SNF market basket cost categories that we believe are labor-intensive and vary with, or are influenced by, the local labor market. For the 2022-based SNF market basket these are: (1) Wages and Salaries (including allocated contract labor costs as described above); (2) Employee Benefits (including allocated contract labor costs as described above); (3) Professional Fees: Labor-Related; (4) Administrative and Facilities Support Services; (5) Installation, Maintenance, and Repair Services; (6) All Other: Labor-Related Services; and (7) a proportion of capital-related expenses. We proposed to continue to include a proportion of capital-related expenses because a portion of these expenses are deemed to be labor-intensive and vary with, or are influenced by, the local labor market. For example, a proportion of construction costs for a medical building would be attributable to local construction workers' compensation expenses.

Consistent with previous SNF market basket revisions and rebasings, the All Other: Labor-related services cost category is mostly comprised of building maintenance and security services (including, but not limited to, landscaping services, janitorial services, waste management services services) and dry cleaning and laundry services. Because these services tend to be labor-intensive and are mostly performed at the SNF facility or in the local area (and therefore, unlikely to be purchased in the national market), we believe that they meet our definition of labor-related services.

These are the same cost categories we have included in the labor-related share for the 2018-based SNF market basket rebasing (86 FR 42461), as well as the same categories included in the labor-related share for the 2021-based inpatient rehabilitation facility (IRF) market basket (88 FR 50984), and 2021-based inpatient psychiatric facility (IPF) market basket (88 FR 51078).

As discussed in the FY 2022 SNF PPS final rule (86 FR 42462), in an effort to determine more accurately the share of nonmedical professional fees (included in the 2022-based SNF market basket Professional Fees cost categories) that should be included in the labor-related share, we surveyed SNFs regarding the proportion of those fees that are attributable to local firms and the proportion that are purchased from national firms. Based on these weighted results, we determined that SNFs purchase, on average, the following portions of contracted professional services inside their local labor market:

- 78 percent of legal services.
- 86 percent of accounting and auditing services.
- 89 percent of architectural, engineering services.
- 87 percent of management consulting services.

Together, these four categories represent 3.6 percentage points of the total costs for the proposed 2022-based SNF market basket. We applied the percentages from this special survey to their respective SNF market basket weights to separate them into labor-related and nonlabor-related costs. As a result, we are designating 2.8 of the 3.6 percentage points total to the labor-related share, with the remaining 0.8 percentage point categorized as nonlabor-related.

In addition to the professional services as previously listed, for the 2022-based SNF market basket, we proposed to allocate a proportion of the Home Office/Related Organization Contract Labor cost weight, calculated using the Medicare cost reports as previously stated, into the Professional Fees: Labor-Related and Professional Fees: Nonlabor-Related cost categories. We proposed 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 2018-based SNF market basket, we proposed for the 2022-based SNF market basket to use the Medicare cost reports for SNFs to determine the home office labor-related percentages. The Medicare cost report requires a SNF to report information regarding its home office provider. Using information on the Medicare cost report, we compared the location of the SNF with the location of the SNF's home office. We proposed to classify a SNF with a home office located in their respective labor market if the SNF and its home office are located in the same Metropolitan Statistical Area (MSA). Then we determined 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 Home Office/Related Organization Contract Labor costs for those SNFs that had home offices located in their respective local labor markets of total Home Office/Related Organization Contract Labor costs for SNFs with a home office. We determined a SNF's and its home office's MSA using their zip code information from the Medicare cost report.

Using this methodology, we determined that 25 percent of SNFs' Home Office/Related Organization Contract Labor costs were for home offices located in their respective local labor markets. Therefore, we proposed to allocate 25 percent of the Home Office/Related Organization Contract Labor cost weight (0.1 percentage point = 0.6 percent × 25 percent) to the Professional Fees: Labor-Related cost weight and 75 percent of the Home Office/Related Organization Contract Labor cost weight to the Professional Fees: Nonlabor-Related cost weight (0.4 percentage point = 0.6 percent × 75 percent). The 2018-based SNF market basket used a similar methodology for allocating the Home Office/Related Organization Contract Labor cost weight to the labor-related share.

In summary, based on the two allocations mentioned earlier, we proposed to apportion 2.9 percentage points into the Professional Fees: Labor-Related cost category consisting of the Professional Fees (2.8 percentage points) and Home Office/Related Organization Contract Labor (0.1 percentage point) cost weights. 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 0.6 percentage point of total costs) resulting in a Professional Fees: Labor-Related cost weight of 3.6 percent.

Based on IHS Global, Inc.'s fourth-quarter 2023 forecast with historical data through the third quarter of 2023, we proposed a FY 2025 labor-related share of 71.9 percent.

Comment: One commenter did not support any increases in the labor-related share because facilities with a wage index less than 1.0 will suffer financially from a rise in the labor-related share. They stated that across the country, there is a growing disparity between the high-wage and low-wage States.

Response: We appreciate the commenter's concern. However, for this final rule, we are finalizing our proposal to rebase the SNF market basket to reflect a 2022 base year so that we can

incorporate more recent data on SNF cost structures. In addition, we calculate a labor-related share based on the relative importance of labor-related cost categories, to account for historical and projected price changes between the base year and the payment year (FY 2025 in this rule). The price proxies for the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance measure captures these changes. We recognize that a change in the labor-related share can have differential impacts for providers, but we believe it is important to continue to update the labor-related share to reflect the current SNF cost environment.

As was stated in the FY 2025 SNF PPS proposed rule (89 FR 23451), if more recent data subsequently became available, we would use such data, if appropriate, to determine the FY 2025 SNF labor-related share relative importance. Accordingly, based on IGI's second-quarter 2024 forecast with historical data through the first quarter of 2024, the labor-related share for FY 2025 based on the finalized 2022-based SNF market basket is 72.0 percent.

Table 20 compares the FY 2025 labor-related share based on the 2022-based SNF market basket relative importance and the FY 2024 labor-related share based on the 2018-based SNF market basket relative importance as finalized in the FY 2024 SNF final rule (88 FR 53213).

TABLE 20: FY 2024 and FY 2025 SNF Labor-Related Share

	Relative importance, labor-related share, FY 2024 23:2 forecast [1]	Relative importance, labor-related share, FY 2025 24:2 forecast [2]
Wages and Salaries [3]	52.5	53.2
Employee Benefits [3]	9.3	9.2
Professional Fees: Labor-Related	3.4	3.5
Administrative & Facilities Support Services	0.6	0.4
Installation, Maintenance & Repair Services	0.4	0.5
All other: Labor-Related services	2.0	2.0
Capital-Related (.391)	2.9	3.2
Total	71.1	72.0

[1] Published in the **Federal Register** (88 FR 53213); based on the second quarter 2023 IHS Global Inc. forecast of the 2018-based SNF market basket, with historical data through first quarter 2023.

[2] Based on the second quarter 2024 IHS Global Inc. forecast of the 2022-based SNF market basket, with historical data through first quarter 2024.

[3] The Wages and Salaries and Employee Benefits cost weight reflect contract labor costs as described above.

The FY 2025 SNF labor-related share is 0.9 percentage point higher than the FY 2024 SNF labor-related share (based on the 2018-based SNF market basket). The higher labor-related share is primarily due to incorporating the 2022 Medicare cost report data, which resulted in a higher Compensation cost weight, as well as higher relative importance of the Capital cost category.

5. FY 2025 Market Basket Percentage Increase for the SNF PPS Update

As discussed previously in this rule, beginning with the FY 2025 SNF PPS update, we are adopting the 2022-based SNF market basket as the appropriate market basket of goods and services for the SNF PPS. Consistent with historical practice, we estimate the market basket update for the SNF 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 and total factor productivity (TFP).

Based on IGI's fourth-quarter 2023 forecast with historical data through the third quarter of 2023, the proposed 2022-based SNF market basket update for FY 2025 was estimated to be 2.8 percent—which was 0.1 percentage point lower than the FY 2025 percent change of the 2018-based SNF market basket. We are also proposed that if more recent data subsequently became available (for example, a more recent estimate of the market basket and/or the TFP), we would use such data, if appropriate, to determine the FY 2025 SNF market basket percentage increase, labor-related share, forecast error adjustment, or productivity adjustment in the SNF PPS final rule. Accordingly, based on IGI's second-quarter 2024 forecast with historical data through the first quarter of 2024, the most recent estimate of the 2022-based SNF market basket percentage increase for FY 2025 is 3.0 percent.

Table 21 compares the 2022-based SNF market basket and the 2018-based SNF market basket percent changes. While there are slight differences of up to 0.2 percentage point in certain years, there is no difference in the average growth rates between the two market baskets in the historical period (FY 2020–FY 2023) and a 0.1 percentage point difference in the forecast period (FY 2024–FY 2026) when rounded to one decimal place.

TABLE 21: 2022-based SNF Market Basket and 2018-based SNF Market Basket, Percent Changes: 2020-2026

Fiscal Year (FY)	2022-based SNF Market Basket	2018-based SNF Market Basket
Historical data:		
FY 2020	2.0	2.1
FY 2021	3.6	3.6
FY 2022	6.5	6.3
FY 2023	5.6	5.6
Average FY 2020-2023	4.4	4.4
Forecast:		
FY 2024	3.6	3.6
FY 2025	3.0	3.1
FY 2026	2.8	2.9
Average FY 2024-2026	3.1	3.2

Source: IHS Global, Inc. 2nd quarter 2024 forecast with historical data through 1st quarter 2024.

B. Changes to SNF PPS Wage Index

1. Core-Based Statistical Areas (CBSAs) for the FY 2025 SNF PPS Wage Index

a. Background

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 proposed to continue this practice for FY 2025, 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 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, as the basis for the SNF PPS wage index, the IPPS hospital wage data, unadjusted for occupational mix, without taking into account geographic reclassifications under section 1886(d)(8) and (d)(10) of the Act, and without applying the rural floor under section 4410 of the BBA 1997 and the outmigration adjustment under section 1886(d)(13) of the Act. For FY 2025, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2020, and before October 1, 2021 (FY 2021 cost report data).

The applicable SNF PPS wage index value is assigned to a SNF on the basis of the labor market area in which the SNF is geographically located. 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 Metropolitan Statistical Area (MSA) and the creation of micropolitan statistical areas and combined statistical areas. In adopting the Core-Based Statistical Areas (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), since the expiration of this 1-year transition on September 30, 2006, we have 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 MSAs, 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. In addition, on August 15, 2017, OMB issued Bulletin No. 17–01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300). As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), and as we noted in the proposed rule, 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.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. Subsequently, on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18–04, may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.*

While OMB Bulletin No. 18–04 is not based on new census data, it includes some material changes to the OMB statistical area delineations, including some new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would be split apart. 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 through FY 2024.

On July 21, 2023, OMB issued OMB Bulletin No. 23–01 (available at *https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf*) which updates and supersedes OMB Bulletin No. 20–01 based upon the 2020 Standards for Delineating Core Based Statistical Areas (''the 2020 Standards'') published by the Office of Management and Budget (OMB) on July 16, 2021 (86 FR 37770). OMB Bulletin No. 23–01 revised CBSA delineations which are comprised of counties and equivalent entities (for example, boroughs, a city and borough, and a municipality in Alaska, planning regions in Connecticut, parishes in Louisiana, municipios in Puerto Rico, and independent cities in Maryland, Missouri, Nevada, and Virginia). For FY 2025, we are adopting the revised OMB delineations identified in OMB Bulletin No. 23–01.

To implement these changes for the SNF PPS beginning in FY 2025, it is necessary to identify the revised labor market area delineation for each affected county and provider in the country. The revisions OMB published on July 21, 2023 contain a number of significant changes. For example, under the revised OMB delineations, there would be new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would split apart. We discussed these changes in more detail in the proposed rule.

b. Implementation of Revised Labor Market Area Delineations

We typically delay implementing OMB labor market area delineations to allow for sufficient time to assess the new changes. For example, as discussed in the FY 2014 SNF PPS proposed rule (78 FR 26448) and final rule (78 FR 47952), we delayed implementing the revised OMB statistical area delineations described in OMB Bulletin No. 13–01 to allow for sufficient time to assess the new changes. We believe it is important for the SNF PPS to use the latest labor market area delineations available as soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We further believe that using the delineations reflected in OMB Bulletin No. 23–01 would increase the integrity of the SNF PPS wage index system by creating a more accurate representation of geographic variations in wage levels. We have reviewed our findings and impacts relating to the revised OMB delineations set forth in OMB Bulletin No. 23–01 and find no compelling reason to further delay implementation. Because we believe we have broad authority under section 1888(e)(4)(G)(ii) of the Act to determine the labor market areas used for the SNF PPS wage index, and because we believe the delineations reflected in OMB Bulletin No. 23–01 better reflect the local economies and wage levels of the areas in which hospitals are currently located, we proposed to implement the revised OMB delineations as described in the July 21, 2023 OMB Bulletin No. 23–01, for the SNF PPS wage index effective beginning in FY 2025. In addition, we will apply the permanent 5 percent cap policy in FY 2025 on decreases in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2024) to assist providers in adapting to the revised OMB delineations (if we finalize the implementation of such delineations for the SNF PPS wage index beginning in FY 2025). This policy is discussed in more detail in the proposed rule. We solicited comments on these proposals.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Commenters generally support the proposed policies for FY 2025. One commenter stated that it ''seems to strike a balance between fairly compensating SNFs, promoting quality care, and enhancing regulatory oversight.'' Another commenter appreciates that CMS is not requiring the commitment resources needed to do cost report audits at this time. However, a number of these commenters also recommend CMS continue to reform the wage index policies. These recommendations included suggestions such as modifying the current methodology by developing a reclassification policy similar to the hospital wage index reclassification policy or developing a SNF-specific wage index.

Response: We appreciate the commenters' support of the wage index proposed policies for FY 2025. In the absence of a SNF-specific wage index, we continue to believe the use of the pre-reclassified and pre-floor hospital wage data (without the occupational mix adjustment) continue to be an appropriate and reasonable proxy for the SNF PPS. For a detailed discussion of the rationale for our current wage index policies and for responses to these recurring comments, we refer readers to the FY 2024 SNF PPS final rule (88 FR 53211 through 53215) and the FY 2016 SNF PPS final rule (80 FR 46401 through 46402).

Comment: One commenter, who disagrees with the proposed delineation changes, specifically expressed concerns with the wage index decrease of both Rock County, Minnesota, and McHenry County, North Dakota. Both counties will transition from rural to urban designation and in turn will experience slightly over a 12 percent decrease from FY 2024 to FY 2025. Due to the decline in wage index, the commenter strongly requests CMS to review the wage index data for Trinity Health (the only rural PPS hospital in North Dakota prior to the proposed designation change).

Response: We understand that some CBSAs may experience a wage index decline compared to the previous fiscal year. For North Dakota, our investigation discovered the wage data for Trinity Health (provider 350006) was audited in FY 2025 with no issues reported. The average hourly wage reported for Trinity Health declined 7 percent since FY 2024. For the purposes of the SNF PPS, if a SNF (not hospital) experience a rural or urban redesignation due to the proposed delineation changes for FY 2025 and their wage index resulted in decline since FY 2024, the 5 percent cap policy will be applied. Therefore, we continue to believe that the 5 percent cap policy will mitigate any significant decreases a SNF may experience due to the revised OMB delineations. Additional details on the wage index transition policy for FY 2025 is discussed further below in this section. After consideration of public comments, we are finalizing our proposal regarding the implementation of the revised labor market area delineations for FY 2025.

(1) Micropolitan Statistical Areas

As discussed in the FY 2006 SNF PPS proposed rule (70 FR 29093 through 29094) and final rule (70 FR 45041), we

considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. 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 SNF PPS rural wage index (see 70 FR 29094 and 70 FR 45040 through 45041).

Thus, the SNF PPS statewide rural wage index is determined using IPPS hospital data from hospitals located in non-MSA areas, and the statewide rural wage index is assigned to SNFs located in those areas. Because Micropolitan Areas tend to encompass smaller population centers and contain fewer hospitals than MSAs, we determined that if Micropolitan Areas were to be treated as separate labor market areas, the SNF PPS wage index would have included significantly more single-provider labor market areas. As we explained in the FY 2006 SNF PPS proposed rule (70 FR 29094), recognizing Micropolitan Areas as independent labor markets would generally increase the potential for dramatic shifts in year-to-year wage index values because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of an area. Dramatic shifts in an area's wage index from year-to-year are problematic and create instability in the payment levels from year-to-year, which could make fiscal planning for SNFs difficult if we adopted this approach. For these reasons, we adopted a policy to include Micropolitan Areas in the State's rural wage area for purposes of the SNF PPS wage index and have continued this policy through the present.

We believe that the best course of action would be to continue the policy established in the FY 2006 SNF PPS final rule and include Micropolitan Areas in each State's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). We do not believe it would be appropriate to calculate a separate wage index for areas that typically may include only a few hospitals for the reasons discussed in the FY 2006 SNF PPS proposed rule, and as discussed earlier. Therefore, in conjunction with our implementing of the revised OMB labor market delineations beginning in FY 2025 and consistent with the treatment of Micropolitan Areas under the IPPS, we proposed to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of the State's rural wage index.

(2) Urban Counties That Would Become Rural Under the Revised OMB Delineations

As previously discussed, we proposed to implement the new OMB statistical area delineations (based upon the 2020 decennial Census data) beginning in FY 2025 for the SNF PPS wage index. Our analysis shows that a total of 54 counties (and county equivalents) that are currently considered part of an urban CBSA will be considered located in a rural area, for SNF PPS payment beginning in FY 2025, when we adopt the new OMB delineations. Table 22 lists the 54 urban counties that will be rural when we finalized our proposal to implement the new OMB delineations.

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TABLE 22: Counties That Will Transition from Urban to Rural Status

Federal Information Processing Standard (FIPS) County Code	County Name	State	Current CBSA	Current CBSA Name
01129	Washington	AL	33660	Mobile, AL
05025	Cleveland	AR	38220	Pine Bluff, AR
05047	Franklin	AR	22900	Fort Smith, AR-OK
05069	Jefferson	AR	38220	Pine Bluff, AR
05079	Lincoln	AR	38220	Pine Bluff, AR
09015	Windham	CT	49340	Worcester, MA-CT
10005	Sussex	DE	41540	Salisbury, MD-DE
13171	Lamar	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
16077	Power	ID	38540	Pocatello, ID
17057	Fulton	IL	37900	Peoria, IL
17077	Jackson	IL	16060	Carbondale-Marion, IL
17087	Johnson	IL	16060	Carbondale-Marion, IL
17183	Vermilion	IL	19180	Danville, IL
17199	Williamson	IL	16060	Carbondale-Marion, IL
18121	Parke	IN	45460	Terre Haute, IN
18133	Putnam	IN	26900	Indianapolis-Carmel-Anderson, IN
18161	Union	IN	17140	Cincinnati, OH-KY-IN
21091	Hancock	KY	36980	Owensboro, KY
21101	Henderson	KY	21780	Evansville, IN-KY
22045	Iberia	LA	29180	Lafayette, LA
24001	Allegany	MD	19060	Cumberland, MD-WV
24047	Worcester	MD	41540	Salisbury, MD-DE
25011	Franklin	MA	44140	Springfield, MA
26155	Shiawassee	MI	29620	Lansing-East Lansing, MI
27075	Lake	MN	20260	Duluth, MN-WI
28031	Covington	MS	25620	Hattiesburg, MS
31051	Dixon	NE	43580	Sioux City, IA-NE-SD
36123	Yates	NY	40380	Rochester, NY
37049	Craven	NC	35100	New Bern, NC
37077	Granville	NC	20500	Durham-Chapel Hill, NC
37085	Harnett	NC	22180	Fayetteville, NC
37087	Haywood	NC	11700	Asheville, NC
37103	Jones	NC	35100	New Bern, NC
37137	Pamlico	NC	35100	New Bern, NC
42037	Columbia	PA	14100	Bloomsburg-Berwick, PA
42085	Mercer	PA	49660	Youngstown-Warren-Boardman, OH-PA
42089	Monroe	PA	20700	East Stroudsburg, PA
42093	Montour	PA	14100	Bloomsburg-Berwick, PA
42103	Pike	PA	35084	Newark, NJ-PA
45027	Clarendon	SC	44940	Sumter, SC
48431	Sterling	TX	41660	San Angelo, TX
49003	Box Elder	UT	36260	Ogden-Clearfield, UT
51113	Madison	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	Southampton	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	Franklin City	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC

Federal Information Processing Standard (FIPS) County Code	County Name	State	Current CBSA	Current CBSA Name
54035	Jackson	WV	16620	Charleston, WV
54043	Lincoln	WV	16620	Charleston, WV
54057	Mineral	WV	19060	Cumberland, MD-WV
55069	Lincoln	WI	48140	Wausau-Weston, WI
72001	Adjuntas	PR	38660	Ponce, PR
72055	Guanica	PR	49500	Yauco, PR
72081	Lares	PR	10380	Aguadilla-Isabela, PR
72083	Las Marias	PR	32420	Mayagüez, PR
72141	Utuado	PR	10380	Aguadilla-Isabela, PR

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We proposed that, for purposes of determining the wage index under the SNF PPS, the wage data for all hospitals located in the counties listed in Table 22 would be considered rural when calculating their respective State's rural wage index under the SNF PPS. We recognize that rural areas typically have lower area wage index values than urban areas, and SNFs located in these counties may experience a negative impact in their SNF PPS payment due to the adoption of the revised OMB delineations. Furthermore, for SNF providers currently located in an urban county that will be considered rural when this proposal will be finalized, we will utilize the rural unadjusted per diem rates, found in Table 14, as the basis for determining payment rates for these facilities beginning on October 1, 2024.

(3) Rural Counties That Would Become Urban Under the Revised OMB Delineations

As previously discussed, we proposed to implement the revised OMB statistical area delineations based upon OMB Bulletin No. 18–04 beginning in FY 2025. Analysis of these OMB statistical area delineations shows that a total of 54 counties (and county equivalents) that are currently located in rural areas will be located in urban areas when we finalize our proposal to implement the revised OMB delineations.

Table 23 lists the 54 rural counties that will be urban when we finalize this proposal.

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TABLE 23: Counties That Will Transition from Rural to Urban Status

FIPS County Code	County	State	CBSA	CBSA Name
01087	Macon	AL	12220	Auburn-Opelika, AL
01127	Walker	AL	13820	Birmingham, AL
12133	Washington	FL	37460	Panama City-Panama City Beach, FL
13187	Lumpkin	GA	12054	Atlanta-Sandy Springs-Roswell, GA
15005	Kalawao	HI	27980	Kahului-Wailuku, HI
17053	Ford	IL	16580	Champaign-Urbana, IL
17127	Massac	IL	37140	Paducah, KY-IL
18159	Tipton	IN	26900	Indianapolis-Carmel-Greenwood, IN
18179	Wells	IN	23060	Fort Wayne, IN
20021	Cherokee	KS	27900	Joplin, MO-KS
21007	Ballard	KY	37140	Paducah, KY-IL
21039	Carlisle	KY	37140	Paducah, KY-IL
21127	Lawrence	KY	26580	Huntington-Ashland, WV-KY-OH
21139	Livingston	KY	37140	Paducah, KY-IL
21145	Mc Cracken	KY	37140	Paducah, KY-IL
21179	Nelson	KY	31140	Louisville/Jefferson County, KY-IN
22053	Jefferson Davis	LA	29340	Lake Charles, LA
22083	Richland	LA	33740	Monroe, LA
26015	Barry	MI	24340	Grand Rapids-Wyoming-Kentwood, MI
26019	Benzie	MI	45900	Traverse City, MI
26055	Grand Traverse	MI	45900	Traverse City, MI
26079	Kalkaska	MI	45900	Traverse City, MI
26089	Leelanau	MI	45900	Traverse City, MI
27133	Rock	MN	43620	Sioux Falls, SD-MN
28009	Benton	MS	32820	Memphis, TN-MS-AR
28123	Scott	MS	27140	Jackson, MS
30007	Broadwater	MT	25740	Helena, MT
30031	Gallatin	MT	14580	Bozeman, MT
30043	Jefferson	MT	25740	Helena, MT
30049	Lewis And Clark	MT	25740	Helena, MT
30061	Mineral	MT	33540	Missoula, MT
32019	Lyon	NV	39900	Reno, NV
37125	Moore	NC	38240	Pinehurst-Southern Pines, NC
38049	Mchenry	ND	33500	Minot, ND
38075	Renville	ND	33500	Minot, ND
38101	Ward	ND	33500	Minot, ND
39007	Ashtabula	OH	17410	Cleveland, OH
39043	Erie	OH	41780	Sandusky, OH
41013	Crook	OR	13460	Bend, OR
41031	Jefferson	OR	13460	Bend, OR
42073	Lawrence	PA	38300	Pittsburgh, PA
45087	Union	SC	43900	Spartanburg, SC
46033	Custer	SD	39660	Rapid City, SD
47081	Hickman	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	Aransas	TX	18580	Corpus Christi, TX
48035	Bosque	TX	47380	Waco, TX
48079	Cochran	TX	31180	Lubbock, TX
48169	Garza	TX	31180	Lubbock, TX

FIPS County Code	County	State	CBSA	CBSA Name
48219	Hockley	TX	31180	Lubbock, TX
48323	Maverick	TX	20580	Eagle Pass, TX
48407	San Jacinto	TX	26420	Houston-Pasadena-The Woodlands, TX
51063	Floyd	VA	13980	Blacksburg-Christiansburg-Radford, VA
51181	Surry	VA	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
55123	Vernon	WI	29100	La Crosse-Onalaska, WI-MN

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We proposed that, for purposes of calculating the area wage index under the SNF PPS, the wage data for hospitals located in the counties listed in Table 23 will be included in their new respective urban CBSAs. Typically, SNFs located in an urban area will receive a wage index value higher than or equal to SNFs located in their State's rural area. Furthermore, for SNFs currently located in a rural county that will be considered urban when this proposal be finalized, we will utilize the urban unadjusted per diem rates found in Table 23, as the basis for determining the payment rates for these facilities beginning October 1, 2024.

(4) Urban Counties That Would Move to a Different Urban CBSA Under the Revised OMB Delineations

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties will shift from one urban CBSA to another urban CBSA under adoption of the new OMB delineations. In other cases, when we adopt the new OMB delineations, counties will shift between existing and new CBSAs, changing the constituent makeup of the CBSAs.

In one type of change, an entire CBSA will be subsumed by another CBSA. For example, CBSA 31460 (Madera, CA) currently is a single county (Madera, CA) CBSA. Madera County will be a part of CBSA 23420 (Fresno, CA) under the new OMB delineations.

In another type of change, some CBSAs have counties that would split off to become part of, or to form, entirely new labor market areas. For example, CBSA 29404 (Lake County-Kenosha County, IL-WI) currently is comprised of two counties (Lake County, IL, and Kenosha County, WI). Under the new OMB delineations, Kenosha county will split off and form the new CBSA 28450 (Kenosha, WI), while Lake county would remain in CBSA 29404.

Finally, in some cases, a CBSA will lose counties to another existing CBSA when we adopt the new OMB delineations. For example, Meade County, KY, will move from CBSA 21060 (Elizabethtown-Fort Knox, KY) to CBSA 31140 (Louisville/Jefferson County, KY-IN). CBSA 21060 will still exist in the new labor market delineations with fewer constituent counties. Table 24 lists the urban counties that will move from one urban CBSA to another urban CBSA under the new OMB delineations.

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TABLE 24: Counties That Will Change to a Different CBSA

FIPS County Code	County Name	State	Current CBSA	CBSA
06039	Madera	CA	31460	23420
11001	The District	DC	47894	47764
12053	Hernando	FL	45300	45294
12057	Hillsborough	FL	45300	45294
12101	Pasco	FL	45300	45294
12103	Pinellas	FL	45300	41304
12119	Sumter	FL	45540	48680
13013	Barrow	GA	12060	12054
13015	Bartow	GA	12060	31924
13035	Butts	GA	12060	12054
13045	Carroll	GA	12060	12054
13057	Cherokee	GA	12060	31924
13063	Clayton	GA	12060	12054
13067	Cobb	GA	12060	31924
13077	Coweta	GA	12060	12054
13085	Dawson	GA	12060	12054
13089	De Kalb	GA	12060	12054
13097	Douglas	GA	12060	12054
13113	Fayette	GA	12060	12054
13117	Forsyth	GA	12060	12054
13121	Fulton	GA	12060	12054
13135	Gwinnett	GA	12060	12054
13143	Haralson	GA	12060	31924
13149	Heard	GA	12060	12054
13151	Henry	GA	12060	12054
13159	Jasper	GA	12060	12054
13199	Meriwether	GA	12060	12054
13211	Morgan	GA	12060	12054
13217	Newton	GA	12060	12054
13223	Paulding	GA	12060	31924
13227	Pickens	GA	12060	12054
13231	Pike	GA	12060	12054
13247	Rockdale	GA	12060	12054
13255	Spalding	GA	12060	12054
13297	Walton	GA	12060	12054
18073	Jasper	IN	23844	29414
18089	Lake	IN	23844	29414
18111	Newton	IN	23844	29414
18127	Porter	IN	23844	29414
21163	Meade	KY	21060	31140
22103	St. Tammany	LA	35380	43640
24009	Calvert	MD	47894	30500
24017	Charles	MD	47894	47764
24033	Prince Georges	MD	47894	47764
24037	St. Marys	MD	15680	30500
25015	Hampshire	MA	44140	11200
34009	Cape May	NJ	36140	12100
34023	Middlesex	NJ	35154	29484

FIPS County Code	County Name	State	Current CBSA	CBSA
34025	Monmouth	NJ	35154	29484
34029	Ocean	NJ	35154	29484
34035	Somerset	NJ	35154	29484
36027	Dutchess	NY	39100	28880
36071	Orange	NY	39100	28880
37019	Brunswick	NC	34820	48900
39035	Cuyahoga	OH	17460	17410
39055	Geauga	OH	17460	17410
39085	Lake	OH	17460	17410
39093	Lorain	OH	17460	17410
39103	Medina	OH	17460	17410
39123	Ottawa	OH	45780	41780
47057	Grainger	TN	34100	28940
51013	Arlington	VA	47894	11694
51043	Clarke	VA	47894	11694
51047	Culpeper	VA	47894	11694
51059	Fairfax	VA	47894	11694
51061	Fauquier	VA	47894	11694
51107	Loudoun	VA	47894	11694
51153	Prince William	VA	47894	11694
51157	Rappahannock	VA	47894	11694
51177	Spotsylvania	VA	47894	11694
51179	Stafford	VA	47894	11694
51187	Warren	VA	47894	11694
51510	Alexandria City	VA	47894	11694
51600	Fairfax City	VA	47894	11694
51610	Falls Church City	VA	47894	11694
51630	Fredericksburg City	VA	47894	11694
51683	Manassas City	VA	47894	11694
51685	Manassas Park City	VA	47894	11694
53061	Snohomish	WA	42644	21794
54037	Jefferson	WV	47894	11694
55059	Kenosha	WI	29404	28450
72023	Cabo Rojo	PR	41900	32420
72059	Guayanilla	PR	49500	38660
72079	Lajas	PR	41900	32420
72111	Penuelas	PR	49500	38660
72121	Sabana Grande	PR	41900	32420
72125	San German	PR	41900	32420
72153	Yauco	PR	49500	38660

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If providers located in these counties move from one CBSA to another under the new OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values.

In other cases, adopting the revised OMB delineations will involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19430 (Dayton-Kettering, OH) will experience a change to its name and become CBSA 19430 (Dayton-Kettering-Beavercreek, OH), while all of its three constituent counties will remain the same. We consider these changes (where only the CBSA name and/or number will change) to be inconsequential changes with respect to the SNF PPS wage index. Table 25 sets forth a list of such CBSAs where there will be a change in CBSA name and/or number only when we adopt the revised OMB delineations.

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TABLE 25: Urban CBSAs With Change to Name and/or Number

Current CBSA	Current CBSA Name	CBSA	CBSA Name
10380	Aguadilla-Isabela, PR	10380	Aguadilla, PR
10540	Albany-Lebanon, OR	10540	Albany, OR
12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock-San Marcos, TX
12540	Bakersfield, CA	12540	Bakersfield-Delano, CA
13820	Birmingham-Hoover, AL	13820	Birmingham, AL
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14860	Bridgeport-Stamford-Norwalk, CT	14860	Bridgeport-Stamford-Danbury, CT
15260	Brunswick, GA	15260	Brunswick-St. Simons, GA
15680	California-Lexington Park, MD	30500	Lexington Park, MD
16540	Chambersburg-Waynesboro, PA	16540	Chambersburg, PA
16984	Chicago-Naperville-Evanston, IL	16984	Chicago-Naperville-Schaumburg, IL
17460	Cleveland-Elyria, OH	17410	Cleveland, OH
19430	Dayton-Kettering, OH	19430	Dayton-Kettering-Beavercreek, OH
19740	Denver-Aurora-Lakewood, CO	19740	Denver-Aurora-Centennial, CO
21060	Elizabethtown-Fort Knox, KY	21060	Elizabethtown, KY
21060	Elizabethtown-Fort Knox, KY	31140	Louisville/Jefferson County, KY-IN
21780	Evansville, IN-KY	21780	Evansville, IN
21820	Fairbanks, AK	21820	Fairbanks-College, AK
22660	Fort Collins, CO	22660	Fort Collins-Loveland, CO
23224	Frederick-Gaithersburg-Rockville, MD	23224	Frederick-Gaithersburg-Bethesda, MD
23844	Gary, IN	29414	Lake County-Porter County-Jasper County, IN
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming-Kentwood, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Greer, SC
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Port Royal, SC
26380	Houma-Thibodaux, LA	26380	Houma-Bayou Cane-Thibodaux, LA
26420	Houston-The Woodlands-Sugar Land, TX	26420	Houston-Pasadena-The Woodlands, TX
26900	Indianapolis-Carmel-Anderson, IN	26900	Indianapolis-Carmel-Greenwood, IN
27900	Joplin, MO	27900	Joplin, MO-KS
27980	Kahului-Wailuku-Lahaina, HI	27980	Kahului-Wailuku, HI
29404	Lake County-Kenosha County, IL-WI	28450	Kenosha, WI
29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL
29820	Las Vegas-Henderson-Paradise, NV	29820	Las Vegas-Henderson-North Las Vegas, NV
31020	Longview, WA	31020	Longview-Kelso, WA
31460	Madera, CA	23420	Fresno, CA
34100	Morristown, TN	28940	Knoxville, TN
34740	Muskegon, MI	34740	Muskegon-Norton Shores, MI
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	48900	Wilmington, NC
35084	Newark, NJ-PA	35084	Newark, NJ
35154	New Brunswick-Lakewood, NJ	29484	Lakewood-New Brunswick, NJ
35300	New Haven-Milford, CT	35300	New Haven, CT

Current CBSA	Current CBSA Name	CBSA	CBSA Name
35380	New Orleans-Metairie, LA	43640	Slidell-Mandeville-Covington, LA
35840	North Port-Sarasota-Bradenton, FL	35840	North Port-Bradenton-Sarasota, FL
35980	Norwich-New London, CT	35980	Norwich-New London-Willimantic, CT
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Fremont-Berkeley, CA
36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ
36260	Ogden-Clearfield, UT	36260	Ogden, UT
36540	Omaha-Council Bluffs, NE-IA	36540	Omaha, NE-IA
37460	Panama City, FL	37460	Panama City-Panama City Beach, FL
39100	Poughkeepsie-Newburgh-Middletown, NY	28880	Kiryas Joel-Poughkeepsie-Newburgh, NY
39340	Provo-Orem, UT	39340	Provo-Orem-Lehi, UT
39540	Racine, WI	39540	Racine-Mount Pleasant, WI
41540	Salisbury, MD-DE	41540	Salisbury, MD
41620	Salt Lake City, UT	41620	Salt Lake City-Murray, UT
41900	San Germán, PR	32420	Mayagüez, PR
42644	Seattle-Bellevue-Kent, WA	21794	Everett, WA
42680	Sebastian-Vero Beach, FL	42680	Sebastian-Vero Beach-West Vero Corridor, FL
42700	Sebring-Avon Park, FL	42700	Sebring, FL
43620	Sioux Falls, SD	43620	Sioux Falls, SD-MN
44140	Springfield, MA	11200	Amherst Town-Northampton, MA
44420	Staunton, VA	44420	Staunton-Stuarts Draft, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45300	Tampa-St. Petersburg-Clearwater, FL	41304	St. Petersburg-Clearwater-Largo, FL
45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
45540	The Villages, FL	48680	Wildwood-The Villages, FL
45780	Toledo, OH	41780	Sandusky, OH
47220	Vineland-Bridgeton, NJ	47220	Vineland, NJ
47260	Virginia Beach-Norfolk-Newport News, VA-NC	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
48140	Wausau-Weston, WI	48140	Wausau, WI
48300	Wenatchee, WA	48300	Wenatchee-East Wenatchee, WA
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL
49340	Worcester, MA-CT	49340	Worcester, MA
49500	Yauco, PR	38660	Ponce, PR
49660	Youngstown-Warren-Boardman, OH-PA	49660	Youngstown-Warren, OH

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5. Change to County-Equivalents in the State of Connecticut

The June 6, 2022 Census Bureau Notice (87 FR 34235–34240), OMB Bulletin No. 23–01 replaced the 8 counties in Connecticut with 9 new ''Planning Regions.'' Planning regions now serve as county-equivalents within the CBSA system. We proposed to adopt the planning regions as county equivalents for wage index purposes. We believe it is necessary to adopt this migration from counties to planning region county-equivalents in order to maintain consistency with OMB updates. As outlined in the proposed rule, we are providing the following crosswalk with the current and proposed FIPS county and county-equivalent codes and CBSA assignments.

TABLE 26: Connecticut Counties to Planning Regions

FIPS	Current County	Current CBSA	FIPS	Planning Region Area (County Equivalent)	CBSA
9001	Fairfield	14860	9190	Western Connecticut	14860
9001	Fairfield	14860	9120	Greater Bridgeport	14860
9003	Hartford	25540	9110	Capitol	25540
9005	Litchfield	7	9160	Northwest Hills	7
9007	Middlesex	25540	9130	Lower Connecticut River Valley	25540
9009	New Haven	35300	9170	South Central Connecticut	35300
9009	New Haven	35300	9140	Naugatuck Valley	47930
9011	New London	35980	9180	Southeastern Connecticut	35980
9013	Tolland	25540	9110	Capitol	25540
9015	Windham	49340	9150	Northeastern Connecticut	7

2. Transition Policy for FY 2025 Wage Index Changes

Overall, we believe that implementing the new OMB delineations will result in wage index values being more representative of the actual costs of labor in a given area. We recognize that some SNFs (43 percent) will experience decreases in their area wage index values as a result of this change, though less than 1 percent of providers will experience a significant decrease (that is, greater than 5 percent) in their area wage index value. We also realize that many SNFs (57 percent) will have higher area wage index values after adopting the revised OMB delineations.

CMS recognizes that SNFs in certain areas may experience reduced payment due to the adoption of the revised OMB delineations and has finalized transition policies to mitigate negative financial impacts and provide stability to year-to-year wage index variations. In FY 2023, the 5 percent cap policy was made permanent for all SNFs. This 5 percent cap on reductions policy is discussed in further detail in FY 2023 final rule at 87 FR 47521 through 47523. It is CMS' long held opinion that revised labor market delineations should be adopted as soon as is possible to maintain the integrity the wage index system. We believe the 5 percent cap policy will sufficiently mitigate significant disruptive financial impacts on SNFs negatively affected by the adoption of the revised OMB delineations. We do not believe any additional transition is necessary considering that the current cap on wage index decreases, which was not in place when implementing prior decennial census updates in FY 2006 and FY 2015, ensures that a SNF's wage index will not be less than 95 percent of its final wage index for the prior year.

Furthermore, consistent with the requirement at section 1888(e)(4)(G)(ii) of the Act that wage index adjustments must be made in a budget neutral manner, the applied 5 percent cap on the decrease in an SNF's wage index will not result in any change in estimated aggregate SNF PPS payments by applying a budget neutrality factor to the unadjusted Federal per diem rates. The methodology for calculating this budget neutrality factor is outlined in section III.D of the proposed rule.

We solicited comments on our proposed implementation of revised labor market area delineations. The proposed wage index applicable to FY 2025 is set forth in Table A and B available on the CMS website at *https://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Several commenters support the existing 5 percent permanent cap policy but raised concerns on varying impacts it has on different providers. A commenter recommends that the 5 percent cap be applied in a non-budget neutral manner. Another commenter suggest that CMS apply a 1-year transition period to allow time to study the impact of the delineation changes. A commenter suggest CMS lower the cap amount to mitigate changes caused by revisions to the CBSA delineations.

Response: We appreciate the commenters' support of the permanent 5 percent cap on wage index decreases policy. When the permanent 5 percent cap policy was established in FY 2023, our provider level impact analysis determined approximately 97 percent of SNFs would experience a wage index change within 5 percent. Therefore, we believe applying a 5-percent cap on all wage index decreases each year, regardless of the reason for the decrease, would effectively mitigate instability in SNF PPS payments due to any significant wage index decreases that may affect providers in any year. As discussed earlier in this section, it is CMS' long held opinion that revised labor market delineations should be adopted as soon as is possible to maintain the integrity the wage index system. We believe the 5 percent cap policy will sufficiently mitigate significant disruptive financial impacts on SNFs negatively affected by the proposed adoption of the revised OMB delineations. As for budget neutrality, we do not believe that the permanent 5 percent cap policy for the SNF wage index should be applied in a non-budget-neutral manner. As a matter of fact, the statute at section 1888(e)(4)(G)(ii) of the Act requires that adjustments for geographic variations in labor costs for a FY are made in a budget-neutral manner. We refer readers to the FY 2023 SNF PPS final rule (87 FR 47521 through 47523) for a detailed discussion and for responses to these and other comments relating to the wage index cap policy.

After consideration of public comments, we are finalizing our proposal regarding the wage index adjustment for FY 2025.

C. Technical Updates to the 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 PDPM ICD–10 code to clinical category mapping, ICD–10 code to SLP comorbidity mapping, and ICD–10 code to NTA comorbidity mapping (hereafter collectively referred to as the PDPM ICD–10 code mappings) 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 mappings, 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 non-substantive changes to the PDPM ICD–10 code mappings through a sub-regulatory process consisting of posting the updated PDPM ICD–10 code mappings 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 mappings.

On the other hand, substantive changes that go beyond the intention of maintaining consistency with the most current PDPM ICD–10 code mappings, such as changes to the assignment of a code to a clinical category or comorbidity list, would be through notice and comment rulemaking because they are changes that affect policy. We noted in the proposed rule that in the case of any diagnoses that are either currently mapped to Return to Provider or that we are finalizing 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. Clinical Category Changes for New ICD–10 Codes for FY 2025

Each year, we review the clinical category assigned to new ICD–10 diagnosis codes and proposed changing the assignment to another clinical category if warranted. This year, we proposed changing the clinical category assignment for the following four new codes that were effective on October 1, 2023.

- E88.10 *Metabolic Syndrome* was initially mapped to the clinical category of Medical Management. The National Institutes of Health (NIH) defines metabolic syndrome as the presence of at least three of the following traits: Large waist, elevated triglyceride levels, reduced high-density lipoprotein (HDL) cholesterol, increased blood pressure, and/or elevated fasting blood glucose. Metabolic syndrome is a cluster of metabolic risk factors for cardiovascular diseases and type 2 diabetes mellitus. The root causes of metabolic syndrome are overweight/obesity, physical inactivity, and genetic factors. Given this, treatment for Metabolic Syndrome typically occurs outside of a Part A SNF stay and we do not believe it would serve appropriately as the primary diagnosis for a Part A-covered SNF stay. For this reason, we proposed to change the mapping of this code from Medical Management to the clinical category of Return to Provider.
- E88.811 *Insulin Resistance Syndrome, Type A* was initially mapped to the clinical category of Medical Management. Type A insulin resistance syndrome (TAIRS) is a rare disorder characterized by severe insulin resistance due to defects in insulin receptor signaling and treatment typically occurs outside of a Part A SNF stay. For this reason, we proposed to change the mapping of this code from Medical Management to the clinical category of Return to Provider.
- E88.818 *Other Insulin Resistance* was initially mapped to the clinical category of Medical Management. Other Insulin Resistance is used to specify a medical diagnosis of other insulin resistance such as Insulin resistance, Type B. Treatment typically occurs outside of a Part A SNF stay. For this reason, we proposed to change the mapping of this code from Medical Management to the clinical category of Return to Provider.
- E88.819 *Insulin Resistance, Unspecified* was initially mapped to the clinical category of Medical Management and is utilized to indicate when a specific type of insulin resistance has not been specifically identified. Treatment typically occurs outside of a Part A SNF stay. For this reason, we proposed to change the mapping of this code from Medical Management to the clinical category of Return to Provider.

We solicited comments on the proposed substantive changes to the PDPM ICD–10 code mappings outlined in this section, as well as comments on additional substantive and non-substantive changes that commenters believe are necessary.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the proposed reclassification of the PDPM ICD–10 mappings of E88.10 Metabolic Syndrome, E88.811 Insulin Resistance Syndrome, E88.818 Other Insulin Resistance, and E88.819 Insulin Resistance, Unspecified from Medical Management to the Return to Provider (RTP) category. Commenters agreed these mapping changes would improve billing accuracy, promote more appropriate diagnoses for SNF stays, and ultimately improve patient care.

Response: We appreciate the support for these proposed ICD–10 mapping changes.

Comment: One commenter stated CMS should reconsider mapping ICD–10 code M62.81, Muscle Weakness (Generalized) from RTP to alternative category and be used as a primary diagnosis.

Response: We considered this request and, as noted in 87 FR 47524, continue to believe, as discussed in the FY 2023 SNF PPS final rule (87 FR 47524), that M62.81 Muscle Weakness (Generalized) is nonspecific and if the original condition is resolved, but the resulting muscle weakness persists because of the known original diagnosis, there are more specific codes that exist that would account for why the muscle weakness is on-going. Many musculoskeletal conditions are the result of a previous injury or trauma to a site or are recurrent conditions. This symptom, without any specification of the etiology or severity, is not a reason for daily skilled care in a SNF. Patients with Muscle Weakness (Generalized) should obtain a more specific diagnosis causing the generalized muscle weakness. The specific diagnosis should be used to develop an appropriate care plan for the patient.

Comment: Several commenters recommended that CMS consider additional changes to the ICD–10 mappings. These include additional dysphagia code mappings for the Speech Language Pathology component, changes to how PDPM classifies dialysis patients, and adding codes that will reflect complications related to the GI devices.

Response: We appreciate the comments and, to the extent that these changes represent substantive changes to the ICD–10 code mappings, we will consider these comments for future rulemaking.

After consideration of public comments, we are finalizing the changes described above, as proposed.

D. Request for Information: Update to PDPM Non-Therapy Ancillary Component

1. Background

In the FY 2019 SNF PPS final rule (83 FR 39162), we finalized the implementation of the PDPM, effective October 1, 2019. Under the PDPM, payment is determined through the combination of six payment components. Five of the components (PT, OT, SLP, NTA, and nursing) are case-mix adjusted. Additionally, there is a non-case-mix adjusted component to cover utilization of SNF resources that do not vary according to patient characteristics.

The NTA component utilizes a comorbidity score to assign the patient to an NTA component case-mix group, which is determined by the presence of conditions or the use of extensive services (henceforth also referred to as comorbidities) that were found to be correlated with increases in NTA costs for SNF patients. The presence of these comorbidities is reported by providers on certain items of the Minimum Data Set (MDS) resident assessment, with some comorbidities being identified by ICD–10–CM diagnosis codes (hereafter referred to as ICD–10 codes) that are coded in Item I8000 of the MDS. MDS Item I8000 is an open-ended item on the MDS assessment where the provider can fill in additional active diagnoses for the patient that are either not explicitly on the MDS, or are more severe or specific diagnoses, in the form of ICD–10 codes. For conditions and extensive services where the source is indicated as MDS Item I8000, CMS posts an NTA comorbidity to ICD–10 mapping, available at *https://www.cms.gov/medicare/payment/prospective-payment-systems/skilled-nursing-facility-snf/patient-driven-model,* that provides a crosswalk between the listed condition and the ICD–10 codes that may be coded to qualify that condition to serve as part of the patient's NTA classification.

During the development of PDPM, CMS identified a list of 50 conditions and extensive services that were associated with increases in NTA costs. Each of the 50 comorbidities used under PDPM for NTA classification is assigned a certain number of points based on its relative costliness. To determine the patient's NTA comorbidity score, a provider would identify all the comorbidities for which a patient would qualify and then add the points for each comorbidity together. The resulting sum represents the patient's NTA comorbidity score, which is then used to classify the patient into an NTA component classification group. More information about the creation of the NTA component scoring method can be found in section 3.7 of the SNF PDPM Technical Report, available at *https://www.cms.gov/medicare/payment/prospective-payment-systems/skilled-nursing-facility-snf/pps-model-research.*

In response to feedback from interested parties, CMS stated in the FY 2019 SNF PPS final rule that we would consider revisiting both the list of comorbidities used under the NTA component and the points assigned to each condition or extensive service based on changes in the patient population and care practices over time (83 FR 39224). Accordingly, in the FY 2025 SNF PPS proposed rule, we released a request for information (RFI) soliciting comment on the methodology CMS is currently considering for updating the NTA component (89 FR 23459 through 89 FR 23461).

2. Updates to the Study Population and Methodology

We are considering several changes to the NTA study population as a foundation upon which to update the NTA component. First, we are considering updating the years used for data corresponding to Medicare Part A SNF stays, including claims, assessments, and cost reports. To develop PDPM, CMS used a study population of Medicare Part A SNF stays with admissions from FY 2014 through FY 2017 (see FY 2019 SNF PPS final rule, 83 FR 39220). This methodology is described in more detail in section 3.2.1 of the SNF PDPM technical report, available at *https://www.cms.gov/medicare/payment/prospective-payment-systems/skilled-nursing-facility-snf/pps-model-research.* The updated study population will instead use Medicare Part A SNF stays with admissions from FY 2019 through FY 2022. However, as discussed in the FY 2023 SNF PPS final rule (87 FR 47526 through 47528), data from much of this time period was affected by the national COVID–19 PHE with significant impacts on nursing homes. We are therefore considering using the same subset population used for the PDPM parity adjustment recalibration by excluding stays with either a COVID–19 diagnosis or stays using a COVID–19 PHE-related modification under section 1812(f) of the Act.

Next, we are considering making certain methodological changes to reflect more accurate and reliable coding of NTA conditions and extensive services on SNF Part A claims and the MDS after PDPM implementation. We had taken a broad approach when creating the initial list of conditions and services used under the NTA component to predict what NTA coding practices would be after PDPM implementation, given the absence of analogous data in the previous Resource Utilization Groups, Version IV (RUG–IV) payment model. The initial list of comorbidities used under the NTA component was therefore created using data from a variety of different sources, including using Medicare inpatient, outpatient, and Part B claims to identify the presence of condition categories from the Medicare Parts C and D risk adjustment models (hereafter referred to as CCs and RxCCs, respectively). More information about this methodology can be found in section 3.7 of the SNF PDPM Technical Report, available at *https://www.cms.gov/medicare/payment/prospective-payment-systems/skilled-nursing-facility-snf/pps-model-research.* Given that we now have several years of post-PDPM implementation data, we believe it would more accurately reflect the coding of conditions and extensive services under PDPM to rely exclusively upon SNF PPS Part A claims and the MDS. We are therefore considering updating the methodology to only utilize SNF Part A claims and the MDS, and not claim types from other Medicare settings.

Additionally, we are considering modifying the overlap methodology to rely more upon the MDS items that use a checkbox to record the presence of conditions and extensive services whenever possible, while allowing for potentially more severe or specific diagnoses to be indicated on MDS Item I8000 when it would be useful for more accurate patient classification under PDPM. During the development of the NTA component, CMS included both MDS items and ICD–10 diagnoses from the Medicare Part C CCs and Part D RxCCs. Because the CCs were developed to predict utilization of Medicare Part C services, while the RxCCs were developed to predict Medicare Part D drug costs, the largest component of NTA costs, we stated in the FY 2019 SNF PPS final rule that we believed using both sources allowed us to define the conditions and extensive services potentially associated with NTA utilization more comprehensively (83 FR 39220). In cases where there was considerable overlap between an MDS item and its CC or RxCC definition, to ensure accurate estimation of statistically significant regression results, we chose the CC or RxCC definition if it had higher average NTA cost per day than the MDS item before

running the final regression analysis. More information about this methodology can be found in section 3.7 of the SNF PDPM Technical Report, available at *https://www.cms.gov/medicare/payment/prospective-payment-systems/skilled-nursing-facility-snf/pps-model-research.*

Since the implementation of PDPM, we believe patient conditions and extensive services are now more accurately and reliably reported by providers using MDS items. We are therefore considering prioritizing the reporting of conditions on the MDS by raising the cost threshold for selecting the overlapping CC or RxCC definitions from any additional cost to 5 dollars in average NTA cost per day, which is the amount that we observe to be generally associated with a 1-point NTA increase. Specifically, since any dollar amount less than 5 dollars would render the two options indistinguishable from each other in the point assignment when comparing relative costliness, choosing MDS items over the overlapping CC or RxCC definitions will not lead to any loss of the most expensive representations of the conditions and services in the regression model.

3. Updates to Conditions and Extensive Services Used for NTA Classification

Table 27 provides the list of conditions and extensive services that would be used for NTA classification following the various changes to the methodology described in the RFI. For each comorbidity, we have also included the frequency of stays, the average NTA cost per day, the ordinary least squares (OLS) estimate of its impact on NTA costs per day, and the assigned number of points based on its relative impact on a patient's NTA costs. Conditions and extensive services with a greater impact on NTA costs were assigned more points, while those with less of an impact were assigned fewer points. More information about this methodology can be found in section 3.7 of the SNF PDPM Technical Report, available at *https://www.cms.gov/medicare/payment/prospective-payment-systems/skilled-nursing-facility-snf/pps-model-research.*

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TABLE 27: Conditions and Extensive Services Used for NTA Classification

NTA Comorbidity	% of Stays	Avg NTA Costs	OLS Estimate	PDPM Points
DGN: HIV/AIDS	0.3%	$128	$71.01	7
RxCC: Lung Transplant Status	0.0%	$117	$49.29	5
O0100H2: Special Treatments/Programs: Intravenous Medication Post-admit Code	8.6%	$105	$46.99	5
MDS: Parenteral IV feeding: Level high	0.3%	$120	$46.27	5
RxCC: Cystic Fibrosis	0.0%	$99	$31.10	3
RxCC: Major Organ Transplant Status, Except Lung	0.5%	$85	$21.66	2
CC: Cirrhosis of Liver	2.0%	$77	$18.92	2
RxCC: Chronic Myeloid Leukemia	0.1%	$75	$17.81	2
DGN: Endocarditis	0.5%	$97	$17.46	2
RxCC: Opportunistic Infections	0.3%	$85	$16.91	2
I2900: Active Diagnoses: Diabetes Mellitus (DM) Code	38.2%	$66	$15.67	2
O0100I2: Special Treatments/Programs: Transfusion Post-admit Code	0.2%	$80	$14.65	1
MDS: Parenteral IV feeding: Level Low	0.0%	$82	$14.26	1
CC: Bone/Joint/Muscle Infections/Necrosis - Except: RxCC: Aseptic Necrosis of Bone	2.9%	$97	$14.23	1
I6200: Active Diagnoses: Asthma COPD Chronic Lung Disease Code	29.2%	$66	$13.72	1
O0100D2: Special Treatments/Programs: Suctioning Post-admit Code	0.8%	$86	$13.11	1
RxCC: Psoriatic Arthropathy and Systemic Sclerosis	0.2%	$72	$12.87	1
RxCC: Chronic Pancreatitis	0.3%	$75	$12.64	1
RxCC: Specified Hereditary Metabolic/Immune Disorders	0.0%	$74	$10.36	1
I5200: Active Diagnoses: Multiple Sclerosis Code	0.9%	$63	$9.84	1
O0100F2: Special Treatments/Programs: Ventilator Post-admit Code	0.3%	$99	$9.79	1
RxCC: Pancreatic Disorders and Intestinal Malabsorption, Except Pancreatitis	0.6%	$65	$9.16	1
M1040B: Other Foot Skin Problems: Diabetic Foot Ulcer Code	1.6%	$87	$9.07	1
RxCC: Narcolepsy and Cataplexy	0.1%	$68	$9.01	1
RxCC: Venous Thromboembolism	4.4%	$64	$8.86	1
B0100: Comatose	0.0%	$87	$8.64	1
M0300X1: Highest Stage of Unhealed Pressure Ulcer - Stage 4	1.6%	$80	$8.48	1
I1300: Active Diagnoses: Ulcerative Colitis, Crohn's Disease, or Inflammatory Bowel Disease	2.3%	$63	$7.77	1
RxCC: Atrial Arrhythmias	26.4%	$60	$7.35	1
RxCC: Sickle Cell Anemia	0.0%	$65	$7.27	1
RxCC: Myelodysplastic Syndromes and Myelofibrosis	0.4%	$65	$7.11	1
I2500: Wound Infection Code	2.1%	$84	$6.96	1
RxCC: Rheumatoid Arthritis and Other Inflammatory Polyarthropathy	2.5%	$62	$6.94	1
RxCC: Myasthenia Gravis, Amyotrophic Lateral Sclerosis and Other Motor Neuron Disease - Except: CC: Amyotrophic Lateral Sclerosis and Other Motor Neuron Disease	0.3%	$64	$6.60	1
CC: Complications of Specified Implanted Device or Graft	0.3%	$75	$6.39	1
I6100: Active Diagnoses: Post Traumatic Stress Disorder	0.6%	$67	$5.94	1
RxCC: Aplastic Anemia and Other Significant Blood Disorders	0.4%	$64	$5.90	1
O0100M2: Special Treatments/Programs: Isolation Post-admit Code	2.0%	$68	$5.77	1
I0600: Active Diagnoses: Heart Failure	29.5%	$63	$5.72	1
H0100D: Bladder and Bowel Appliances: Intermittent catheterization	0.8%	$59	$5.39	1
I6300: Active Diagnoses: Respiratory Failure	12.5%	$67	$5.10	1

NTA Comorbidity	% of Stays	Avg NTA Costs	OLS Estimate	PDPM Points
RxCC: Morbid Obesity	6.7%	$69	$5.02	1
I5700: Active Diagnoses: Anxiety Disorder	22.4%	$59	$4.89	1
CC: Disorders of Immunity - Except: RxCC: Immune Disorders	0.9%	$65	$4.76	1
G0600D: Mobility Devices: Limb prosthesis	0.4%	$68	$4.65	1
RxCC: Pituitary, Adrenal Gland, and Other Endocrine and Metabolic Disorders	2.4%	$61	$4.62	1
I1700: Active Diagnoses: Multi-Drug Resistant Organism (MDRO) Code	2.7%	$84	$4.57	1
M1040E: Other Skin Problems: Surgical Wound(s) Code	25.7%	$57	$4.05	1
I5900: Active Diagnoses: Bipolar Disorder	3.5%	$61	$4.02	1
RxCC: Chronic Viral Hepatitis, Except Hepatitis C	0.1%	$71	$3.90	1

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We solicited comments on the RFI for updates to the NTA component of PDPM. The following is a summary of the comments we received.

Commenters supported some additions and opposed some removals to the list of conditions and services used under the NTA component. Some commenters thanked CMS for the additions of rheumatoid arthritis and mobility devices for limb prosthesis. Other commenters objected to the removal of several conditions, such as proliferative diabetic retinopathy and vitreous hemorrhage, ostomy, malnutrition and at risk for malnutrition, feeding tube, infection of and open lesions on the foot, radiation, tracheostomy, pulmonary fibrosis and other chronic lung disorders, and systemic lupus erythematosus, other connective tissue disorders, and inflammatory spondylopathies.

Commenters requested that CMS consider other suggestions for the list of conditions and services used under the NTA component, such as increasing point values, adding other conditions, or not making any changes to the list. For example, some commenters objected to decreased points for parenteral IV feeding, invasive mechanical ventilator or respirator, wound infections, and HIV/AIDS. Some commenters also questioned the underlying data behind the OLS cost estimate decreases for multi-drug resistant organism and morbid obesity, even though the NTA point allocation did not change for those conditions, with some commenters requesting increased points for morbid obesity. Commenters further suggested that CMS consider adding comorbidities such as end-stage renal disease, mental health-related diagnoses such as schizophrenia and major depression, chemotherapy, end-of life prognosis, and unstageable pressure injuries with slough or eschar. One commenter objected to any changes to the current allocation of NTA points, noting that reducing points for comorbidities that are commonly admitted to SNFs, while adding points for comorbidities that are not as commonly admitted, may result in reduced payment to facilities for conditions that are frequently cared for. Similarly, another commenter stated that while adding comorbidities makes sense, removing comorbidities does not because the correlated increased cost was set by the CMS data-driven studies completed for PDPM implementation.

Many commenters specifically objected to the removal of malnutrition and at risk for malnutrition. These commenters emphasized that malnutrition is prevalent among beneficiaries in the post-acute care setting, with undiagnosed and untreated malnutrition potentially resulting in a gradual deterioration of overall health and a decline in both physical and cognitive capabilities. In turn, malnutrition can lead to extended hospital stays, increased readmission rates, a wide range of chronic health issues (commonly the development of pressure injuries, infections, decreased ability to complete activities of daily living, and frailty/fractures), and fatalities. Additionally, if malnutrition is not identified and treated early, the need and incidence for placement of an enteral feeding tube is heightened, which precipitates more risk and expense. Commenters were concerned that removing malnutrition from the list of comorbidities used under the NTA component could prevent needed resources from going to this population and reduce the importance of the role of registered dietitians, who are integral members of the patient care team. Many commenters suggested that malnutrition should increase to two NTA points while leaving at risk for malnutrition and tube feeding at one NTA point. One commenter suggested that malnutrition should become a stand-alone therapy for increased reimbursement separate from the list of conditions and services used under the NTA component.

Other commenters suggested that the criteria for defining malnutrition could be further refined, rather than being removed entirely from the list of comorbidities used under the NTA component. For example, commenters noted that registered dietitian nutritionists receive evidenced-based training to identify malnutrition using the validated Academy of Nutrition and Dietetics and American Society for Parenteral and Enteral Nutrition (ASPEN) indicators of malnutrition (AAIM) and suggested that CMS adopt the AAIM criteria in the RAI manual for MDS Item I5600 *malnutrition (protein or calorie) or at risk for malnutrition.* Some commenters suggested that CMS utilize the ICD–10 diagnosis code range E40 through E46 to define malnutrition and exclude at risk of malnutrition because there is no official ICD–10 diagnosis code. Many commenters suggested that CMS provide clear guidance consisting of specific examples and coding criteria in the RAI manual for malnutrition or at risk for malnutrition, which would ensure consistency and accuracy in coding practices across healthcare facilities.

We also received some comments about the data and methodology that we presented in this RFI for how CMS revised the list of comorbidities used under the NTA component. Some commenters supported updating the NTA study methodology with more recent data, while excluding those with COVID–19 diagnoses. However, other commenters stated that there was insufficient information provided in the RFI to provide meaningful and specific feedback. Commenters recommended that CMS work through potential NTA component changes in a more transparent manner, such as publishing more detailed data and considering other opportunities to gain additional feedback from interested parties.

Commenters objected to the use of FY 2019 through FY 2022 data because of the COVID–19 PHE and the effects of this PHE on the SNF patient population and data collected during this time, suggesting that CMS should instead use more stable data from FY 2022 onwards with no COVID–19 related data exclusions. Some commenters recommended that CMS wait until it has at least three years of data after the end of the COVID–19 PHE. Commenters generally agreed with CMS' methodological approaches to only utilize SNF Part A claims and the MDS and not claim types from other Medicare settings that were used as a proxy to develop PDPM, but requested the flexibility to use such data in the future to include new NTA conditions as needed, such as emergent diagnoses, treatment innovations, or costs associated with certain CMS policies such as Enhanced Barrier Precautions (EBP) in nursing homes. Lastly, commenters generally agreed with modifying the overlap methodology to rely more upon MDS items that use a checkbox to record the presence of conditions and extensive services, but disagreed with CMS' method of prioritizing the MDS items by raising the cost threshold for selecting the overlapping CC or RxCC definitions (comprised of ICD–10 diagnosis codes to be entered into MDS Item I8000) from any additional cost to five dollars in average NTA cost per day.

Finally, commenters sought clarification on whether routine updates to the NTA component would be needed or beneficial in the future, as well as on the net financial impacts and if the changes would be implemented in a budget-neutral manner.

We thank commenters for their responses to the NTA RFI and we will take these comments under advisement as we consider proposed changes to the NTA component of PDPM in future rulemaking.

VII. 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 § 413.360.

In the proposed rule, we proposed to require SNFs to collect and submit through the Minimum Data Set (MDS) four new items and modify one item on the MDS as described in section VI.C. of the proposed rule. In section VI.E.3. of the proposed rule, we proposed to adopt a similar validation process for the SNF QRP that we adopted for the SNF VBP, and to amend regulation text at § 413.360 to implement the validation process we proposed. We also sought information on future measure concepts for the SNF QRP in section VI.D. of the proposed rule.

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 SNF QRP

The SNF QRP currently has 15 adopted measures, which are listed in Table 28. 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 28: Quality Measures Currently Adopted for the 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)
Discharge Mobility Score	Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients
Discharge Self-Care Score	Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients
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)
DC Function	Discharge Function Score
Patient/Resident COVID-19 Vaccine	COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date
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
National Healthcare Safety Network	
HCP COVID-19 Vaccine	COVID-19 Vaccination Coverage among Healthcare Personnel (HCP)
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel (HCP)

We did not propose to adopt any new measures for the SNF QRP.

C. Collection of Four New Items as Standardized Patient Assessment Data Elements and Modification of One Item Collected as a Standardized Patient Assessment Data Element Beginning With the FY 2027 SNF QRP

In the proposed rule, we proposed to require SNFs to report the following four new items [2] as standardized patient assessment data elements under the social determinants of health (SDOH) category: one item for Living Situation; two items for Food; and one item for Utilities. We also proposed to modify one of the current items collected as a standardized patient assessment data element under the SDOH category (the Transportation item), as described in section VI.C.5. of the proposed rule.[3]

[2] Items may also be referred to as ''data elements.''

[3] As noted in section VI.C.3 of the proposed rule and section VII.C.3 of this final rule, hospitals are required to report whether they have screened patients for five standardized SDOH categories: housing instability, food insecurity, utility difficulties, transportation needs, and interpersonal safety.

1. Definition of Standardized Patient Assessment Data

Section 1888(e)(6)(B)(i)(III) of the Act requires SNFs to submit standardized patient assessment data required under section 1899B(b)(1) of the Act. Section 1899B(b)(1)(A) of the Act requires post-acute care (PAC) providers to submit standardized patient assessment data under applicable reporting provisions (which, for SNFs, is the SNF QRP) with respect to the admission and discharge of an individual (and more frequently as the Secretary deems appropriate) using a standardized patient assessment instrument. Section 1899B(a)(1)(C) of the Act requires, in part, the Secretary to modify the PAC assessment instruments in order for PAC providers, including SNFs, to submit standardized patient assessment data under the Medicare program. SNFs are currently required to report standardized patient assessment data through the patient assessment instrument, referred to as the MDS. Section 1899B(b)(1)(B) of the Act describes standardized patient assessment data as data required for at least the quality measures described in section 1899B(c)(1) of the Act and that is with respect to the following categories: (1) functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider; (2) cognitive function, such as ability to express ideas and to understand, and mental status, such as depression and dementia; (3) special services, treatments, and interventions, such as need for ventilator use, dialysis, chemotherapy, central line placement, and total parenteral nutrition; (4) medical conditions and comorbidities, such as diabetes, congestive heart failure, and pressure ulcers; (5) impairments, such as incontinence and an impaired ability to hear, see, or swallow, and (6) other categories deemed necessary and appropriate by the Secretary.

2. Social Determinants of Health Collected as Standardized Patient Assessment Data Elements

Section 1899B(b)(1)(B)(vi) of the Act authorizes the Secretary to collect standardized patient assessment data elements with respect to other categories deemed necessary and appropriate. Accordingly, we finalized the creation of the SDOH category of

standardized patient assessment data elements in the FY 2020 SNF PPS final rule (84 FR 38805 through 38817), and defined SDOH as the socioeconomic, cultural, and environmental circumstances in which individuals live that impact their health.[4] According to the World Health Organization, research shows that the SDOH can be more important than health care or lifestyle choices in influencing health, accounting for between 30 to 55 percent of health outcomes.[5] This is part of a growing body of research that highlights the importance of SDOH on health outcomes. Subsequent to the FY 2020 SNF PPS final rule, we expanded our definition of SDOH: SDOH 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.[6] [7] [8] This expanded definition aligns our definition of SDOH with the definition used by HHS agencies, including OASH, the Centers for Disease Control and Prevention (CDC) and the White House Office of Science and Technology Policy.[9] [10] We currently collect seven items in this SDOH category of standardized patient assessment data elements: ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 38805 through 38817).[11]

In accordance with our authority under section 1899B(b)(1)(B)(vi) of the Act, we similarly finalized the creation of the SDOH category of standardized patient assessment data elements for Inpatient Rehabilitation Facilities (IRFs) in the FY 2020 IRF PPS final rule (84 FR 39149 through 39161), for Long-Term Care Hospitals (LTCHs) in the FY 2020 Inpatient Prospective Payment System (IPPS)/LTCH PPS final rule (84 FR 42577 through 84 FR 42588), and for Home Health Agencies (HHAs) in the Calendar Year (CY) 2020 HH PPS final rule (84 60597 through 60608). We also collect the same seven SDOH items in these PAC providers' respective patient assessment instruments (84 FR 39161, 84 FR 42590, and 84 FR 60610, respectively).

Access to standardized data relating to SDOH on a national level permits us to conduct periodic analyses, and to assess their appropriateness as risk adjustors or in future quality measures. Our ability to perform these analyses relies on existing data collection of SDOH items from PAC settings. We adopted these SDOH items using common standards and definitions across the four PAC providers to promote interoperable exchange of longitudinal information among these PAC providers, including SNFs, and other providers. We believe this information may facilitate coordinated care, continuity in care planning, and the discharge planning process from PAC settings.

We noted in the FY 2020 SNF PPS final rule that each of the items we were adopting at that time was identified in the 2016 National Academies of Sciences, Engineering, and Medicine (NASEM) report as impacting care use, cost and outcomes for Medicare beneficiaries (84 FR 38806). At that time, we acknowledged that other items may also be useful to understand. The SDOH items we proposed to adopt as standardized patient assessment data elements under the SDOH category in the proposed rule were also identified in the 2016 NASEM report [12] or the 2020 NASEM report [13] as impacting care use, cost and outcomes for Medicare beneficiaries. The items have the capacity to take into account treatment preferences and care goals of residents and their caregivers, to inform our understanding of resident complexity and SDOH that may affect care outcomes, and ensure that SNFs are in a position to impact them through the provision of services and supports, such as connecting residents and their caregivers with identified needs with social support programs.

Health-related social needs (HRSNs) are individual-level, adverse social conditions that negatively impact a person's health or health care,[14] and are the resulting effects of SDOH. Examples of HRSNs include lack of access to food, housing, or transportation, and have been associated with poorer health outcomes, greater use of emergency departments and hospitals, and higher health care costs.[15] Certain HRSNs can directly influence an individual's physical, psychosocial, and functional status. This is particularly true for food security, housing stability, utilities security, and access to transportation.[16]

We proposed to require SNFs to collect and submit four new items in the MDS as standardized patient assessment data elements under the SDOH category because these items would collect information not already captured by the current SDOH items. Specifically, we believe the ongoing identification of SDOH would have three significant benefits. First, promoting screening for these SDOH could serve as evidence-based building blocks for supporting healthcare providers in actualizing their commitment to address disparities that disproportionately impact underserved communities. Second, screening for SDOH improves health equity through identifying potential social needs so the SNF may address those with the resident, their caregivers, and community partners during the discharge planning process, if indicated.[17] Third, these SDOH items could support our ongoing SNF QRP initiatives by providing data with which to stratify SNF's performance on

[4] FY 2020 SNF PPS final rule (84 FR 38805).

[5] World Health Organization. Social determinants of health. Available at *https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.*

[6] Using Z Codes: The Social Determinants of Health (SDOH). Data Journey to Better Outcomes.

[7] Improving the Collection of Social Determinants of Health (SDOH) Data with ICD–10–CM Z Codes. *https://www.cms.gov/files/document/cms-2023-omh-z-code-resource.pdf.*

[8] *CMS.gov.* Measures Management System (MMS). CMS Focus on Health Equity. Health Equity Terminology and Quality Measures. *https://mmshub.cms.gov/about-quality/quality-at-CMS/goals/cms-focus-on-health-equity/health-equity-terminology.*

[9] Centers for Disease Control and Prevention. Social Determinants of Health (SDOH) and PLACES Data.

[10] ''U.S. Playbook To Address Social Determinants Of Health'' from the White House Office Of Science And Technology Policy (November 2023).

[11] These SDOH data are also collected for purposes outlined in section 2(d)(2)(B) of the Improving Medicare Post-Acute Care Transitions Act (IMPACT Act). For a detailed discussion on SDOH data collection under section 2(d)(2)(B) of the IMPACT Act, see the FY 2020 SNF PPS final rule (84 FR 38805 through 38817).

[12] National Academies of Sciences, Engineering, and Medicine. 2016. Accounting for Social Risk Factors in Medicare Payment: Identifying Social Risk Factors. Washington, DC: The National Academies Press. *https://doi.org/10.17226/21858.*

[13] National Academies of Sciences, Engineering, and Medicine. 2020. Leading Health Indicators 2030: Advancing Health, Equity, and Well-Being. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25682.*

[14] Centers for Medicare & Medicaid Services. ''A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights.'' August 2022. Available at *https://www.cms.gov/priorities/innovation/media/document/ahcm-screeningtool-companion.*

[15] Berkowitz, S.A., T.P. Baggett, and S.T. Edwards, ''Addressing Health-Related Social Needs: Value-Based Care or Values-Based Care?'' Journal of General Internal Medicine, vol. 34, no. 9, 2019, pp. 1916–1918, *https://doi.org/10.1007/s11606-019-05087-3.*

[16] Hugh Alderwick and Laura M. Gottlieb, ''Meanings and Misunderstandings: A Social Determinants of Health Lexicon for Health Care Systems: Milbank Quarterly,'' Milbank Memorial Fund, November 18, 2019, *https://www.milbank.org/quarterly/articles/meanings-and-misunderstandings-a-social-determinants-of-health-lexicon-for-health-care-systems/.*

[17] American Hospital Association (2020). Health Equity, Diversity & Inclusion Measures for Hospitals and Health System Dashboards. December 2020. Accessed: January 18, 2022. Available at *https://ifdhe.aha.org/system/files/media/file/2020/12/ifdhe_inclusion_dashboard.pdf.*

measures and in future quality measures.

Collection of additional SDOH items would permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries. For example, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to SNFs on whether differences in quality measure outcomes are present for their residents by dual-enrollment status and race and ethnicity.[18] We noted in the proposed rule that advancing health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars [19] and a Biden-Harris Administration priority.[20]

3. Collection of Four New Items as Standardized Patient Assessment Data Elements Beginning With the FY 2027 SNF QRP

We proposed to require SNFs to collect and submit four new items as standardized patient assessment data elements under the SDOH category using the MDS: one item for Living Situation, as described in section VI.C.3.(a) of the proposed rule; two items for Food, as described in section VI.C.3.(b) of the proposed rule; and one item for Utilities, as described in section VI.C.3.(c) of the proposed rule.

We selected the SDOH items from the Accountable Health Communities (AHC) Health-Related Social Needs (HRSN) Screening Tool developed for the AHC Model.[21] The AHC HRSN Screening Tool is a universal, comprehensive screening for HRSNs that addresses five core domains as follows: (1) housing instability (for example, homelessness, poor housing quality); (2) food insecurity; (3) transportation difficulties; (4) utility assistance needs; and (5) interpersonal safety concerns (for example, intimate-partner violence, elder abuse, child maltreatment).[22]

We believe that requiring SNFs to report the Living Situation, Food, Utilities, and Transportation items that are included in the AHC HRSN Screening Tool will further standardize the screening of SDOH across quality programs. For example, as outlined in the proposed rule, our proposal will align, in part, with the requirements of the Hospital Inpatient Quality Reporting (IQR) Program and the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program. As of January 2024, hospitals are required to report whether they have screened patients for the standardized SDOH categories of housing instability, food insecurity, utility difficulties, transportation needs, and interpersonal safety to meet the Hospital IQR Program requirements.[23] Additionally, beginning January 2025, IPFs will also be required to report whether they have screened patients for the same set of SDOH categories.[24] As we continue to standardize data collection across PAC settings, we believe using common standards and definitions for new items is important to promote interoperable exchange of longitudinal information between SNFs and other providers to facilitate coordinated care, continuity in care planning, and the discharge planning process.

Below we describe each of the four items in more detail.

(a) Living Situation

Healthy People 2030 prioritizes economic stability as a key SDOH, of which housing stability is a component.[25] [26] Lack of housing stability encompasses several challenges, such as having trouble paying rent, overcrowding, moving frequently, or spending the bulk of household income on housing.[27] These experiences may negatively affect one's physical health and access to health care. Housing instability can also lead to homelessness, which is housing deprivation in its most severe form.[28] On a single night in 2023, roughly 653,100 people, or 20 out of every 10,000 people in the United States, were experiencing homelessness.[29] Studies also found that people who are homeless have an increased risk of premature death and experience chronic disease more often than among the general population.[30] We believe that SNFs can use information obtained from the Living Situation item during a resident's discharge planning. For example, SNFs could work in partnership with community care hubs and community-based organizations to establish new care transition workflows, including referral pathways, contracting mechanisms, data sharing strategies, and implementation training that can track HRSNs to ensure unmet needs, such as housing, are successfully addressed through closed loop referrals and follow-up.[31] SNFs could also take action to help alleviate a resident's other related costs of living, like food, by

[18] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to SNFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the SNF QRP Training web page at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Training.*

[19] 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.*

[20] The Biden-Harris Administration's strategic approach to addressing health related social needs can be found in The U.S. Playbook to Address Social Determinants of Health (SDOH) (2023): *https://www.whitehouse.gov/wp-content/uploads/2023/11/SDOH-Playbook-3.pdf.*

[21] The AHC Model was a 5-year demonstration project run by the Centers for Medicare & Medicaid Innovation between May 1, 2017 and April 30, 2023. For more information go to *https://www.cms.gov/priorities/innovation/innovation-models/ahcm.*

[22] More information about the AHC HRSN Screening Tool is available on the website at *https://innovation.cms.gov/Files/worksheets/ahcm-screeningtool.pdf.*

[23] Centers for Medicare & Medicaid Services, FY2023 IPPS/LTCH PPS final rule (87 FR 49202 through 49215).

[24] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[25] Office of Disease Prevention and Health Promotion. (n.d.). Healthy People 2030 | Priority Areas: Social Determinants of Health. Retrieved from U.S. Department of Health and Human Services: *https://health.gov/healthypeople/priority-areas/social-determinants-health.*

[26] Healthy People 2030 is a long-term, evidence-based effort led by the U.S. Department of Health and Human Services (HHS) that aims to identify nationwide health improvement priorities and improve the health of all Americans.

[27] Kushel, M.B., Gupta, R., Gee, L., & Haas, J.S. (2006). Housing instability and food insecurity as barriers to health care among low-income Americans. *Journal of General Internal Medicine, 21*(1), 71–77. doi: *10.1111/j.1525–1497.2005.00278.x.*

[28] Homelessness is defined as ''lacking a regular nighttime residence or having a primary nighttime residence that is a temporary shelter or other place not designed for sleeping.'' Crowley, S. (2003). The affordable housing crisis: Residential mobility of poor families and school mobility of poor children. Journal of Negro Education, 72(1), 22–38. *https://doi.org/10.2307/3211288.*

[29] The 2023 Annual Homeless Assessment Report (AHAR) to Congress. The U.S. Department of Housing and Urban Development 2023. *https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf.*

[30] Baggett, T.P., Hwang, S.W., O'Connell, J.J., Porneala, B.C., Stringfellow, E.J., Orav, E.J., Singer, D.E., & Rigotti, N.A. (2013). Mortality among homeless adults in Boston: Shifts in causes of death over a 15-year period. JAMA Internal Medicine, 173(3), 189–195. *https://doi.org/10.1001/jamainternmed.2013.1604.* Schanzer, B., Dominguez, B., Shrout, P.E., & Caton, C.L. (2007). Homelessness, health status, and health care use. American Journal of Public Health, 97(3), 464–469. doi: *https://doi.org/10.2105/ajph.2005.076190.*

[31] U.S. Department of Health & Human Services (HHS), Call to Action, ''Addressing Health Related Social Needs in Communities Across the Nation.'' November 2023. *https://aspe.hhs.gov/sites/default/files/documents/3e2f6140d0087435cc6832bf8cf32618/hhs-call-to-action-health-related-social-needs.pdf.*

referring the resident to community-based organizations that would allow the resident's additional resources to be allocated towards housing without sacrificing other needs.[32] Finally, SNFs could use the information obtained from the Living Situation item to better coordinate with other healthcare providers, facilities, and agencies during transitions of care, so that referrals to address a resident's housing stability are not lost during vulnerable transition periods.

Due to the potential negative impacts housing instability can have on a resident's health, we proposed to adopt the Living Situation item as a new standardized patient assessment data element under the SDOH category. The proposed Living Situation item is based on the Living Situation item collected in the AHC HRSN Screening Tool,[33] [34] and was adapted from the Protocol for Responding to and Assessing Patients' Assets, Risks, and Experiences (PRAPARE) tool.[35] The proposed Living Situation item asks, ''What is your living situation today?'' The proposed response options are: (0) I have a steady place to live; (1) I have a place to live today, but I am worried about losing it in the future; (2) I do not have a steady place to live; (7) Resident declines to respond; and (8) Resident unable to respond. A draft of the Living Situation item proposed as a standardized patient assessment data element under the SDOH category can be found in the Downloads section of the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.*

(b) Food

The U.S. Department of Agriculture, Economic Research Service defines a lack of food security as a household-level economic and social condition of limited or uncertain access to adequate food.[36] Adults who are food insecure may be at an increased risk for a variety of negative health outcomes and health disparities. For example, a study found that food-insecure adults may be at an increased risk for obesity.[37] Another study found that food-insecure adults have a significantly higher probability of death from any cause or cardiovascular disease in long-term follow-up care, in comparison to adults that are food secure.[38]

While having enough food is one of many predictors for health outcomes, a diet low in nutritious foods is also a factor.[39] The United States Department of Agriculture (USDA) defines nutrition security as ''consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.'' [36] Nutrition security builds on and complements long standing efforts to advance food security. Studies have shown that older adults struggling with food insecurity consume fewer calories and nutrients and have lower overall dietary quality than those who are food secure, which can put them at nutritional risk.[40] Older adults are also at a higher risk of developing malnutrition, which is considered a state of deficit, excess, or imbalance in protein, energy, or other nutrients that adversely impacts an individual's own body form, function, and clinical outcomes.[41] Up to 50 percent of older adults are affected by or at risk for malnutrition, which is further aggravated by a lack of food security and poverty.[42] These facts highlight why the Biden-Harris Administration launched the White House Challenge to End Hunger and Build Health Communities.[43]

We believe that adopting items to collect and analyze information about a resident's food security at home could provide additional insight to their health complexity and help facilitate coordination with other healthcare providers, facilities, and agencies during transitions of care, so that referrals to address a resident's food security are not lost during vulnerable transition periods. For example, a SNF's dietitian or other clinically qualified nutrition professional could work with the resident and their caregiver to plan healthy, affordable food choices prior to discharge.[44] SNFs could also refer a resident that indicates lack of food security to government initiatives such as the Supplemental Nutrition Assistance Program (SNAP) and food pharmacies (programs to increase access to healthful foods by making them affordable), two initiatives that have been associated with lower health care costs and reduced hospitalization and emergency department visits.[45]

We proposed to adopt two Food items as new standardized patient assessment data elements under the SDOH category. These proposed items are based on the Food items collected in the AHC HRSN Screening Tool and were adapted from the USDA 18-item Household Food Security Survey (HFSS).[46] The first

[32] Henderson, K.A., Manian, N., Rog, D.J., Robison, E., Jorge, E., AlAbdulmunem, M. ''Addressing Homelessness Among Older Adults'' (Final Report). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. October 26, 2023.

[33] More information about the AHC HRSN Screening Tool is available on the website at *https://innovation.cms.gov/Files/worksheets/ahcm-screeningtool.pdf.*

[34] The AHC HRSN Screening Tool Living Situation item includes two questions. In an effort to limit SNF burden, we only proposed the first question.

[35] National Association of Community Health Centers and Partners, National Association of Community Health Centers, Association of Asian Pacific Community Health Organizations, Association OPC, Institute for Alternative Futures. ''PRAPARE.'' 2017. *https://prapare.org/the-prapare-screening-tool/.*

[36] U.S. Department of Agriculture, Economic Research Service (n.d.). *Definitions of food security.* Retrieved March 10, 2022, from *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/.*

[37] Hernandez, D.C., Reesor, L.M., & Murillo, R. (2017). Food insecurity and adult overweight/obesity: Gender and race/ethnic disparities. *Appetite, 117,* 373–378.

[38] Banerjee, S., Radak, T., Khubchandani, J., & Dunn, P. (2021). Food Insecurity and Mortality in American Adults: Results From the NHANES-Linked Mortality Study. Health promotion practice, 22(2), 204–214. *https://doi.org/10.1177/1524839920945927*

[39] National Center for Health Statistics (2022, September 6). Exercise or Physical Activity. Retrieved from Centers for Disease Control and Prevention: *https://www.cdc.gov/nchs/fastats/exercise.htm.*

[40] Ziliak, J.P., & Gundersen, C. (2019). The State of Senior Hunger in America 2017: An Annual Report. Prepared for Feeding America. Available at *https://www.feedingamerica.org/research/senior-hunger-research/senior.*

[41] The Malnutrition Quality Collaborative (2020). National Blueprint: Achieving Quality Malnutrition Care for Older Adults, 2020 Update. Washington, DC: Avalere Health and Defeat Malnutrition Today. Available at *https://defeatmalnutrition.today/advocacy/blueprint/.*

[42] Food Research & Action Center (FRAC). ''Hunger is a Health Issue for Older Adults: Food Security, Health, and the Federal Nutrition Programs.'' December 2019. *https://frac.org/wp-content/uploads/hunger-is-a-health-issue-for-older-adults-1.pdf.*

[43] The White House Challenge to End Hunger and Build Health Communities (Challenge) was a nationwide call-to-action released on March 24, 2023 to interested parties across all of society to make commitments to advance President Biden's goal to end hunger and reduce diet-related diseases by 2030—all while reducing disparities. More information on the White House Challenge to End Hunger and Build Health Communities can be found: *https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/24/fact-sheet-biden-harris-administration-launches-the-white-house-challenge-to-end-hunger-and-build-healthy-communities-announces-new-public-private-sector-actions-to-continue-momentum-from-hist/.*

[44] Schroeder K, Smaldone A. Food Insecurity: A Concept Analysis. Nurse Forum. 2015 Oct–Dec;50(4):274–84. doi: 10.1111/nuf.12118. Epub 2015 Jan 21. PMID: 25612146; PMCID: PMC4510041.

[45] Tsega M, Lewis C, McCarthy D, Shah T, Coutts K. Review of Evidence for Health-Related Social Needs Interventions. July 2019. The Commonwealth Fund. *https://www.commwealthfund.org/sites/default/files/2019-07/ROI-evidence-review-final-version.pdf.*

[46] More information about the HFSS tool can be found at *https://www.ers.usda.gov/topics/food-*

Continued

proposed Food item states, ''Within the past 12 months, you worried that your food would run out before you got money to buy more.'' The second proposed Food item states, ''Within the past 12 months, the food you bought just didn't last and you didn't have money to get more.'' We proposed the same response options for both items: (0) Often true; (1) Sometimes true; (2) Never True; (7) Resident declines to respond; and (8) Resident unable to respond. A draft of the Food items proposed to be adopted as standardized patient assessment data elements under the SDOH category can be found in the Downloads section of the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.*

(c) Utilities

A lack of energy (utility) security can be defined as an inability to adequately meet basic household energy needs.[47] According to the United States Department of Energy, one in three households in the U.S. are unable to adequately meet basic household energy needs.[48] The consequences associated with a lack of utility security are represented by three primary dimensions: economic; physical; and behavioral. Residents with low incomes are disproportionately affected by high energy costs, and they may be forced to prioritize paying for housing and food over utilities.[49] Some residents may face limited housing options, and therefore, are at increased risk of living in lower-quality physical conditions with malfunctioning heating and cooling systems, poor lighting, and outdated plumbing and electrical systems.[50] Residents with a lack of utility security may use negative behavioral approaches to cope, such as using stoves and space heaters for heat.[51] In addition, data from the Department of Energy's U.S. Energy Information Administration confirm that a lack of energy security disproportionately affects certain populations, such as low-income and African American households.[52] The effects of a lack of utility security include vulnerability to environmental exposures such as dampness, mold, and thermal discomfort in the home, which have a direct impact on a person's health.[53] For example, research has shown associations between a lack of energy security and respiratory conditions as well as mental health–related disparities and poor sleep quality in vulnerable populations such as the elderly, children, the socioeconomically disadvantaged, and the medically vulnerable.[54]

We believe adopting an item to collect information about a resident's utility security would facilitate the identification of residents who may not have utility security and who may benefit from engagement efforts. For example, SNFs may be able to use the information on utility security to help connect some residents in need to programs that can help older adults pay for their home energy (heating/cooling) costs, like the Low-Income Home Energy Assistance Program (LIHEAP).[55] SNFs may also be able to partner with community care hubs and community-based organizations to assist the resident in applying for these and other local utility assistance programs, as well as helping them navigate the enrollment process.[56]

We proposed to adopt a new item, Utilities, as a new standardized patient assessment data element under the SDOH category. This proposed item is based on the Utilities item collected in the AHC HRSN Screening Tool, and was adapted from the Children's Sentinel Nutrition Assessment Program (C–SNAP) survey.[57] The proposed Utilities item asks, ''In the past 12 months, has the electric, gas, oil, or water company threatened to shut off services in your home?'' The proposed response options are: (0) Yes; (1) No; (2) Already shut off; (7) Resident declines to respond; and (8) Resident unable to respond. A draft of the Utilities item proposed as a standardized patient assessment data element under the SDOH category can be found in the Downloads section of the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.*

4. Interested Parties Input

We developed our updates to add these items after considering feedback we received in response to our request for information (RFI) on ''Principles for Selecting and Prioritizing SNF QRP Quality Measures and Concepts Under Consideration for Future Years'' in the FY 2024 SNF PPS final rule (88 FR 53265 through 53267). This RFI sought to obtain input on a set of principles to identify SNF QRP measures, as well as additional thoughts about measurement gaps, and suitable measures for filling these gaps. In response to this solicitation, many commenters generally stated that the inclusion of a malnutrition screening and intervention measures would promote both quality and health equity. Other measures and measurement concepts included health equity, psychosocial issues, and caregiver status. The FY 2024 SNF PPS final rule includes a summary of the public comments that we received in response to the RFI and our responses to those comments (88 FR 53265 through 53267).

We also considered comments received in response to our Health Equity Update in the FY 2024 SNF PPS final rule. Comments were generally supportive of CMS' efforts to develop ways to measure and mitigate health inequities. One commenter referenced their belief that collection of SDOH would enhance holistic care, call attention to impairments that might be

nutrition-assistance/food-security-in-the-u-s/survey-tools/.

[47] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[48] US Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[49] Hernández D. ''Understanding energy insecurity' and why it matters to health.'' Soc Sci Med. 2016; 167:1–10.

[50] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct;167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[51] Hernández D. ''What 'Merle' Taught Me About Energy Insecurity and Health.'' Health Affairs, VOL.37, NO.3: Advancing Health Equity Narrative Matters. March 2018. *https://doi.org/10.1377/hlthaff.2017.1413.*

[52] US Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[53] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct;167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[54] Hernández D, Siegel E. Energy insecurity and its ill health effects: A community perspective on the energy-health nexus in New York City. Energy Res Soc Sci. 2019 Jan;47:78–83. *doi: 10.1016/j.erss.2018.08.011.* Epub 2018 Sep 8. PMID: 32280598; PMCID: PMC7147484.

[55] U.S. Department of Health & Human Services. Office of Community Services. Low Income Home Energy Assistance Program (LIHEAP). *https://www.acf.hhs.gov/ocs/programs/liheap.*

[56] National Council on Aging (NCOA). ''How to Make It Easier for Older Adults to Get Energy and Utility Assistance.'' Promising Practices Clearinghouse for Professionals. Jan. 13, 2022. *https://www.ncoa.org/article/how-to-make-it-easier-for-older-adults-to-get-energy-and-utility-assistance.*

[57] This validated survey was developed as a clinical indicator of household energy security among pediatric caregivers. Cook, J.T., D.A. Frank., P.H. Casey, R. Rose-Jacobs, M.M. Black, M. Chilton, S. Ettinger de Cuba, et al. ''A Brief Indicator of Household Energy Security: Associations with Food Security, Child Health, and Child Development in US Infants and Toddlers.'' Pediatrics, vol. 122, no. 4, 2008, pp. e874–e875. *https://doi.org/10.1542/peds.2008-0286.*

mitigated or resolved, and facilitate clear communication between residents and SNFs. While there were commenters who urged CMS to balance reporting requirements so as not to create undue administrative burden, another commenter suggested CMS incentivize collection of data on SDOH such as housing stability and food security. The FY 2024 SNF PPS final rule (88 FR 53268 through 53269) includes a summary of the public comments that we received in response to the Health Equity Update and our responses to those comments.

Additionally, we considered feedback we received when we proposed the creation of the SDOH category of standardized patient assessment data elements in the FY 2020 SNF PPS proposed rule (84 FR 17671 through 17679). Commenters were generally in favor of the concept of collecting SDOH items and stated that, if implemented appropriately, the data could be useful in identifying and addressing health care disparities, as well as refining the risk adjustment of outcome measures. The FY 2020 SNF PPS final rule (84 FR 38805 through 38818) includes a summary of the public comments that we received and our responses to those comments. We incorporated this input into the development of this update.

We solicited comment on the proposal to adopt four new items as standardized patient assessment data elements under the SDOH category beginning with the FY 2027 SNF QRP: one Living Situation item; two Food items; and one Utilities item.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Many commenters supported the proposed new SDOH assessment items, viewing this as an important step towards identifying health disparities, improving health outcomes, understanding diverse resident needs, improving discharge planning and care coordination, and fostering continuous quality improvement. Many of these commenters also emphasized the importance of SDOH data collection in achieving health equity, and one commenter emphasized the importance of identifying, documenting, and addressing SDOH to provide equitable, high-quality, holistic, resident-centered care. Several commenters noted the importance of the proposed new SDOH assessment items in facilitating discharge planning strategies that can account for a person's housing, food, utilities, and transportation needs. One of these commenters agreed that risk factors such as a person's living situation in the community, and access to adequate nutrition and utilities necessary for a safe and health-promoting environment, need to be identified and addressed in the plan of care. This commenter went on to say that reducing housing, food, utility, and transportation security barriers as part of a SNF's discharge planning processes can reduce the risk for negative outcomes, such as hospital readmissions and readmission to the nursing facility for long-term care, when they return to the community. One of these commenters noted that collecting more granular SDOH data is crucial, especially for those residents who transition from SNFs to home or community-based settings. Two of these commenters also noted that the lack of information on residents' social risk factors is a barrier to providing social services to high-risk and underserved populations and believe the value of including data collection on these new assessment items outweighs the additional administrative burden.

Response: We appreciate the support. We agree that the collection of the new SDOH assessment items will support SNFs that wish to understand the health disparities that affect their resident populations, facilitate coordinated care, foster continuity in care planning, and assist with the discharge planning process from the SNF setting.

Comment: One commenter supported CMS's decision to align and standardize new SDOH data collection in the SNF QRP with data already being collected in other settings, such as the Hospital Inpatient Quality Reporting (IQR) Program and the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program requirements.

Response: We thank the commenter for recognizing that our proposal aligns, in part, with the requirements of the Hospital IQR Program and the IPFQR Program. as we continue to standardize data collection across settings, we believe using common standards and definitions for new assessment items is important to promote interoperable exchange of longitudinal information between SNFs and other providers. We also believe collecting this information may facilitate coordinated care, continuity in care planning, and the discharge planning process from PAC settings, including SNFs.

Comment: Several commenters agreed with the importance of collecting SDOH assessment items through the MDS, but also expressed concerns about the additional administrative burden associated with collecting the proposed SDOH data beginning in FY 2025 for the FY 2027 SNF QRP. Several of these commenters noted that data collection is financially burdensome and increases burden on already overextended staff. One commenter noted that because CMS proposed to add the assessment items to the MDS, SNFs would also be required to collect this data on Medicaid residents as well, which would add to the reporting and administrative burden. Another commenter requested additional funding for the increased costs associated with what they noted to be tasks outside the normal day-to-day operations of the facilities.

Response: Although the addition of four new SDOH assessment items to the MDS will increase the burden associated with completing the MDS, we carefully considered this increased burden against the benefits of adopting the assessment items for the MDS. Collection of additional SDOH assessment items will permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries, and therefore we do not want to delay the implementation of the new SDOH assessment items. As noted in section VI.C.2 of the proposed rule (89 FR 23464) and section VII.C.2 of this final rule, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to SNFs on whether differences in quality measure outcomes are present for their residents by dual-enrollment status and race and ethnicity.[58] In balancing the reporting burden for SNFs, we prioritized our policy objective to collect additional SDOH standardized patient assessment data elements that will inform care planning and coordination and quality improvement across care settings.

Regarding the comment requesting additional funding for the increased costs associated with collecting data on these new assessment items, we find the comment unclear. We interpret the commenter to mean that they do not believe that current SNF PPS payments

[58] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to SNFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the SNF QRP Training web page at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Training.*

are sufficient to cover the increased burden (specifically, costs) associated with collection of this additional data for the proposed new SDOH assessment items. As discussed previously, we carefully considered the increased burden associated with collection of these four new SDOH assessment items against the benefits of adopting these items for the MDS. This collection could be useful to SNFs as they identify the discharge needs of each resident. This includes developing and implementing an effective discharge planning process that focuses on the resident's discharge goals, preparing residents to be active partners, effectively transitioning them to post-discharge care, and reducing factors leading to preventable readmissions. The new SDOH assessment items we proposed to adopt were identified in the 2016 NASEM report [59] or the 2020 NASEM report [60] as impacting care use, cost, and outcomes for Medicare beneficiaries. We believe the proposed new SDOH assessment items have the potential to generate actionable data SNFs can use to implement effective discharge planning processes that can reduce the risk for negative outcomes such as hospital readmissions and admission to a nursing facility for long-term care. Given that SNFs must develop and implement an effective discharge planning process that ensures the discharge needs of each resident are identified, we believe SNFs are likely collecting some of this data already. Collection of these new SDOH items will provide key information to SNFs to support effective discharge planning.

Regarding the commenter's concern that SNFs would be required to collect this data on Medicaid residents, it is unclear specifically what the commenter's concerns are. In section VII.E.3. of this final rule, we proposed to adopt four new SDOH assessment items for the SNF QRP. For the SNF QRP, SNFs are required to collect and submit data for MDS items specified by CMS for Medicare Part A fee-for service residents receiving skilled services. We did not propose and would not require SNFs to collect and submit data for the four new SDOH assessment items and modified Transportation item on Medicaid residents residing in the nursing facility.

Finally, we plan to provide training resources in advance of the initial collection of the new SDOH assessment items to ensure that SNFs have the tools necessary to administer these new items and reduce the burden to SNFs having to create their own training resources. These training resources may include online learning modules, tip sheets, questions and answers documents and/or recorded webinars and videos. We anticipate that we will make these materials available to SNFs in mid-2025, which will give SNFs several months prior to required collection and reporting to take advantage of the learning opportunities.

Comment: One commenter who supported the proposal to collect the new and modified SDOH assessment items, also encouraged CMS to ensure the new assessment items are valid and reliable. Two commenters, who did not support the proposal, noted concerns with the validity and reliability of the proposed new and modified SDOH assessment items, and one of these commenters recommended further testing of the proposed items.

Response: We disagree that the proposed new SDOH assessment items require further testing prior to requiring SNFs to collect them on the MDS for the SNF QRP. The AHC HRSN Screening Tool is evidence-based and informed by practical experience. With input from a panel of national experts convened by our contractor, We developed the tool under the Center for Medicare and Medicaid Innovation (CMMI) by conducting a review of existing screening tools and questions focused on core and supplemental HRSN domains, including housing instability, food insecurity, transportation difficulties, utility assistance needs, and interpersonal safety concerns.[61] These domains were chosen based upon literature review and expert consensus utilizing the following three 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.[62] In addition to established evidence of their association with health status, risk, and outcomes, these domains were selected because they can be assessed across the broadest spectrum of individuals in a variety of settings.[63] [64]

Through this process, over 50 screening tools totaling more than 200 questions were compiled. To refine this list, CMS' contractor consulted a technical expert panel (TEP) consisting of a diverse group of tool developers, public health and clinical researchers, clinicians, population health and health systems executives, community-based organization leaders, and Federal partners. Over the course of several meetings, this TEP met to discuss opportunities and challenges involved in screening for HRSNs; consider and pare down CMS's list of evidence-based screening questions; and recommend a short list of questions for inclusion in the final tool. The AHC HRSN 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. This tool was evaluated psychometrically and demonstrated evidence of both reliability and validity, including inter-rater reliability and concurrent and predictive validity. Moreover, the AHC HRSN Screening Tool can be implemented in a variety of places where individuals seek healthcare, including SNFs.

We selected these proposed assessment items for the SNF QRP from the AHC HRSN Screening Tool because we believe that collecting information on living situation, food, utilities, and transportation could have a direct and positive impact on resident care in SNFs. Specifically, collecting this information provides an opportunity for the SNF to identify residents' potential HRSNs, and if indicated, to address

[59] National Academies of Sciences, Engineering, and Medicine. 2016. Accounting for Social Risk Factors in Medicare Payment: Identifying Social Risk Factors. Washington, DC: The National Academies Press. *https://doi.org/10.17226/21858.*

[60] National Academies of Sciences, Engineering, and Medicine. 2020. Leading Health Indicators 2030: Advancing Health, Equity, and Well-Being. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25682.*

[61] *https://nam.edu/standardized-screening-for-health-related-social-needs-in-clinical-settings-the-accountable-health-communities-screening-tool/.*

[62] 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 June 9, 2024.

[63] 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 June 9, 2024.

[64] 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.

those with the resident, their caregivers, and community partners during the discharge planning process, potentially resulting in improvements in resident outcomes.

Comment: One commenter referenced CMS' second evaluation of the AHC model from 2018 through 2021,[65] and said they interpret the Findings at a Glance to conclude the AHC HRSN Screening Tool ''did not appear to increase beneficiaries' connection to community services or HRSN resolution.''

Response: This two-page summary of the AHC Model 2018–2021 [66] describes the results of testing whether systematically identifying and connecting beneficiaries to community resources for their HRSNs improved health care utilization outcomes and reduced costs. To ensure consistency in the screening offered to beneficiaries across both an individual community's clinical delivery sites and across all the communities in the model, we developed a standardized HRSN screening tool. This AHC HRSN Screening Tool was used to screen Medicare and Medicaid beneficiaries for core HRSNs to determine their eligibility for inclusion in the AHC Model. If a Medicare or Medicaid beneficiary was eligible for the AHC Model, they were randomly assigned to one of two tracks: (1) Assistance; or (2) Alignment. The Assistance Track tested whether navigation assistance that connects navigation-eligible beneficiaries with community services results in increased HRSN resolution, reduced health care expenditures, and unnecessary utilization. The Alignment Track tested whether navigation assistance, combined with engaging key interested parties in continuous quality improvement (CQI) to align community service capacity with beneficiaries' HRSNs, results in greater increases in HRSN resolution and greater reductions in health expenditures and utilization than navigation assistance alone. Regardless of assigned track, all beneficiaries received HRSN screening, community referrals, and navigation to community services.[67]

We believe the commenter inadvertently misinterpreted the findings, believing these findings were with respect to the effectiveness and scientific validity of the AHC HRSN Screening Tool itself. The findings section of this two-page summary described six key findings from the AHC Model, which examined whether the Assistance Track or the Alignment Track resulted in greater increases in HRSN resolution and greater reductions in health expenditures and utilization. Particularly, the AHC Model reduced emergency department visits among Medicaid and FFS Medicare beneficiaries in the Assistance Track, which was suggestive that navigation may help patients use the health care system more effectively. We acknowledge that navigation alone did not increase beneficiaries' connection to community services or HRSN resolution, and this was attributed to gaps between community resource availability and beneficiary needs. The AHC HRSN Screening Tool used in the AHC Model was limited to identifying Medicare and Medicaid beneficiaries with at least one core HRSN who could be eligible to participate in the AHC Model. Our review of the AHC Model did not identify any issues with the validity and scientific reliability of the AHC HRSN Screening Tool.

Finally, as part of our routine item and measure monitoring work, we continually assess the implementation of new assessment items, and we will include the four new proposed SDOH assessment items in our monitoring work.

Comment: Two commenters requested that CMS articulate its vision for how the data collected from the proposed SDOH standardized patient assessment data elements will be used in quality and payment programs. These commenters were concerned that CMS may use the SDOH assessment data to develop a SNF QRP measure that would hold SNFs solely accountable for social drivers of health that require resources and engagement across an entire community to address. One of these commenters recommended that CMS not finalize this proposal and instead engage interested parties in the industry to understand the role that SNFs can play in improving SDOH.

Response: We proposed the four new SDOH assessment items because collection of additional SDOH items would permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries. For example, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to SNFs on whether differences in quality measure outcomes are present for their residents by dual-enrollment status and race and ethnicity.[68] We note that advancing health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars [69] and a Biden-Harris Administration priority.[70] Furthermore, any updates to the SNF QRP measure set would be addressed through future notice-and-comment rulemaking, as necessary.

Comment: One commenter said they recognize the importance of collecting standardized patient assessment data elements to better serve residents' needs and for identifying and addressing potential issues of equity. However, they urged CMS to reevaluate the utility of collecting this information, particularly compared to the burden of data collection. Specifically, they noted that CMS must keep the role of the social worker in a SNF in mind when considering these assessment items. They stated that a social worker's job in a SNF is to meet the needs of SNF residents during their SNF stay and to coordinate services for a successful return to the community, but the SNF social worker has no control over what happens after the resident discharges from the SNF and cannot become the resident's community social worker. Therefore, they believe a SNF's responses to the proposed new and modified SDOH assessment items would neither impact nor be impacted by the SNF stay.

Response: While we recognize the role that social workers have in the SNF, we believe that the proposed new and modified SDOH assessment items are relevant to the SNF's interdisciplinary

[65] *https://www.cms.gov/priorities/innovation/data-and-reports/2023/ahc-second-eval-rpt-fg.*

[66] *https://www.cms.gov/priorities/innovation/data-and-reports/2023/ahc-second-eval-rpt-fg.*

[67] Accountable Health Communities (AHC) Model Evaluation, Second Evaluation Report. May 2023. This project was funded by the Centers for Medicare & Medicaid Services under contract no. HHSM–500–2014–000371, Task Order75FCMC18F0002. *https://www.cms.gov/priorities/innovation/data-and-reports/2023/ahc-second-eval-rpt.*

[68] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to SNFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the SNF QRP Training web page at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Training.*

[69] 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.*

[70] The Biden-Harris Administration's strategic approach to addressing health related social needs can be found in The U.S. Playbook to Address Social Determinants of Health (SDOH) (2023): *https://www.whitehouse.gov/wp-content/uploads/2023/11/SDOH-Playbook-3.pdf.*

care team and could impact the discharge planning occurring during the SNF stay. We proposed the collection of new and modified SDOH assessment items at the time of admission to the SNF because we believe that having information on residents' living situation, food, and utilities will give SNFs an opportunity to better understand and address the broader needs of their residents. We also believe this information is essential for comprehensive resident care, potentially leading to improved health outcomes and more effective discharge planning. As we stated in the proposed rule and in section VII.C.2 of this final rule, according to the World Health Organization, research shows that SDOH can be more important than health care or lifestyle choices in influencing health, accounting for between 30 to 55 percent of health outcomes.[71] This is part of a growing body of research that highlights the importance of SDOH on health outcomes. As noted previously, SNFs are already required by our regulation at § 483.21(c)(1) to develop and implement an effective discharge planning process.

Comment: One of these commenters did not agree with CMS that the proposed SDOH assessment items would produce interoperable data within the CMS quality programs because the proposed requirements for SNF are not standardized with the SDOH collection requirements in the Hospital IQR Program and IPFQR Programs. This commenter noted that the Screening for SDOH measures in the Hospital IQR and IPFQR Programs do not specify when a patient is screened (for example, at admission) and how the screening questions are asked (in other words, specific wording and responses). Instead, providers reporting these measures under the Hospital IQR and IPFQR Programs are only asked to document that a patient was screened for the following domains: housing instability, food insecurity, transportation difficulties, utility assistance needs, and interpersonal safety concerns.

Response: We disagree that the proposed collection of four new SDOH assessment items and one modified SDOH assessment item for the SNF QRP and the requirements for the Hospital IQR and IPFQR Programs do not promote standardization. Although hospitals and IPFs participating in these programs can use a self-selected SDOH screening tool, the Screening for SDOH and Screen Positive Rate for SDOH measures we have adopted for the Hospital IQR and IPFQR Programs address the same SDOH domains that we have proposed to collect as standardized patient assessment data under the SNF QRP: housing instability, food insecurity, utility difficulties, and transportation needs. We believe that this partial alignment will facilitate longitudinal data collection on the same topics across healthcare settings. As we continue to standardize data collection, we believe using common standards and definitions for new assessment items is important to promote the interoperable exchange of longitudinal information between SNFs and other providers to facilitate coordinated care, continuity in care planning, and the discharge planning process. This is evidenced by our recent proposals to add these four SDOH assessment items and one modified SDOH assessment item in the IRF QRP (89 FR 22275 through 22280), LTCH QRP (89 FR 36345 through 36350), and Home Health QRP (89 FR 55383 through 55388).

(a) Comments on the Living Situation Assessment Item

Comment: Several commenters supported the proposal to adopt the Living Situation item as a standardized patient assessment data element in the MDS. Several of these commenters emphasized that having information on living situation is critical for developing tailored and effective discharge plans. Two of these commenters noted that this information will allow providers to better understand social and environmental factors that affect their residents' health outcomes, and one of these commenters also noted that collecting and reporting living situation data could encourage SNFs to care for residents who may have more difficult discharges. Another commenter noted that having living situation information enables better care coordination, identifies support gaps, and allows SNFs to develop tailored care plans. Finally, another commenter noted that understanding a person's living situation can ensure the appropriate provision of necessary adaptive equipment to address their needs.

Response: We agree that a person's living situation may negatively affect their physical health and access to health care, and that SNFs can use information obtained from the Living Situation item for discharge planning, partnerships with community care hubs and community-based organizations, and coordination with other healthcare providers, facilities, and agencies during transitions of care.

Comment: One commenter recommended that the Living Situation item incorporate information on whether a resident's living situation is suitable for their potentially new complex care needs. This commenter highlighted the changing nature of SNF residents' needs and noted that some residents may have been housing secure prior to their condition, but their prior living situation may no longer be suitable for their current needs, which may include specific requirements such as mobility equipment.

Response: While we proposed to require the collection of the Living Situation item at admission only, the collection could potentially prompt the SNF to initiate additional conversations with their residents about their living situation needs throughout their stay. As the commenter pointed out, it is important to think about the resident's living situation in the context of their new care needs, and collecting the Living Situation assessment item at admission would be an important first step to that process. Additionally, SNFs may seek to collect any additional information that they believe may be relevant to their resident population to inform their care and discharge planning process.

Comment: One commenter recommended that a timeframe be added to the response options for the proposed Living Situation item. This commenter suggested that adding a timeframe of one year or less to these response options would allow healthcare providers to promptly intervene and mitigate any eminent negative housing situations. They were concerned that, if left open-ended, residents may respond yes, thinking about many possible scenarios that may occur in the distant future.

Response: We interpret the comment to be suggesting that a time frame be added to two of the Living Situation response options, specifically: (1) I have a place to live today, but I am worried about losing it in the future; and (2) I do not have a steady place to live. We want to clarify that the proposed Living Situation item frames the question as, ''What is your living situation today?'' The question establishes the timeframe (the present) the resident should consider in responding to the item.

Comment: Two commenters recommended that instead of collecting data on the proposed Living Situation assessment item, CMS should propose an item to collect information on financial insecurity. Both commenters stressed that financial insecurity

[71] World Health Organization. Social determinants of health. Available at *https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.*

underpins all the proposed SDOH items. One of these commenters encouraged CMS to eventually develop a mechanism to ensure that such needs are not only assessed but met with delivered services.

Response: We will consider this feedback as we evaluate future policy options. We note that although we proposed to require the collection of the Living Situation item for the SNF QRP, nothing would preclude SNFs from choosing to screen their residents for additional SDOH they believe are relevant for their resident population and the community they serve, including financial insecurity.

(b) Comments on the Food Assessment Items

Comment: We received several comments supporting the collection of the two proposed Food assessment items because of the importance of nutrition and food access to SNF residents' health outcomes, and the usefulness of this information for treatment and discharge planning. Specifically, two of these commenters highlighted the association between food insecurity and malnutrition with health outcomes, and one of these commenters highlighted the importance of addressing food insecurity among Medicare residents, particularly among elderly residents or those with chronic conditions. This commenter noted that addressing food security will help foster better health outcomes, lower healthcare costs, and enhance quality of life. Another one of these commenters noted that the responses to the Food assessment items would help providers incorporate treatment strategies that address residents' food access and guide the selection of interventions and training (for example, meal planning) provided throughout the plan of care. Moreover, another one of these commenters noted that the two proposed Food assessment items are critical to facilitating coordination with other healthcare providers and community-based organizations during transitions of care for residents at risk for inadequate food intake or who may need support in accessing healthy foods aligned with medically tailored meals or prescription diets. Finally, another commenter acknowledged the intersection between these proposed SDOH assessment items, highlighting the important relationship between transportation and a person's ability to access food. This commenter provided the example that a person may have enough funds to purchase food, but not have access to transportation to obtain food.

Response: We agree that a person's access to food affects their health outcomes and risk for adverse events, and understanding the potential needs of residents admitted to a SNF through the collection of the two new Food assessment items can help SNFs facilitate resources to better address a SNF resident's access to food when discharged.

Comment: One commenter did not support the proposed Food assessment items stating that, although the assessment items are valid, they do not provide clear information on nutritional status because there could be family members or community organizations that provide food support. Additionally, this commenter noted that ''food'' is a general term and does not address selection or intake of food.

Response: While we acknowledge that the proposed Food assessment items do not ask for specific information on residents' nutritional status or whether they have family members or community organizations that provide food support, our intent was to collect information on whether the resident may have worries about their access to food or are experiencing concerns about access to food. We believe that adopting the proposed Food assessment items will help SNFs identify any potential issues. Having this information could also help SNFs coordinate care upon discharge of their residents. We also note that, while the proposal would require the collection of the Food assessment items at admission only, the collection could potentially prompt the SNF to initiate conversations between the SNF and its residents about their food needs throughout their stay. Finally, we remind the commenter that nothing would preclude the SNF from choosing to screen its residents for additional SDOH they believe are relevant for their resident population and the community they serve, including family or community support.

Comment: One commenter expressed concerns that the proposed Food assessment items ask residents to rate the frequency of food shortages using a three-point scale, which is inconsistent with other questions on the MDS such as the resident mood, behavioral symptoms, and daily preference assessment items, which use a four-point scale to determine frequency. This commenter noted that this inconsistency may lead to confusion for staff and residents.

Response: We clarify that the proposed draft Food assessment items include three frequency responses in addition to response options in the event the resident declines to respond or is unable to respond: (0) Often true; (1) Sometimes true; (2) Never True; (7) Resident declines to respond; and (8) Resident unable to respond. We acknowledge that there are a number of resident interview assessment items on the MDS that use a four-point scale, but there are also assessment items on the MDS that do not use a four-point scale. For example, the Health Literacy (B1300), Social Isolation (D0700), and the Pain Interference with Therapy Activities (J0520) assessment items currently use a five-point scale item. We chose the proposed Food assessment items from the AHC HRSN Screening Tool, and they were tested and validated using a three-point response scale. Since the MDS currently includes assessment items that use varying response scales, we do not believe staff and residents will be confused. we plan to develop resources SNF staff can use to ensure residents understand the proposed item questions and response options. For example, we developed cue cards to assist SNFs in conducting the Brief Interview for Mental Status (BIMS) in Writing, the Resident Mood Interview (PHQ–2 to 9), the Pain Assessment Interview, and the Interview for Daily and Activity Preference.[72]

Comment: One commenter expressed concerns with the lack of evidence supporting the proposed Food assessment items in the older adult population and requested that CMS provide more detailed supporting evidence, or not finalize the proposal until it can produce such evidence. This commenter noted that the proposed Food assessment items were based on a research study for families with young children, and that they did not see information that would support their use in the older population.

Response: We interpret the commenter to be referring to the citation in the draft of the Food items posted on the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.* We acknowledge that the AHC Screening Tool includes a citation to a study that was done in children. However, as discussed in section VI.C.3(b) of the proposed rule and section VII.C.3(b) of this final rule, these items are also found in the USDA 18-item Household Food Security Survey (HFSS). The HFSS has been extensively used with adults both in the U.S. and

[72] These cue cards are currently available on the SNF QRP Training web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/training.*

internationally. More information about its use and research over the last 25 years can be found on the USDA website at *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/history-background/.*

Comment: Two commenters were concerned with the 12-month look-back period for the proposed Food assessment items, noting that this broad look-back period may capture needs that occurred in the past, but have been resolved. These commenters recommended a three-month look-back period instead, to capture true concerns that should inform the SNFs' care and discharge planning.

Response: We disagree that the 12-month look back period for the proposed Food assessment items is too long and that it will not result in reliable responses. We believe a 12-month look back period is more appropriate than a shorter, three-month look-back period because a person's Food situation may fluctuate over time. One study of Medicare Advantage beneficiaries found that approximately half of U.S. adults report one or more HRSNs over four quarters.[73] However, at the individual level, participants had substantial fluctuations: 47.4 percent of the participants fluctuated between 0 and 1 or more HRSNs over the four quarters, and 21.7 percent of participants fluctuated between one, two, three, or four or more HRSNs over the four quarters. The researchers noted that the dynamic nature of individual-level HRSNs requires consideration by healthcare providers screening for HRSNs.

To account for potentially changing Food needs over time, we believe it is important to use a longer look-back period to comprehensively capture any Food needs a SNF resident may have had, so that SNFs may consider them in their care and discharge planning.

Comment: Three commenters recognized the importance of collecting information on residents' food access through a streamlined data collection process, but recommended that CMS combine the two proposed Food assessment items into a singular comprehensive assessment item to enhance efficiency and reduce respondent burden, while still capturing the nuanced aspects of food insecurity crucial for care planning and recourse allocation. Two of these commenters also noted that beneficiaries may be uncomfortable sharing this sensitive personal information with facility staff and may be reluctant to respond to two nearly identical questions.

Response: We appreciate the commenters' recommendation to combine the two separate proposed Food assessment items into a single comprehensive assessment item to reduce respondent burden. However, past testing of the items found that the item sensitivity was higher when using both Food assessment items, as opposed to just one. Specifically, these analyses found that an affirmative response to just one of the questions provided a sensitivity of 93 percent or 82 percent, depending on the item, whereas collecting both of the proposed Food items, and evaluating whether there is an affirmative response to the first and/or second item yielded a sensitivity of 97 percent.[74] This means that only 3 percent of respondents who have food needs were likely to be misclassified. Therefore, we believe it is important to include both proposed Food assessment items.

In response to commenters who noted that beneficiaries may be uncomfortable sharing this sensitive personal information with facility staff, we acknowledge that the Food assessment items require the resident to be asked potentially sensitive questions. We recommend that SNFs ensure residents feel comfortable answering these questions and explain to residents that the information will be helpful to developing an individualized plan of care and discharge plan. Additionally, the proposed items include a response option, (7) Resident declines to respond, for residents who may decline to respond to the proposed Food assessment items. Information provided by residents in response to the proposed Food assessment items may be protected health information (PHI),[75] and SNFs are responsible for adopting reasonable safeguards to ensure that residents' information is not impermissibly disclosed contrary to applicable confidentiality, security, and privacy laws.

We plan to provide training resources in advance of the initial collection of the proposed new Food assessment items to ensure that SNFs have the tools necessary to administer the new proposed new Food assessment items and reduce the burden to SNFs in creating their own training resources. These training resources may include online learning modules, tip sheets, questions and answers documents, and/or recorded webinars and videos, and would be available to providers in mid-2025, allowing SNFs several months to ensure their staff take advantage of the learning opportunities.

(c) Comments on the Utilities Assessment Item

Comment: Several commenters supported the proposal to add a new Utility assessment item to the MDS and highlighted that a resident's access to utilities is crucial for maintaining a safe and healthy living environment. These commenters noted that understanding residents' utility needs will help SNFs in their discharge planning. One of these commenters noted that by assessing a resident's utility security, SNFs may be able to improve their access by referring them to programs like the Low-Income Home Energy Assistance Program (LIHEAP)[76] or other organizations that provide assistance to those with utility needs. Two commenters highlighted that SNF residents are often discharged with equipment requiring constant, consistent electricity (for example, supplemental oxygen, vents, continuous positive airway pressure (CPAP), bilevel positive airway pressure (BiPAP), continuous ambulatory delivery device (CADD) pumps for Dobutamine, and left ventricular assist device (LVAD). If a resident does not have access to a reliable power source for these critical supports, they are at risk of not using the equipment as prescribed or dying.

Response: We thank the commenters for their support and agree that residents' utilities needs can affect SNF residents' health outcomes, and the collection of the proposed Utilities assessment item can equip SNFs with the information to inform care plans and discharge planning.

Comment: Two commenters were concerned with the 12-month look-back period for the proposed Utility assessment item, noting that this broad look-back period may not result in reliable responses, or their needs may have been resolved. One of these commenters recommended a three-month look-back period instead, to

[73] Haff, N, Choudhry, N.K., Bhatkhande, G., Li, Y., Antol, D., Renda, A., Laufffenburger, J. Frequency of Quarterly Self-reported Health-Related Social Needs Among Older Adults, 2020. JAMA Network Open. 2022;5(6):e2219645. Doi:*101001/jamanetworkopen.2022.19645.* Accessed June 9, 2024.

[74] Gundersen C, Engelhard E, Crumbaugh A, Seligman, H.K. Brief assessment of Food insecurity Accurately Identifies High0Risk US Adults. Public Health Nutrition, 2017. Doi: 10.1017/S1368980017000180. *https://childrenshealthwatch.org/wp-content/uploads/brief-assessment-of-food-insecurity-accurately-identifies-high-risk-us-adults.pdf.* Accessed July 2, 2024.

[75] *https://www.hhs.gov/answers/hipaa/what-is-phi/index.html.*

[76] U.S. Department of Health & Human Services. Office of Community Services. Low Income Home Energy Assistance Program (LIHEAP). *https://www.acf.hhs.gov/ocs/programs/liheap.* Accessed July 2, 2024.

provide more reliable, valid, timely, and actionable information for the transition of care.

Response: We disagree that the 12-month look back period for the proposed Utility assessment item is too long and that it will not result in reliable responses. We believe a 12-month look-back period is more appropriate than a shorter, 3-month look-back period because a person's Utilities situation may fluctuate over time. As we noted in an earlier response, a study of Medicare Advantage beneficiaries found that approximately half of U.S. adults report one or more HRSNs over 4 quarters. However, at the individual level, participants had substantial fluctuations: 47.4 percent of the participants fluctuated between 0 and 1 or more HRSNs over the four quarters, and 21.7 percent of participants fluctuated between one, two, three, or four or more HRSNs over the 4 quarters.[77] The researchers noted that the dynamic nature of individual-level HRSNs requires consideration by healthcare providers screening for HRSNs.

To account for potentially changing Utilities needs over time, we believe it is important to use a longer look-back period to comprehensively capture any Utilities needs a SNF resident may have had, so that SNFs may consider them in their care and discharge planning.

Comment: Two commenters suggested that CMS consider assessing family caregiver burden as well as services delivery, the latter of which would capture whether referrals to appropriate services resulted in actual service delivery. One of the commenters also recommended the inclusion of assessment items to improve the overall resident care among those with disabilities, such as: disability-status, residents' independent living status, and ability to return to work.

Response: We agree that it is important to understand family caregiver burden, service delivery, and the needs of residents with disabilities. as we continue to evaluate SDOH standardized patient assessment data elements and future policy options, we will consider this feedback. We note that although we proposed to require the collection of the Utilities item for the SNF QRP, nothing would preclude SNFs from choosing to screen their residents for additional SDOH they believe are relevant to their resident population and the community they serve, including screening for caregiver burden and service delivery.

After careful consideration of the public comments we received, we are finalizing our proposal to adopt four new items as standardized patient assessment data elements under the SDOH category beginning with the FY 2027 SNF QRP: one Living Situation item; two Food items; and one Utilities item.

5. Modification of the Transportation Item Beginning With the FY 2027 SNF QRP

Beginning October 1, 2023, SNFs began collecting seven items adopted as standardized patient assessment data elements under the SDOH category on the MDS.[78] One of these items, Item A1250. Transportation, collects data on whether a lack of transportation has kept a resident from getting to and from medical appointments, meetings, work, or from getting things they need for daily living. This item was adopted as a standardized patient assessment data element under the SDOH category in the FY 2020 SNF PPS final rule (84 FR 38805 through 38809). As we stated in the FY 2020 SNF PPS final rule (84 FR 38814 through 42588), we continue to believe that access to transportation for ongoing health care and medication access needs, particularly for those with chronic diseases, is essential to successful chronic disease management and that the collection of a Transportation item would facilitate the connection to programs that can address identified needs (84 FR 38815 through 42588).

As part of our routine item and measure monitoring work, we continually assess the implementation of the new SDOH items. We have identified an opportunity to improve the data collection for A1250. Transportation in the MDS by aligning it with the Transportation category collected in our other programs.[79] Specifically, we proposed to modify the current Transportation item in the MDS so that it aligns with a Transportation item collected on the AHC HRSN Screening Tool, one of the potential tools the IPFQR and Hospital IQR Programs may select for data collection for the Screening for SDOH measure, as discussed previously.

A1250. Transportation collected in the MDS asks: ''Has lack of transportation kept you from medical appointments, meetings, work, or from getting things needed for daily living?'' The response options are: (A) Yes, it has kept me from medical appointments or from getting my medications; (B) Yes, it has kept me from non-medical meetings, appointments, work, or from getting things that I need; (C) No; (X) Resident unable to respond; and (Y) Resident declines to respond. The Transportation item collected in the AHC HRSN Screening Tool asks, ''In the past 12 months, has lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?'' The two response options are: Yes; and No. Consistent with the AHC HRSN Screening Tool and adapted from the PRAPARE tool, we proposed to modify the A1250. Transportation item collected in the SNF MDS in two ways: (1) revise the look-back period for when the resident experienced lack of reliable transportation; and (2) simplify the response options.

First, the modification of the Transportation item would use a defined 12-month look back period, while the current Transportation item uses a look back period of 6 to 12 months. We believe the distinction of a 12-month look back period would reduce ambiguity for both residents and clinicians, and therefore, improve the validity of the data collected. Second, we proposed to simplify the response options. Currently, SNFs separately collect information on whether a lack of transportation has kept the patient from medical appointments or from getting medications, and whether a lack of transportation has kept the resident from non-medical meetings, appointments, work, or from getting things they need. Although transportation barriers can directly affect a person's ability to attend medical appointments and obtain medications, a lack of transportation can also affect a person's health in other ways, including accessing goods and services, obtaining adequate food and clothing, and social activities.[80] The modified Transportation item would collect information on whether a lack of reliable transportation has kept the resident from medical appointments, meetings, work or from getting things

[77] Haff, N, Choudhry, N.K., Bhatkhande, G., Li, Y., Antol, D., Renda, A., Laufffenburger, J. Frequency of Quarterly Self-reported Health-Related Social Needs Among Older Adults, 2020. JAMA Network Open. 2022;5(6):e2219645. Doi:*101001/jamanetworkopen.2022.19645.* Accessed June 9, 2024.

[78] The seven SDOH items are ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 38805 through 38818).

[79] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[80] Victoria Transport Policy Institute (2016, August 25). Basic access and basic mobility: Meeting society's most important transportation needs. Retrieved from.

needed for daily living, rather than collecting the information separately. As discussed previously, we believe reliable transportation services are fundamental to a person's overall health, and as a result, the burden of collecting this information separately outweighs its potential benefit.

For the reasons outlined in the proposed rule, we proposed to modify A1250. Transportation based on the Transportation item adopted for use in the AHC HRSN Screening Tool and adapted from the PRAPARE tool. The Transportation item asks, ''In the past 12 months, has a lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?'' The response options are: (0) Yes; (1) No; (7) Resident declines to respond; and (8) Resident unable to respond. A draft of the proposed modified Transportation item can be found in the Downloads section of the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.*

We solicited comment on the proposal to modify the current Transportation item previously adopted as a standardized patient assessment data element under the SDOH category beginning with the FY 2027 SNF QRP.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the proposal to modify the Transportation assessment item. Two commenters supported the simplified response options, noting that it would make it easier for residents to answer the question. These commenters also expressed support for the new 12-month look-back period because it would help clarify the question, improve resident comprehension of the proposed Transportation assessment item, and reduce provider burden. Another commenter noted that knowing this information will allow the SNF to connect residents, particularly those who are dependent on a wheelchair or other assisted device for mobility, with reliable transportation services.

Response: We thank the commenters for their support of the proposed modification of the Transportation assessment item. We agree that the proposed changes would help streamline the data collection process by simplifying the item for both residents and SNF staff that collect the data. The use of a 12-month look-back period will reduce ambiguity for both residents and staff, and therefore, improve the validity of the data collected.

Comment: Two commenters expressed concerns about the 12-month look-back period, noting that it may not offer reliable and valid information, and recommended a 3-month look-back period instead. Both commenters also noted that there are limitations with the response options because the responses do not allow for understanding the frequency of the concern, the reasons why reliable transportation is not available or the special accommodations a person may need for transportation.

Response: We disagree that the 12-month look-back period for the proposed modification to the Transportation assessment item is too long and that it will not result in reliable responses. We believe a 12-month look-back period is more appropriate than a shorter, three-month look-back period because a person's Transportation needs may fluctuate over time. As we have noted in an earlier response, a study of Medicare Advantage beneficiaries found that approximately half of U.S. adults report one or more HRSNs over 4 quarters. However, at the individual level, participants had substantial fluctuations: 47.4 percent of the participants fluctuated between 0 and 1 or more HRSNs over the 4 quarters, and 21.7 percent of participants fluctuated between one, two, three, or four or more HRSNs over the 4 quarters.[81] The researchers noted that the dynamic nature of individual-level HRSNs requires consideration by healthcare providers screening for HRSNs. To account for potentially changing Transportation needs over time, we believe it is important to use a longer look-back window to comprehensively capture any Transportation needs a person may have had, so that SNFs may consider them in their care and discharge planning.

Regarding the comment stating the responses do not allow for nuanced understanding of the resident's transportation needs (the frequency of the concern, the reasons why reliable transportation is not available, or the special accommodations a person may need for transportation), we note that although the proposal would require the collection of the Transportation assessment item at admission only, the collection could potentially prompt the SNF to initiate conversations with its residents about their specific Transportation needs. Additionally, SNFs may seek to collect any additional information that they believe may be relevant to their resident population to inform their care and discharge planning process.

After careful consideration of the public comments we received, we are finalizing our proposal to modify the current Transportation item previously adopted as a standardized patient assessment data element under the SDOH category beginning with the FY 2027 SNF QRP.

D. SNF QRP Quality Measure Concepts Under Consideration for Future Years—Request for Information (RFI)

In the proposed rule, we solicited input on the importance, relevance, appropriateness, and applicability of each of the concepts under consideration listed in Table 29 for future years in the SNF QRP. The FY 2024 SNF PPS proposed rule (88 FR 21353 through 21355) included a request for information (RFI) on a set of principles for selecting and prioritizing SNF QRP measures, identifying measurement gaps, and suitable measures for filling these gaps. We also sought input on data available to develop measures, approaches for data collection, perceived challenges or barriers, and approaches for addressing identified challenges. We refer readers to the FY 2024 SNF PPS final rule (88 FR 53265 through 53267) for a summary of the public comments we received in response to the RFI.

Subsequently, our measure development contractor convened a Technical Expert Panel (TEP) on December 15, 2023, to obtain expert input on the future measure concepts that could fill the measurement gaps identified in our FY 2024 RFI.[82] The TEP also discussed the alignment of PAC and Hospice measures with CMS' ''Universal Foundation'' of quality measures.[83]

In consideration of the feedback we have received through these activities, we solicited input on four concepts for the SNF QRP (See Table 29). One is a

[81] Haff, N, Choudhry, N.K., Bhatkhande, G., Li, Y., Antol, D., Renda, A., Laufffenburger, J. Frequency of Quarterly Self-reported Health-Related Social Needs Among Older Adults, 2020. JAMA Network Open. 2022;5(6):e2219645. Doi:*101001/jamanetworkopen.2022.19645.* Accessed June 9, 2024.

[82] The Post-Acute Care (PAC) and Hospice Quality Reporting Program Cross-Setting TEP summary report will be published in early summer or as soon as technically feasible. SNFs can monitor the Partnership for Quality Measurement website at *https://mmshub.cms.gov/get-involved/technical-expert-panel/updates* for updates.

[83] Centers for Medicare & Medicaid Services. Aligning Quality Measures Across CMS—the Universal Foundation. November 17, 2023. *https://www.cms.gov/aligning-quality-measures-across-cms-universal-foundation.*

composite of vaccinations [84] which could represent overall immunization status of residents such as the Adult Immunization Status measure [85] in the Universal Foundation. A second concept on which we sought feedback is the concept of depression for the SNF QRP, which may be similar to the Clinical Screening for Depression and Follow-up measure [86] in the Universal Foundation. Finally, we sought feedback on the concepts of pain management and patient experience of care/patient satisfaction for the SNF QRP.

TABLE 29: Future Measure Concepts Under Consideration for the SNF QRP

Quality Measure Concepts
Vaccination Composite
Pain Management
Depression
Patient Experience of Care/Patient Satisfaction

We received public comments on this RFI. The following is a summary of the comments we received.

1. Vaccination Composite

Comment: Most commenters stated they understand CMS' efforts to promote vaccination among residents, and many commenters supported the idea of adding a composite vaccination measure like the Adult Immunization Status (AIS) measure into the SNF QRP. One commenter noted that a composite vaccination measure could improve vaccination rates for those vaccines recommended by the Advisory Committee on Immunization Practices (ACIP), reduce administrative burden through alignment with the Universal Foundation,[87] and potentially improve immunization rates in PAC settings, including SNFs. Another commenter noted that vaccines may not only help prevent illness, or minimize symptoms, but also save lives, especially for key conditions including COVID–19, influenza, respiratory syncytial virus (RSV), and pneumonia that have the most severe impact on older adults and individuals with multiple chronic conditions that receive post-acute or long-term care in nursing homes. Another commenter noted that, while in previous years they have shared concerns on the Patient/Resident COVID–19 Vaccine measure in rulemaking comments, if this measure is rolled into a composite vaccination measure, they would support the concept, particularly if the weight of the COVID–19 vaccination for residents is weighed appropriately in relation to the influenza vaccine.

Several commenters, however, did not support the idea of adding a composite vaccination measure into the SNF QRP for a number of reasons. They questioned whether the SNF is the appropriate setting for collecting vaccination rates, and pointed to several challenges SNFs would experience in gathering information on vaccination status and insuring the validity of the measure.

Two commenters suggested that a composite vaccination measure should focus on primary care practices as the appropriate setting in which to report vaccination status, and this information could be shared with other healthcare providers when a resident requires services in another setting. Another commenter did not support the use of composite vaccination measures stating that they may mask specific vaccination uptake and make it more difficult to interpret vaccination status. This commenter recommended that CMS report on specific vaccination rates because it would provide more actionable data to SNFs. One of these commenters also questioned whether there would be exclusions for medical contraindications and deeply held religious beliefs, and how a measure reported by residents in the SNF would be verified.

Three commenters also noted that there are numerous reasons beyond health contraindications that residents may decide whether to receive vaccinations, and these reasons are largely dependent on factors outside of a SNF's control, such as where the facility is located and personal preference of the residents. Two of these commenters suggested that, by requiring a composite vaccination measure, a SNF could be incentivized either not to offer admission to residents who are not up to date with vaccinations or admit the resident and administer the vaccinations, even when vaccine administration may increase the risk of adverse health outcomes.

2. Pain Management

Comment: Most commenters supported the pain management measure concept. One of these commenters noted that a resident's experience of pain can affect numerous aspects of their care, including their ability to tolerate therapy, their ability to gain function, their mental health, and their overall experience of care. Another one of these commenters stated that these measures could potentially inform future efforts to address inequities in SNF care. Three of these commenters urged CMS to recognize the value of nonpharmacological treatment options, and one these commenters noted that collecting data on pain management strategies would ensure the highest effectiveness, lowest cost, and least invasive and addictive modalities are used in the treatment of chronic or subacute pain. One of these commenters supported the concept but also encouraged CMS to use the Centers for Disease Control and Prevention (CDC) Clinical Practice Guideline for

[84] A composite measure can summarize multiple measures through the use of one value or piece of information. More information can be found at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/mms/downloads/composite-measures.pdf.*

[85] CMS Measures Inventory Tool. Adult immunization status measure found at *https://cmit.cms.gov/cmit/#/FamilyView?familyId=26.*

[86] MS Measures Inventory Tool. Clinical Depression Screening and Follow-Up measure found at *https://cmit.cms.gov/cmit/#/FamilyView?familyId=672.*

[87] Centers for Medicare & Medicaid Services. Aligning Quality Measures Across CMS—the Universal Foundation. November 17, 2023. *https://www.cms.gov/aligning-quality-measures-across-cms-universal-foundation.*

Prescribing Opioids for Pain [88] as some SNF residents may appropriately need these medications, suggesting that there are key populations that should be excluded from any measures that could reduce their access to these medications. Another one of these commenters stated that they were hopeful that the recently implemented MDS items in section J0300–J0600 which assesses pain interference with daily activities, sleep, and participation in therapy could provide a foundation for future proposed measures, if it can overcome the potential to incentivize inappropriate use of pain medication. They also noted that one of the largest challenges in the nursing facility environment is the high proportion of residents with cognitive deficits who may be unable to effectively verbalize pain responses. This commenter urged CMS to consider the fact that these residents may convey pain in other ways including gestures, vocalizations, or atypical behaviors and to consider how these residents could be incorporated into a future pain measure.

One commenter opposed the measure concept, stating that pain management is a challenging topic to address, including in the SNF, and a SNF's goal is to manage the resident's pain and discomfort. This commenter and others opposed the idea of a SNF QRP measure that included an expectation of an improvement in pain since it could unintentionally incentivize providers to lower resident pain levels by prescribing medications, including opioids. One of these commenters suggested that improving care and treatment for mental health substance use disorders would be a better use of resources in the SNF QRP.

3. Depression

Comment: We received several comments on the concept of depression for a future SNF QRP measure, and many commenters supported the concept. One of these commenters noted that identifying a resident's risk of depression early and implementing interventions to address depression in the SNF setting can help to improve overall resident outcomes and quality of life. Another one of these commenters encouraged CMS to pursue development of this measure as part of larger equity efforts within the program. Another one of these commenters agreed, noting that mental health parity and access policies are grounded in the health equity view that mental and behavioral health treatment, access, and coverage should be the same as for physical healthcare.

One commenter, who supported the measure concept, also noted that groundwork is needed to identify the importance, relevance, appropriateness, feasibility, and applicability of such a measure or measures. This commenter noted that the MDS has two resident mood screening tools, the Patient Health Questionnaire (PHQ)–2 to 9 (PHQ–2 to 9) and the Staff Assessment of Resident Mood PHQ–9–OV,[89] creating challenges with the data that would need to be considered if a depression quality measure were developed using both MDS-based resident mood depression screening tools. Another one of these commenters recommended that CMS develop a measure that reports the number of residents who are identified as having depression and then receive follow up care, stating that recognizing when SNF's provide care to such residents would be more meaningful than a measure that simply reports the number of residents with depression.

Two commenters opposed the measure concept of depression, noting that a measure may require SNFs to have additional resources to treat depression, to which they may not have access. One of these commenters noted that they already collect information and use physician documentation to identify mental health or other behavioral health issues, stating that adding another screening requirement would not improve the quality of care, but it would add cost and burden to the SNF clinical team.

4. Patient Experience of Care/Patient Satisfaction

Comment: We received many comments on the concept of a patient experience of care/patient satisfaction measure, and all commenters supported the idea of further development. One commenter noted that the lack of a patient experience of care/patient satisfaction measure is a notable gap in quality measurement and patient reported measures should be given equal consideration as data driven measures in the SNF QRP. Two commenters called patient self-report the gold standard to assess care quality, while another one recommended that patient experience measures include a focus on activities that have a meaningful impact on function rather than emphasizing activities that may be appealing to residents and caregivers, but do not support improvement of function.

Two commenters noted the value in a patient experience of care/patient satisfaction measure; specifically, noting that persons who believe their personal goals, care preferences, and priorities (GPP) are heard and followed-up on by the care team applying a person-centered approach are more likely to participate in their environment, be happier, and have better clinical outcomes. One of these commenters also encouraged CMS to look at the activities of the Moving Forward coalition in this area.

Two commenters made recommendations for a patient satisfaction measure, like the CoreQ, or a patient experience measure, such as the Consumer Assessment of Healthcare Providers and Systems (CAHPS), while several other commenters made recommendations for the type of questions that should be included, the number of questions a survey should have, how it should be completed, potential submission methods, exclusion criteria, psychometric properties, and CBE endorsement status.

5. Other Suggestions for Future Measure Concepts

Comment: In addition to comments received on the four measure concepts of pain, depression, vaccination, and patient experience of care/patient satisfaction, we also received a couple of comments urging careful consideration of the feedback CMS receives to ensure that future proposals account for the additional burden on providers, evaluate the operational impact on SNFs, and minimize the risk of gaming or inappropriately influencing performance results. Some commenters also made suggestions for future measure concepts for the SNF QRP.

One commenter suggested we consider measures that assessed management of degenerative cognitive conditions, effectiveness of disposition planning and care transitions, changes in resident function, rates of follow-up care, and residents' access to appropriate treatments and medications. Another commenter recommended measures related to timely and appropriate referral to hospice, advance care planning, and palliative care access and utilization. One commenter recommended developing a measure addressing needs navigation, utilizing the new Principal Illness Navigation (PIN) codes adopted in the 2025

[88] Dowell D, Ragan KR, Jones CM, Baldwin GT, Chou R. CDC Clinical Practice Guideline for Prescribing Opioids for Pain—United States, 2022. MMWR Recomm Rep 2022;71(No. RR–3):1–95. DOI: *https://dx.doi.org/10.15585/mmwr.rr7103a1*.

[89] Both the PHQ–2 to–9 and Staff Assessment of Resident Mood PHQ–9–OV are collection on the MDS 3.0.

Physician Fee Schedule,[90] to provide insight into the type of residents receiving these services and its utilization, while another commenter recommended the Patient Active Measure (PAM®) instrument [91] be added to the MDS or required in parallel to the MDS.

Response: We thank all the commenters for responding to this RFI. While we are not responding to specific comments in response to the RFI in this final rule, we will take this feedback into consideration for our future measure development efforts for the SNF QRP.

E. 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 specified data for the SNF QRP.

2. Reporting Schedule for the New Standardized Patient Assessment Data Elements, and the Modified Transportation Data Element, Beginning October 1, 2025, for the FY 2027 SNF QRP

As outlined in sections VI.C.3. and VI.C.5. of the proposed rule, we proposed to adopt four new items as standardized patient assessment data elements under the SDOH category (one Living Situation item, two Food items, and one Utilities item) and to modify the Transportation standardized patient assessment data element previously adopted under the SDOH category beginning with the FY 2027 SNF QRP.

We proposed that SNFs would be required to report these new items and the modified Transportation item using the MDS beginning with residents admitted on October 1, 2025, through December 31, 2025, for purposes of the FY 2027 SNF QRP. Starting in CY 2026, we proposed that SNFs would be required to submit data for the entire calendar year for each program year.

We also proposed that SNFs that submit the Living Situation, Food, and Utilities items with respect to admission only would be deemed to have submitted those items with respect to both admission and discharge. We proposed that SNFs would be required to submit these four items at admission only (and not at discharge) because it is unlikely that the assessment of those items at admission would differ from the assessment of the same item at discharge. This will align the data collection for these proposed items with other SDOH items (that is, Race, Ethnicity, Preferred Language, and Interpreter Services) which are only collected at admission.[92] A draft of the proposed items is available in the Downloads section of the SNF QRP Measures and Technical Information web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.*

As we noted in section VI.C.5 of the proposed rule and in section VII.C.6 of this final rule, we continually assess the implementation of the new SDOH items, including A1250. Transportation, as part of our routine item and measure monitoring work. We received feedback from interested parties in response to the FY 2020 SNF PPS proposed rule (84 FR 17676 through 17678) noting their concern with the burden of collecting the Transportation item at admission and discharge. Specifically, commenters stated that a resident's access to transportation is unlikely to change between admission and discharge. We analyzed the data SNFs reported from October 1, 2023, through December 31, 2023 (Quarter 4 of CY 2023), and found that residents' responses do not significantly change from admission to discharge.[93] Specifically, the proportion of residents [94] who responded ''Yes'' to the Transportation item at admission versus at discharge differed by only 0.60 percentage points during this period. We find these results convincing, and therefore we proposed to require SNFs to collect and submit the modified standardized patient assessment data element, Transportation, at admission only.

We solicited public comment on our proposal to collect data on the following items proposed as standardized patient assessment data elements under the SDOH category at admission only beginning with October 1, 2025, SNF admissions: (1) Living Situation as described in section VI.C.3(a) of the proposed rule; (2) Food as described in section VI.C.3(b) of the proposed rule; and (3) Utilities as described in section VI.C.3(c) of the proposed rule. We also solicited comment on our proposal to collect the modified standardized patient assessment data element, Transportation, at admission only beginning with October 1, 2025, SNF admissions as described in section VI.C.5 of the proposed rule.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the proposed collection of the SDOH assessment items once, upon admission, noting that this would mitigate the administrative burden of data collection and reduce redundancy. One commenter acknowledged CMS's internal analysis of the Transportation assessment item that demonstrated a less than one percent change in the assessment item response between admission and discharge.

Response: We appreciate the commenters' input on the timing of collecting the proposed SDOH assessment items. We continually assess the implementation of the new SDOH assessment items as part of our routine item and measure monitoring work, and when we identify an opportunity to improve data collection, we want to implement it. In the FY 2025 SNF proposed rule (89 FR 23468 through 23469), we proposed to collect these new and modified assessment items at admission only because we believe it is unlikely that the assessment of these items at admission would differ from the assessment of the same items at discharge. We are mindful of provider burden and appreciate the support from several commenters who agreed that collection at admission only, rather than at both admission and discharge, would mitigate the administrative burden of data collection on these new and modified assessment items.

Comment: One commenter recommended CMS collect the proposed new SDOH assessment items at discharge only, rather than at admission, to facilitate discharge planning. One commenter expressed concerns about data for the SDOH items being collected on every assessment, noting that responses will not change during the resident's stay.

[90] Principal Illness Navigation (PIN) services describe services that auxiliary personnel, including care navigators or peer support specialists, may perform incidental to the professional services of a physician or other billing practitioner, under general supervision. Two codes describe PIN services, and two codes describe Principal Illness Navigation-Peer Support (PIN–PS) services, which are intended more for patients with high-risk behavioral health conditions and have slightly different service elements that better describe the scope of practice of peer support specialists. In general, where we describe aspects of PIN, it also applies to PIN–PS unless otherwise specified. MLN9201074 January 2024. *https://www.cms.gov/files/document/mln9201074-health-equity-services-2024-physician-fee-schedule-final-rule.pdf-0.*

[91] Patient Activation Measure® (PAM®). *https://www.insigniahealth.com/pam/.*

[92] FY 2020 SNF PPS final rule (84 FR 38817 through 38818).

[93] Due to data availability of SNF SDOH standardized patient assessment data elements, this is based on one quarter of Transportation data.

[94] The analysis is limited to residents who responded to the Transportation item at both admission and discharge.

Response: We believe that collecting the SDOH assessment items at discharge only would be too late for the SNF to act on the information if it so chooses. As we explained in our proposal, obtaining this information early in the resident's stay will ensure the SNF has information that it could use to inform how it cares for the resident and during the discharge planning processes.

Regarding the commenter who expressed concerns about collecting the proposed new and modified assessment items on every assessment, we did not propose that SNFs would collect these items on every assessment of a resident. Rather, we proposed that SNFs would be required to report these new assessment items and the modified Transportation item using the MDS beginning with residents admitted on October 1, 2025, through December 31, 2025, for purposes of the FY 2027 SNF QRP, and for the entire calendar year for each program year thereafter. We note the SNF QRP's reporting requirements currently only apply to residents receiving skilled care in a SNF covered by Medicare Part A.

Comment: Two commenters suggested that CMS offer the flexibility for SNFs to use SDOH data collected during the transition of care to the SNF or during the look-back period, rather than requiring its collection at admission. These commenters stated that they believed CMS' focus should be on how SDOH information is used in care planning and discharge planning, rather than requiring this information be obtained via a resident's verbal responses during the look-back period of the initial assessment.

Several commenters noted that CMS already collects many of the proposed SDOH assessment items from other health care providers, such as hospitals or other post-acute providers, prior to a SNF stay, and encouraged CMS to consider supporting data portability and screening interoperability across healthcare providers to avoid unnecessary duplication of screenings and assessments.

Response: We interpret these commenters to be suggesting that CMS should allow SNFs to obtain information collected in previous healthcare settings, rather than requiring SNFs to obtain this information from the resident upon the resident's admission to the SNF. Obtaining information about the Living Situation, Food, Utilities, and Transportation assessment items directly from the resident, sometimes called ''hearing the resident's voice,'' is more reliable and accurate than obtaining it from a health care provider that previously cared for the resident for several reasons: the SNF would not know whether it was collected from the resident or from a family member or other source; the SNF would not know how the SDOH domain was defined—for example, whether utilities included electricity, gas, oil, or water or only asked about electricity; and the SNF would not be able to determine whether the potential problem had been resolved since then. Most importantly, we believe that by asking the resident these questions at admission, it may prompt further discussion with the resident about their needs and help formulate an appropriate discharge care plan.

We also appreciate the statements from commenters encouraging CMS to support data portability and screening interoperability. As we noted in the FY 2023 SNF PPS final rule (87 FR 47503 and 47504), 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 MDS, Inpatient Rehabilitation Facility—Patient Assessment Instrument (IRF–PAI), Long-Term Care Hospital (LTCH) Continuity Assessment Record and Evaluation (CARE) Data Set (LCDS), the Outcome and Assessment Information Set (OASIS) used by Home Health Agencies, and other sources. The CMS Data Element Library (DEL) continues to be updated and serves as a resource for PAC assessment data elements, as well as furthers CMS' goal of data standardization and interoperability. We acknowledge that there are still opportunities to advance these goals, and we will take these comments into consideration.

Comment: Several commenters offered suggestions or recommendations for guidance related to collecting the proposed SDOH assessment items. One commenter recommended that CMS include coding logic to allow skipping the Utilities assessment item if a resident indicated that they do not have a steady place to live, since it would be inappropriate to ask about utilities if a resident has no place to live.

Response: We appreciate all the comments we received about coding these proposed new and modified SDOH assessment items, including the Utilities assessment item. We proposed that SNFs would be required to collect and submit information on the four new assessment items, to have complete information. We do not agree that it would be inappropriate to ask about utilities just because a resident does not have a place to live at the time of the assessment. The resident may be living in temporary housing or a shelter, and gathering this information would still be important for their discharge planning.

Comment: Some commenters were also concerned that the proposed SDOH assessment items will be challenging for SNF residents to respond to, considering that many SNF residents have cognitive impairments or are more severely ill than the average Medicare beneficiary for whom the AHC HRSN Screening Tool was developed.

Response: We believe SNFs are accustomed to working with residents with very complex medical conditions, including multiple comorbidities, stroke, and cognitive decline, and we are confident in their ability to collect this data in a consistent manner. There are currently several resident interview assessment items on the MDS, and SNFs are accustomed to administering these questions to cognitively impaired patients.

We also plan to provide training resources in advance of the initial collection of the assessment items to ensure that SNFs have the tools necessary to administer the new SDOH assessment items and reduce the burden to SNFs in creating their own training resources. These training resources may include online learning modules, tip sheets, questions and answers documents, and/or recorded webinars and videos, and would be available to providers in mid-2025, allowing SNFs several months to ensure their staff take advantage of the learning opportunities.

Comment: Another commenter expressed concerns about collecting data on the Transportation assessment item from residents younger than 18 years old and recommended that CMS provide consideration for residents requiring special accommodations. Additionally, one commenter recommended that CMS consider a response option for SDOH assessment items that residents refuse to answer due to concerns about confidentiality or embarrassment.

Response: We are uncertain what the commenter's concerns are related to collecting the Transportation assessment item from residents younger than 18 years old, but we interpret the commenter to be concerned that these residents would be too young to provide a response or that these residents may be too young to have a driver's license,

so the question would not be applicable to them.

In response to the first potential concern that residents would be too young to provide a response, we highlight that there is growing recognition of the need for effective screening methods for HRSNs in all patient populations, including pediatrics and adolescents. Children are especially vulnerable to HRSN, as poverty in childhood correlates to poor health outcomes.[95] [96] [97] Although there is no standardized protocol for screening in pediatric settings,[98] organizations like the American Academy of Pediatrics provide toolkits with suggestions for a screening protocol. Transportation has been identified by hospitals and clinics [99] [100] that care for pediatric and adolescent patients as an important area to screen. One hospital system began using the AHC HRSN Screening Tool, including the proposed Transportation item, during selected well child visits at a Federally Qualified Health Center, and found the tool was feasible to administer and identified more than a third of patients with one or more HRSNs.[101]

In response to the second potential concern that the question would not be applicable to these residents because they may be too young to have a driver's license, we believe that even if a patient younger than 18 years old cannot drive themselves, they may rely on others, or they may use public transportation. As a result, they may still have transportation access needs that should be identified.

We interpret the second part of the comment to be recommending that we modify the response options to collect information about residents requiring special transportation accommodations. Although the proposal would require SNFs to collect the modified Transportation assessment item as described in section VII.E.2. of this final rule, such collection could potentially prompt the SNF to initiate conversations with its residents about their potential Transportation needs, such as special accommodations a resident may need to access transportation. Additionally, SNFs may seek to collect any additional information that they believe may be relevant to their resident population to inform their care and discharge planning process.

Comment: One commenter recommended that CMS consider a response option for SDOH assessment items that residents refuse to answer due to concerns about confidentiality or embarrassment.

Response: As described in sections VII.C.3.(a), VII.C.3.(b), VII.C.3.(c), and VII.C.5., each proposed new and modified SDOH item includes response options for those scenarios where a resident declines or is unable to provide information: (7) Resident declines to respond; and (8) Resident is unable to respond.

Comment: A few commenters recommended provide SNFs more flexibilities in collecting the new and modified SDOH assessment items. Two of these commenters suggested the use of interviews, paper, and electronic survey tools to administer the new and modified SDOH assessment items. One of these commenters also noted that many provider pre-admission processes now involve residents filling out pre-admission questionnaires via paper, mobile apps, or resident portals.

Response: We appreciate the commenters' input on the mechanism of collecting the new and modified SDOH assessment items. SNFs may use different methods to collect the information from the resident, as long as they are consistent with the coding guidance and defined look-back periods in the MDS RAI manual.

Comment: One commenter expressed confusion with how CMS planned to collect the proposed new SDOH assessment items, since the MDS does not currently ask these questions.

Response: As stated in section VI.E.2 of the proposed rule, we proposed adding these assessment items to a future version of the MDS and requiring SNFs to begin collecting the assessment items for residents admitted on or after October 1, 2025. A draft of the assessment items can be found on the SNF QRP Measures and Technical Information web page in the Downloads section at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/measures-and-technical-information.*

Comment: One commenter was concerned that SNFs would not be able to collect the data on admission without knowledge of whether a patient is expected to successfully rehabilitate and return home or would have to remain in the nursing home as a long-stay resident.

Response: We acknowledge that residents' needs may change through the course of their recovery in the SNF, but we also note that while the proposal would require the collection of the SDOH items at admission, we hope the questions would enable future conversations between the SNF and residents about their potential SDOH needs. As the commenter pointed out, it is important to think about the resident's living situation in the context at multiple points during their care journey, and collecting these items at admission would be an important first step to that process.

Comment: Some commenters were concerned that the proposed SDOH assessment items are not applicable to long-term residents receiving skilled care under their Medicare Part A fee-for-service benefit, but who have no plans to discharge back to the community. One commenter specifically stated that the Utilities and Food assessment items are not appropriate for these long-term residents because they reside in the nursing home prior to their SNF stay. Two commenters recommended that CMS consider adding a response option or a skip pattern for SNF residents who are expected to be a long-term nursing home resident, or for those who have resided in the facility during the 12-month look-back period.

Response: We interpret these comments to be discussing long-term residents of a nursing facility (NF) who become eligible for a SNF stay and who are also not expected to be discharged from the SNF to the community. If a resident has resided in a NF for at least 366 days prior to the initiation of a new SNF stay, we acknowledge that such long-term residents of the NF will have had the HRSNs that are the subject of the proposed SDOH assessment items addressed by the NF during the 12-month look-back period that applies to those items.

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[99] Halpin, K, Colvin, JD, Clements, MA, et al. Outcomes of Health-Related Social Needs Screening in a Midwest Pediatric Diabetes Clinic Network. Diabetes. 2023; Vol. 72; Iss: Supplement 1.

[100] Nerlinger, AL, Kopsombut, G. Social determinants of health screening in pediatric healthcare settings. Curr Opin Pediatr. 2023 Feb 1;35(1):14–21. Doi: 10.1097/MOP.0000000000001191.

[101] Gray, T.W., Podewils, L.J., Rasulo, R.M., Weiss, R.P., Tomcho M.M. Examining the Implementation of Health-Related Social Need (HRSN) Screenings at a Pediatric Community Health Center. Journal of Primary Care & Community Health. 2023. Volume 14: 1–8. *https://doi.org/10.1177/21501319231171519.*

After consideration of these comments, we are finalizing a modification to the data specifications of the new and modified SDOH items so that they exclude any SNF residents who, immediately prior to their hospitalization that preceded a new SNF stay, resided in a NF for at least 366 continuous days. The SNF will not be required to ask the resident regarding their specific living situation, food, utilities, or transportation access during the 12-month look-back period because the NF was responsible for providing these needed services. We believe applying this criterion will decrease SNFs' burden of collecting these SDOH items from SNF residents who have received services from a NF for the entirety of the 12-month look-back period.

Comment: One commenter recommended we also require Medicare Advantage (MA) plans to collect and submit SDOH data. They contend that MA plans do not collect data on SDOH, but also make skilled coverage and discharge decisions for plan enrollees. As a result, SDOH data is not part of MA plans' decision-making process for discharge planning and SNFs often disagree with the discharge and coverage decisions issued by MA plans.

Response: We thank the commenter for their recommendation and acknowledge that MA plans have a role to play in advancing health equity. While this recommendation is outside the scope of this rulemaking, we will consider this feedback for future policymaking. we note the SNF QRP's reporting requirements currently only apply to residents receiving skilled care covered by Medicare Part A.

Comment: One commenter spoke about how they convened multiple interested parties to discuss the various social needs related screening measures and how quality measures and quality programs can best meet resident needs and policymakers' objectives. The result of the meeting was ten principles for adoption, updating, and implementing quality measures related to social needs, and they encouraged CMS to consider these principles in furthering SDOH-related policies within quality reporting and payment programs.

Response: We thank the commenter and note that we are not proposing measures related to screening for HRSNs. We will consider this feedback for future policymaking.

Comment: In response to the proposal to adopt two new Food assessment items, one commenter urged CMS to require or strongly encourage SNFs to immediately refer residents to social services to provide residents and caregivers information on post-discharge nutrition and food services (such as meal programs and oral nutrition supplement options); as well as create a post-discharge nutrition/food service plan to ensure services are provided as quickly as possible after discharge from the SNF.

Response: We did not propose to require SNFs to do anything specific with the information they obtain from the resident in response to the Food items. SNFs already are required to develop and implement an effective discharge planning process that focuses on the resident's discharge goals, the preparation of residents to be active partners and effectively transition them to post-discharge care, and the reduction of factors leading to preventable readmissions. We believe the proposed new SDOH assessment items have the potential to generate actionable data SNFs can use to implement effective discharge planning processes that can reduce the risk for negative outcomes such as hospital readmissions and admission to a nursing facility for long-term care. Given that SNFs must develop and implement an effective discharge planning process that ensures the discharge needs of each resident are identified, we believe collection of these new SDOH items will provide key information to SNFs to support effective discharge planning.

Comment: Another commenter described the ongoing burden of CMS' requirement for facilities to collect COVID–19 data. They noted the lack of appropriate technology to manage regulatory requirements necessitates the development of numerous internal processes, and implementing the necessary technology requires significant time and financial investment.

Response: This comment is out of scope for our proposals for the SNF QRP. We will take this feedback into consideration with future policy development work.

After careful consideration of the public comments we received, we are finalizing our proposal to require SNFs to collect and submit data on the following items adopted as standardized patient assessment data elements under the SDOH category at admission only beginning with October 1, 2025, SNF admissions: (1) Living Situation as described in section VII.C.3(a) of this final rule; (2) Food as described in section VII.C.3(b) of this final rule; and (3) Utilities as described in section VII.C.3(c) of this final rule. We are also finalizing our proposal to require SNFs to collect and submit the modified standardized patient assessment data element, Transportation, at admission only beginning with October 1, 2025, SNF admissions as described in section VII.C.5 of this final rule. However, we are finalizing a modification to the data specifications of the new and modified SDOH items so that they exclude any SNF residents who, immediately prior to their hospitalization that preceded a new SNF stay, resided in a NF for at least 366 continuous days. SNFs can monitor the MDS 3.0 Technical Information web page at *https://www.cms.gov/medicare/quality/nursing-home-improvement/minimum-data-set-technical-information* for updates.

3. Participation in a Validation Process Beginning With the FY 2027 SNF QRP

Section 1888(h)(12)(A) of the Act (as added by section 111(a)(4) of Division CC of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260)) requires the Secretary to apply a process to validate data submitted under the SNF QRP. Accordingly, we proposed to require SNFs to participate in a validation process that would apply to data submitted using the MDS and SNF Medicare fee-for-service claims as a SNF QRP requirement beginning with the FY 2027 SNF QRP. We proposed to amend the regulation text at § 413.360.

We are also considering additional validation methods that may be appropriate to include in the future for the current measures submitted through the National Healthcare Safety Network (NHSN), as well as for other new measures we may consider for the program. Any updates to specific program requirements related to the validation process would be addressed through separate and future notice-and-comment rulemaking, as necessary.

(a) Participation in a Validation Process for Assessment-Based Measures

The MDS is a resident assessment instrument that SNFs must complete for all residents in a Medicare or Medicaid certified nursing facility, and for residents 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 to improve clinical assessment and support the credibility of programs that rely on MDS, like the SNF QRP.[102]

[102] 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.*

We proposed to adopt a validation process for the SNF QRP that is similar to the validation process that we have adopted for the SNF Value-Based Purchasing (VBP) program in the FY 2024 SNF PPS final rule (88 FR 53323 through 53325) beginning with the FY 2027 SNF QRP. We proposed that this process would closely align with the validation process we have adopted for the SNF VBP program and would have the following elements:

- We proposed that our validation contractor would select, on an annual basis, up to 1,500 SNFs that submit at least one MDS record in the calendar year (CY) 3 years prior to the applicable FY SNF QRP. For example, for the FY 2027 SNF QRP, we would choose up to 1,500 SNFs that submitted at least one MDS record in CY 2024. We also proposed that the SNFs that are selected to participate in the SNF QRP validation for a program year would be the same SNFs that are randomly selected to participate in the SNF VBP validation process for the corresponding SNF VBP program year.
- We proposed that our validation contractor would request up to 10 medical records from each of the selected SNFs. Each SNF selected would only be required to submit records once in a fiscal year, for a maximum of 10 records for each SNF selected. To decrease the burden for the selected SNF, we proposed that the validation contractor would request that the SNFs submit the same medical records, at the same time, that are required from the same SNFs for purposes of the SNF VBP validation.
- We proposed that the selected SNFs would have the option to submit digital or paper copies of the requested medical records to the validation contractor and would be required to submit the medical records within 45 days of the date of the request (as documented on the request). If the validation contractor has not received the medical records within 30 days of the date of the request, the validation contractor would send the SNF a reminder in writing to inform the SNF that it must submit the requested medical records within 45 days of the date of the initial request.

We proposed that if a SNF does not submit the requested number of medical records within 45 days of the initial request, we would, under section 1888(e)(6)(A) of the Act, reduce the SNF's otherwise applicable annual market basket percentage update by 2 percentage points. The reduction would be applied to the payment update 2 fiscal years after the fiscal year for which the validation contractor requested records. For example, if the validation contractor requested records for FY 2027, and the SNF did not send them, we would reduce the SNF's otherwise applicable annual market basket percentage update by 2 percentage points for the FY 2029 SNF QRP.

We also stated that we intended to propose in future rulemaking the process by which we would evaluate the submitted medical records against the MDS to determine the accuracy of the MDS data that the SNF reported and that CMS used to calculate the measure results. We solicited public comment on what that process could include.

We solicited public comments on our proposal to require SNFs that participate in the SNF QRP to participate in a validation process for assessment-based measures beginning with the FY 2027 SNF QRP.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported our proposal to require SNFs to participate in a validation process that would apply to data submitted using the MDS, and specifically to adopt a validation process for the SNF QRP that is similar to the validation process we have adopted for the SNF VBP program. Most of these commenters appreciated the fact that we proposed using the same process that was adopted for the SNF VBP program, and that records requested and submitted would apply to the validation processes for both the SNF QRP and SNF VBP, reducing provider burden.

Response: We agree that adopting a validation process for the SNF QRP that is similar to the validation process that we adopted for the SNF VBP program and using the same charts for both programs closely aligns the validation processes and reduces burden for SNFs.

Comment: Several commenters noted that SNFs are required to submit data for the SNF QRP and SNF VBP on different timelines and questioned how the same records could be used for both programs. Specifically, they pointed to the fact that SNFs submit data for the SNF QRP on a calendar year (CY) basis, whereas SNFs submit data for the SNF VBP on a fiscal year (FY) basis for purposes of both baseline and performance period calculations. These commenters requested that CMS resolve the apparent misalignment between the two programs' performance periods prior to finalizing the proposal.

Response: Our intent is to use the same records, to the extent feasible. However, we acknowledge that our proposal could have created confusion for SNFs.

Therefore, we are finalizing this proposal with modification to align the data collection period for the SNF QRP validation process with the SNF VBP validation process so that the requested charts will apply to the same FY program year for the SNF QRP and SNF VBP. Specifically, we are finalizing that our validation contractor will select, on an annual basis, up to 1,500 SNFs that submit at least one MDS record in the fiscal year (FY) 2 years prior to the applicable FY SNF QRP. For example, if the validation contractor requested records for FY 2025, and the SNF did not submit them 45 days of the initial request, we would reduce the SNF's otherwise applicable annual market basket percentage update by 2 percentage points for the FY 2027 SNF QRP (See Table 30). We are also finalizing conforming modifications to the regulation text at § 413.360(g)(1)(i), as discussed in section VII.E.3(c) of this final rule.

This change will not affect the data collection or data submission periods for the SNF QRP or the application of any reduction of the SNF's otherwise applicable APU for meeting the SNF QRP reporting requirements, including the required thresholds for the standardized patient assessment data collected using the MDS or the data collected and submitted through the CDC NHSN. This modification to our proposal to use a FY period from which to identify MDS for validation rather than a CY data collection period will only impact the new data validation process requirement. We acknowledge that this will result in SNFs having different data collection periods within the SNF QRP.

TABLE 30: Data Collection Periods for the SNF Validation Process Affecting the FY 2027 SNF QRP

FY Quarter	Dates	Affects FY QRP
Q1	10/1/2024 – 12/31/2024	27
Q2	1/1/2025 – 3/31/2025	27
Q3	4/1/2025 – 6/30/2025	27
Q4	7/1/2025 – 9/30/2025	27

Therefore, if the validation contractor requested records for FY 2025, and the SNF did not submit them within 45 days of the initial request, the SNF would be found to be non-compliant with the SNF QRP requirements for the FY 2027 SNF QRP. SNFs will be notified through the already established methods if they are found to be non-compliant with the SNF QRP requirements, including this new validation process as finalized. Specifically, CMS issues notices of non-compliance to SNFs via a letter distributed through at least one of the following notification methods: the Non-Compliance Notification folders within the internet Quality Improvement and Evaluation System (iQIES), the United States Postal Service (USPS); or via an email from the SNFs Medicare Administrative Contractor. For more information on this process and timeline, see the SNF QRP Reconsideration and Exception & Extension web page at *https://www.cms.gov/medicare/quality/snf-quality-reporting-program/reconsideration-and-exception-extension.*

Comment: Commenters questioned how one chart could be used to validate data on measures that have different measure specifications in the SNF QRP versus the SNF VBP and provided an example. They noted that the SNF VBP program uses the Percent of Residents Experiencing One or More Falls with Major Injury (Long stay) measure which reports the percentage of long-stay nursing home residents with 101 or more cumulative days in the facility and had one or more falls with major injury reported, while the SNF QRP uses the Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long stay) measure, which reports the percentage of Medicare Part A SNF stays during which one or more falls with major injury were reported.

Response: We understand that measures used in the SNF QRP and the SNF VBP program may have different measure specifications, including the measure noted by the commenters. For example, Resident C and Resident D were both residents of a SNF. Resident C was admitted to a SNF for 26 days and then was discharged to home. Resident D, however, had been a resident of a NF for 2 year and then received care as a hospital inpatient making them eligible for a SNF stay. After Resident D's hospital inpatient stay, they subsequently received skilled services at the same NF/SNF.

If the validation contractor requested the medical records for Resident C, the SNF would be subject to the 2 percentage penalty if they failed to submit the medical record for the validation process. If the validation contractor requested the medical records for Resident D, the SNF QRP measures related to Resident D skilled stay are subject to validation using the medical record and the SNF would be subject to the 2-percentage penalty if they failed to submit the medical record for the validation process. With respect to the SNF VBP program measures, Resident D's medical records would be used to validate the Percent of Residents Experiencing One or More Falls with Major Injury (Long stay) measure as required by the SNF VBP program validation process but will not be subject to the SNF QRP penalty for failure to submit the medical record. Any action for not submitting required medical records for the SNF VBP program that are not part of the SNF QRP program will be included in future rulemaking.

Comment: A commenter requested that CMS clarify that the 2 percentage point penalty would apply in total to both the SNF QRP and SNF VBP program data validation processes.

Response: The 2 percentage point penalty would apply to the SNF QRP only. There is currently no validation penalty in the SNF VBP.

Comment: A commenter requested that CMS clarify whether the 2 percentage point reduction to the applicable annual market basket update when a SNF does not submit the requested number of medical records within 45 days of the initial request is the same 2 percentage point reduction that would apply to a SNF who did not meet the reporting threshold, or whether there are two separate 2 percentage point penalties. they are concerned a SNF will be penalized for the same error in more than one way simultaneously, creating a double jeopardy.

Response: We interpret the commenter's reference to a reporting threshold to be referring to the data completion thresholds for reporting measures data and standardized patient assessment data collected using the MDS and the data collected and submitted through the NHSN. In section VI.E.3.(c) of the proposed rule, we proposed to add paragraph (f)(1)(iv) to our regulation at § 413.360 to establish that, if the SNF is selected for the validation process, the SNF must submit 100 percent of medical records requested (up to 10), in their entirety, within 45 days of the initial request. Failure to meet this proposed data completeness requirement (submitting medical records in their entirety as requested) or the required thresholds currently in place (for the standardized patient assessment data collected using the MDS or the data collected and submitted through the CDC NHSN) would result in application of the 2 percentage point penalty to the SNF only under the SNF QRP.

To summarize, we are finalizing that SNFs must comply with the validation process to avoid application of the 2 percent penalty under section 1888(e)(6)(A) of the Act. If the SNF fails to submit those medical records within 45 days of the date on the initial request, then we would apply the 2 percentage point penalty to FY 2027 SNF payments. We would not apply more than one penalty to a SNF for the same program year for failure to meet one or more of the SNF QRP's reporting requirements for that program year.

Comment: Two commenters suggested CMS extend the time period for SNFs to submit the medical records for data validation. One of these commenters suggested an extension to 60 days. The other commenter stated that only one

written notification sent and one follow-up after 30 days was not adequate. They noted that written letters are easily misplaced, especially in facilities with administration turnover, and requested that CMS propose additional ways to notify providers of these reviews, including placing the request on the claim remittance.

Response: We disagree with the commenters and believe that 45 days with two notifications is the appropriate amount of notification. This is consistent with other auditing time periods for SNFs. For example, additional documentation requests (ADRs) sent by the Medicare Administrative Contractors, Special Medicare Review Contractors and Recovery Audit Contractors require records to be submitted within 45 days of the receipt of the letter.[103]

Comment: One commenter requested further clarification on the process by which a SNF would be notified they had been selected for a validation audit and how CMS would provide confirmation that the records had been received.

Response: SNFs selected for a validation audit will be notified via a letter sent through the internet Quality Improvement and Evaluation System (iQIES). We will notify SNFs that the medical records were received via a letter sent through iQIES or via email.

Comment: Several commenters stated they were concerned about the impact of a 2 percentage point payment adjustment to a randomly selected SNF that was required to submit documentation to support one MDS per year versus a randomly selected SNF that was required to submit documentation to support a maximum of 10 MDSs per year. These commenters stated that the risk of possibly dropping below an arbitrary threshold for a SNF that was required to submit documentation to support a maximum 10 MDS per year. They believe this barrier would be extremely difficult to overcome in a fair manner.

Response: In section VII.E.3.(a) of this final rule, we proposed that our validation contractor would request up to 10 medical records from each of the randomly selected SNFs. If a SNF is selected for the validation process and the SNF submits the requested number of medical records within 45 days of the date of the initial letter, then the SNF has met the proposed data completeness requirement for the validation process. While we acknowledge the highly unlikely scenario of a SNF being selected for validation on the basis of a single MDS submission during the relevant time period, we believe it is necessary to initially include all SNFs in the data validation process to meet the statutory requirement to implement a validation process for all data submitted for the SNF QRP.

We also noted in the same section of the rule that we intend to propose in future rulemaking the process by which we would evaluate the submitted medical records against the MDS to determine the accuracy of the MDS data that the SNF reported and that CMS would use to calculate the measure results (89 FR 23469). In establishing a validation threshold in future rulemaking, we will consider feedback about small sample sizes and/or uncertainty associated with sampling into account in our statistical approach.

Comment: Several commenters were concerned that our proposed timeline for implementation of the validation process for assessment-based measures in the FY 2027 SNF QRP year does not allow time for future rulemaking to determine the process by which we would evaluate the submitted medical records against the MDS, determine the accuracy of the MDS data the SNF reported, and provide subsequent notification to the provider in a timely manner that would allow for reconsideration requests, if needed.

They also stated they were concerned about a number of aspects of the validation process that CMS did not describe in the proposed rule, including the appeal process if a SNF disagreed with the validation contractor's findings, the expected threshold for compliance with the data validation, the penalty for noncompliance with the validation threshold, and the penalty for noncompliance with the validation threshold for the SNF VBP program. These commenters are concerned that if CMS establishes an arbitrary minimum MDS accuracy threshold for the SNF QRP validation process in the future without first establishing clear guidelines understood by both the providers and the SNF QRP validation contractors regarding support documentation requirements for each SNF QRP assessment-based element, there could be severe variation in the SNFs' performance scores. As a result, they believe that without clear guidelines the results of a validation audit would be dependent upon the SNF QRP validation contractor's independent determination rather than on whether the MDS was accurately completed per CMS requirements.

Response: Our proposal was limited to requiring SNFs that are selected for validation to submit the requested medical records and to impose a penalty if they do not comply with the request. Therefore, we believe that our proposed implementation timeline is reasonable. We intend to propose in future rulemaking a methodology for validating the submitted medical records against the MDS to determine the accuracy of the MDS data the SNF reported and CMS used to calculate the measure results.

Comment: One commenter recommended that CMS not sample the same facilities year over year if those facilities are performing well, but rather target low performers so as not to impose undue burden on facilities that are appropriately completing the MDS.

Response: We proposed to align the validation processes between the SNF QRP and SNF VBP programs to reduce the potential burden associated with the SNF QRP validation process. In the FY 2024 SNF PPS final rule (88 FR 53324 through 53325), CMS adopted a SNF VBP program validation process in which we would randomly select the SNFs to participate for the corresponding SNF VBP program year. However, we also recognize that SNFs would want an opportunity to provide input on potential criteria we would use in a targeted selection process as well as need ample notification regarding any targeted selection criteria. We will consider moving to a targeted selection process for future rulemaking.

We note that beginning with a random selection process and moving to a targeted selection process is consistent with the validation process for the Hospital IQR Program. We began with random selection of participating hospitals for the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program (now the Hospital IQR Program) for the FY 2012 payment determination (74 FR 43884 through 43889). For the FY 2013 payment determination and subsequent years, we finalized the adoption of an initial targeting criterion after soliciting comments about potential targeting criteria (75 FR 50227 through 50229). As with the Hospital IQR Program's validation process, the SNF QRP will start with a random selection process and consider moving to a targeted selection process in future rulemaking. This is to ensure that we gain experience in auditing the MDS and the corresponding SNF medical records before we consider whether to propose a targeting methodology. We believe that this experience will ensure a fair and equitable audit process for all SNFs.

[103] *https://www.cms.gov/data-research/monitoring-programs/medicare-fee-service-compliance-programs/medical-review-and-education/additional-documentation-request.*

Comment: We received several comments related to the burden associated with the proposals for SNFs to participate in a validation process for assessment-based measures reported in the SNF QRP. Many of these commenters were appreciative of our efforts to reduce burden through using the same records for both SNF VBP validation and the SNF QRP validation. Three of these commenters noted it would reduce the risk of a SNF being audited in back-to-back validation cycles. Several commenters stated they opposed the 2 percentage point penalty reduction for failure to submit the requested medical records because SNFs cannot afford continued decreases in their payments, and the proposal would create additional administrative burden for SNFs that are already suffering staffing deficiencies. One of these commenters noted that adding validation audits is not effective in improving services in a SNF.

Response: We acknowledge the commenters' concerns regarding the potential burden associated with the proposals. We are aware of potential provider burden and carefully considered the options available to us to meet the statutory requirements while also mitigating provider burden. As we previously noted in section VI.E.3. of the proposed rule and section VII.E.3. of this final rule, section 1888(h)(12) of the Act requires that the Secretary apply a process to validate data submitted under the SNF QRP. In addition, we are interested in ensuring the validity of the data reported by SNFs because use of these data has public reporting implications under the SNF QRP. Valid and reliable quality measures are fundamental to the effectiveness of our quality reporting programs. To ensure we receive the medical records we request from selected SNFs, we proposed to require timely submission of requested medical records for the SNF QRP validation process. Specifically, we proposed to apply the SNF QRP's 2 percentage point reduction in accordance with section 1888(e)(6)(A) of the Act if the selected SNF failed to submit 100 percent of the requested medical records as specified. We believe these proposals will ensure we receive the requested medical records so we may validate the data they submitted for the SNF QRP.

Our goal is to minimize the burden we impose on SNFs under the SNF QRP and we will continue considering this topic as we explore proposing additional policies for the SNF QRP validation process. As discussed further in section VI.E.3.(b) of this rule, we note that the claims-based measures validation process we proposed does not impose any new burden on SNFs.

We invited public comments on the future process by which we would evaluate the submitted medical records against the MDS to determine the accuracy of the MDS data that the SNF reported and that CMS would use to calculate the measure results. We received several comments providing various recommendations in response to this request.

Comment: One commenter urged CMS to ensure the reviews are done in a fair and equitable manner, including having therapy professionals on the review team when therapy services are provided to validate the functional components associated with SNF QRP measures. Two commenters noted that when the MDS was initially developed it was intended to be a source record, particularly related to interview questions, and there was no need to document elsewhere in the medical record redundant assessment information. These commenters noted that as the MDS has become a tool for reimbursement purposes, payment auditors have penalized providers for not having this redundant documentation repeated in the medical record, and also note that some States have their own documentation requirements, sometimes contrasting with those requirements published in the MDS Resident Assessment Instrument (RAI) manual. Therefore, these commenters urged CMS to meet with SNFs, including hosting a technical expert panel. Several commenters urged CMS to have an appeals process SNFs could access if they disagree with the validation contractor's findings, and a process through which SNFs could apply for hardship exemption.

Finally, one commenter urged CMS to share this information as soon as possible and provide ample time for evaluation and feedback prior to finalizing and implementing a validation process to validate MDS accuracy.

Response: We thank the commenters for their suggestions, and we will consider this feedback as we consider future rulemaking.

After careful consideration of the public comments we received, we are finalizing this proposal with modification that SNFs that participate in the SNF QRP will be required to participate in a validation process for assessment-based measures beginning with the FY 2027 SNF QRP. Specifically, our validation contractor will select, on an annual basis, up to 1,500 SNFs that submit at least one MDS record in the FY two years prior (rather than the CY 3 years prior) to the applicable FY SNF QRP. For example, for the FY 2027 SNF QRP, we will choose up to 1,500 SNFs that submitted at least one MDS record in FY 2025.

(b) Application of the Existing Validation Process for Claims-Based Measures Reported in the SNF QRP

Beginning with the FY 2027 SNF QRP, we proposed to apply the process we currently use to ensure the accuracy of the Medicare fee-for-service claims to validate claims-based measures under the SNF QRP. Specifically, information reported through Medicare Part A fee-for-service claims are validated for accuracy by Medicare Administrative Contractors (MACs) to ensure accurate Medicare payments. MACs 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.

We use data to calculate claims-based measures for the SNF QRP. We believe that adopting the MAC's existing process of validating claims for medical necessity through targeted and random audits would satisfy the statutory requirement to adopt a validation process for data submitted under the SNF QRP for claims-based measures at section 1888(h)(12)(A) of the Act (as added by section 111(a)(4) of Division CC of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260)).

We solicited public comment on our proposal to apply the MAC's existing validation process for the SNF QRP claims-based measures beginning with the FY 2027 program year.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Two commenters stated that the proposal was vague and provides insufficient detail to estimate what the scope and burden would be associated with this proposal. One commenter submitted a number of questions seeking clarification on the process for claims-based measure validation, including the number of SNF providers that would be subject to the proposed claims-based SNF QRP validation process, whether there was a limit to the number of claims for which a provider must submit supporting

documentation to the MAC, what specific documentation would SNFs be required to submit to the MAC, the specific criteria fee-for-service payment contractors would use to validate the accuracy of the SNF quality-related data, and how a fee-for-service payment auditor would convert/apply their payment process to review claims. Finally, these commenters recommended CMS rescind this proposal and meet with interested parties to identify a more appropriate approach to be presented in subsequent rulemaking.

Response: We interpret the commenters to be seeking further clarification on several issues related to how claims would be validated. As we noted in section VI.E.3.(b) of the proposed rule and section VII.E.3.(b) of this final rule, we proposed to use the same process for the SNF QRP claims-based measures as we adopted in the FY 2023 SNF PPS final rule (87 FR 47590 through 47591) for the SNF All-Cause Readmission (SNFRM) measure in the SNF VBP, since many of SNF QRP measures have already been adopted into the SNF VBP program.

Specifically, we believe that relying on the MACs' existing process of validating claims for medical necessity through targeted and random audits, as discussed in our proposal, satisfies our statutory requirement to adopt a validation process for claims-based measures for the SNF QRP. Given that we calculate SNFs' performance on claims-based measures based on claims they submit for payment under Medicare Part A, and SNFs do not submit any additional data for these claims-based measures, the only information to be validated is whether the claim accurately reflects the services the SNF provided. The MACs' existing process for validating claims, including whether they are medically necessary, addresses whether the information in the claims, which we use to calculate the claim-based measures, is accurate. We also believe that using the same validation process will reduce any additional burden and mitigate any concerns from providers. On this basis, we proposed to rely on the MACs' existing claims validation process to validate the information we use to calculate claims-based measures for SNFs. We clarify that we would deem the information reported through claims, and used for claims-based measures, as validated based on the MACs' existing process for validating the accuracy of claims; neither SNFs nor CMS would take any further action to validate claims-based measures under this proposal. If we decide to further validate claims-based measures beyond the MAC's existing process, this would be done in future rulemaking.

Comment: Two other commenters questioned how CMS' process to validate claims for medical necessity is analogous to validating data for accuracy in quality reporting and requests further clarification.

Response: Specifically, we believe that relying on the MACs' existing process of validating claims for medical necessity through targeted and random audits, as discussed in our proposal, satisfies our statutory requirement to adopt a validation process for claims-based measures for the SNF QRP. Given that we calculate SNFs' performance on claims-based measures based on claims they submit for payment under Medicare Part A, and SNFs do not submit any additional data for these claims-based measures, the only information to be validated is whether the claim accurately reflects the services the SNF provided. The MACs' existing process for validating claims, including whether they are medically necessary, addresses whether the information in the claims, which we use to calculate the claim-based measures, is accurate. We also believe that using the same validation process will reduce any additional burden and mitigate any concerns from providers.

After careful consideration of the public comments we received, we are finalizing our proposal to apply the MAC's existing validation process for the SNF QRP claims-based measures beginning with the FY 2027 program year.

(c) Amending the Regulation Text at § 413.360

We proposed to amend our regulation at § 413.360 to reflect these proposed policies. Specifically, we proposed to add paragraph (g) to our regulation at § 413.360, which would codify the procedural requirements we proposed for these validation processes for SNF QRP. We also proposed to add paragraph (f)(1)(iv) to our regulation at § 413.360 to establish that, if the SNF is selected for the validation process, the SNF must submit up to 10 medical records requested, in their entirety. Finally, we proposed minor technical amendments for our regulation at § 413.360(f)(3) to apply to all data completion thresholds implemented in § 413.360(f)(1).

We solicited public comments on our proposal to amend our regulation at § 413.360. We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: We received one comment on our proposal to amend the regulation text at § 413.360. This commenter noted that in the proposed rule on display at the **Federal Register** (89 FR 23494 column 2), it appears that the proposed § 413.360(g)(1)(iii) may be misworded. Specifically, paragraph (g)(1)(iii) is under § 413.360(g), the description of MDS-assessment-based SNF QRP validation process requirement to submit supporting medical records documentation within 45 days of the date of the records request. However, it refers to paragraph (g)(2) which is related to the claims-based SNF QRP validation process, rather than referencing the MDS-based validation process paragraph (g)(1).

Response: We thank the commenter for pointing out this typographical error. We are finalizing § 413.360(g)(1)(iii) with modification to correct this minor technical error.

Comment: We received one comment on our proposal to add the regulation text at § 413.360(g)(2). This commenter requested that paragraph (g)(2) should be rescinded from the proposed 413.360 revisions pending further consideration for reintroduction in a revised manner in future rulemaking.

Response: We disagree with the commenter. As we noted in section VI.E.3.(b) of the proposed rule and section VII.E.3.(b) of this final rule, we proposed to use the same process for the SNF QRP claims-based measures as we adopted in the FY 2023 SNF PPS final rule (87 FR 47590 through 47591) for the SNF All-Cause Readmission (SNFRM) measure in the SNF VBP, since many of SNF QRP measures have already been adopted into the SNF VBP program.

Specifically, we believe that relying on the MACs' existing process of validating claims for medical necessity through targeted and random audits, as discussed in our proposal, satisfies our statutory requirement to adopt a validation process for claims-based measures for the SNF QRP. Given that we calculate SNFs' performance on claims-based measures based on claims they submit for payment under Medicare Part A, and SNFs do not submit any additional data for these claims-based measures, the only information to be validated is whether the claim accurately reflects the services the SNF provided. The MACs' existing process for validating claims, including whether they are medically necessary, addresses whether the information in the claims, which we use to calculate the claim-based measures, is accurate. We also believe that using the same validation process will reduce any

additional burden and mitigate any concerns from providers. On this basis, we proposed to rely on the MACs' existing claims validation process to validate the information we use to calculate claims-based measures for SNFs. We clarify that we would deem the information reported through claims, and used for claims-based measures, as validated based on the MACs' existing process for validating the accuracy of claims; neither SNFs nor CMS would take any further action to validate claims-based measures under this proposal. If we decide to further validate claims-based measures beyond the MAC's existing process, this would be done in future rulemaking.

Comment: We received one comment related to SNF QRP data collected and submitted through NHSN that was out of scope of the proposals for the SNF QRP assessment-based measures and claims-based measures validation processes. This commenter requested CMS to engage with SNF interested parties in potential future additional SNF QRP validation approaches related to data submitted through NHSN. They note there have been multiple challenges for providers over the years with both the data submission processes to NHSN as well as data coordination between the CDC that manages NHSN reporting processes, and CMS who manages the SNF QRP requirements.

Response: This comment is out of scope for our proposals for the SNF QRP. We will take the commenter's request into consideration for our future policy making with respect to the validation process.

After careful consideration of the public comments we received, we are finalizing our proposal to amend our regulation at § 413.360 to codify the data validation process for the SNF QRP with two modifications. First, as discussed in section VII.E.3.(a) of this final rule, we are finalizing our proposal for selection of SNFs for this validation process with modification. We are finalizing that our validation contractor will select, on an annual basis, up to 1,500 SNFs that submit at least one MDS record in the FY 2 years prior, rather than the CY 3 years prior, to the applicable FY SNF QRP. Therefore, we are finalizing the regulation text at § 413.360(g)(1)(i) with modification to conform with this modification to our criteria for selecting SNFs to participate in this validation process.

Second, we are modifying the regulation text at § 413.360(g)(1)(iii) to correct a minor technical error, so it properly cross-references paragraph (g)(1) instead of paragraph (g)(2).

F. Policies Regarding Public Display of Measure Data for the SNF QRP

As outlined in the proposed rule, we did not propose any new policies regarding the public display of measure data in the FY 2025 SNF PPS proposed rule. For a discussion of our policies regarding public display of SNF QRP measure data and procedures for the SNFs to review and correct data and information prior to their publication, we refer readers to the FY 2017 SNF PPS final rule (81 FR 52045 through 52048).

VIII. Updates to the Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program

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) of 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.

1. Spotlight on the CMS National Quality Strategy

As part of the CMS National Quality Strategy,[104] we are committed to aligning measures across our quality programs and ensuring we measure quality across the entire care continuum in a way that promotes the best, safest, and most equitable care for all individuals.

We believe that improving alignment of measures across the CMS quality programs will reduce provider burden while also improving the effectiveness of quality programs. However, we also recognize that a one-size-fits-all approach fails to capture important aspects of quality in our healthcare system across populations and care settings.

To move towards a more streamlined approach that does not lose sight of important aspects of quality, we are implementing a building-block approach: a ''Universal Foundation'' of quality measures across as many of our quality reporting and value-based care programs as possible, with additional measures added on depending on the population or setting (''add-on sets'').[105]

Our goal with the Universal Foundation is to focus provider attention on measures that are the most meaningful for patients and patient outcomes, reduce provider burden by streamlining and aligning measures, allow for consistent stratification of measures to identify disparities in care between and among populations, accelerate the transition to interoperable, digital quality measures, and allow for comparisons across quality and value-based care programs to better understand what drives quality improvement and what does not.

We select measures for the Universal Foundation that are of high national impact, can be benchmarked nationally and globally, are applicable to multiple populations and settings, are appropriate for stratification to identify disparity gaps, have scientific acceptability, support the transition to digital measurement, and have no anticipated unintended consequences with widespread measure implementation.

We believe that the creation of this Universal Foundation will result in higher quality care for the more than 150 million Americans covered by our programs and will serve as an alignment standard for the rest of the healthcare system. We continue to collect feedback from interested parties through listening sessions, requests for information and proposed rulemaking, and other interactions to refine our approach as we work to implement the Universal Foundation across our quality programs. As we continue building the SNF VBP measure set, we intend to align with the measures in the Universal Foundation, as well as the post-acute care add-on measure set, to the extent feasible.

We received one comment on our discussion of the CMS National Quality Strategy. The following is a summary of the comment we received and our response.

Comment: One commenter supported CMS' intent to align the Program's measure set with the Universal Foundation.

Response: We thank the commenter for their support.

B. Regulation Text Technical Updates

We proposed to make several technical updates to our regulation text. First, we proposed to update

[104] *https://www.cms.gov/medicare/quality/meaningful-measures-initiative/cms-quality-strategy.*

[105] *https://www.cms.gov/aligning-quality-measures-across-cms-universal-foundation.*

§ 413.337(f) to correct the cross-references in that section to § 413.338(a). Second, we proposed to update the definition of ''SNF readmission measure'' in § 413.338(a) by replacing the references to the Skilled Nursing Facility Potentially Preventable Readmissions (SNFPPR) measure with a reference to the Skilled Nursing Facility Within-Stay Potentially Preventable Readmission (SNF WS PPR) measure, by clarifying that we specified both measures under section 1888(g) of the Act, and by clarifying that the SNF readmission measure will be the SNF WS PPR measure beginning October 1, 2027. This change will align the definition of ''SNF readmission measure'' with policies we have previously finalized for the SNF VBP, including that we will not use the SNFPPR and that we will replace the SNFRM with the SNF WS PPR beginning October 1, 2027.

In addition, we proposed to redesignate the term ''performance score'' at § 413.338(a) with the term ''SNF performance score'' for consistency with the terminology we are now using in the Program, and to make conforming edits to the last sentence of § 413.337(f). We also proposed to replace the references to ''program year'' with ''fiscal year'' in the definitions of ''health equity adjustment (HEA) bonus points,'' ''measure performance scaler'', ''top tier performing SNF'', and ''underserved multiplier'' to align the terminology with that used in the remainder of that section.

We also proposed to update § 413.338(f) to redesignate paragraphs (f)(1) through (4) as paragraphs (f)(2) through (5), respectively. We also proposed to add a new paragraph (f)(1) and to revise the newly redesignated paragraphs (f)(2) and (3).

In addition, we proposed to update § 413.338(j)(3) to include additional components of the MDS validation process that we finalized in the FY 2024 SNF PPS final rule (88 FR 53324 through 53325). In particular, we proposed to include the SNF selection, medical record request, and medical record submission processes for MDS validation.

Further, we proposed to remove § 413.338(d)(5) from the regulation text because the only measure that will be in the SNF VBP Program until the FY 2026 program year is the SNFRM, and to add new paragraph (l)(1) which will state that the SNF VBP measure set for each year includes the statutorily-required SNF readmission measure and, beginning with the FY 2026 program year, up to nine additional measures specified by CMS.

We invited public comment on these proposed technical updates to our regulation text.

We did not receive public comments on these proposals, and therefore, we are finalizing them as proposed.

C. SNF VBP Program Measures

1. Background

We refer readers to the FY 2024 SNF PPS final rule for background on the measures we have adopted for the SNF VBP Program (88 FR 53276 through 53297).

Table 31 lists the measures that have been adopted for the SNF VBP Program, along with their timeline for inclusion.

TABLE 31: SNF VBP Program Measures and Timeline for Inclusion in the Program

Measure	FY 2025 Program Year	FY 2026 Program Year	FY 2027 Program Year	FY 2028 Program Year
Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM)	Included	Included	Included	
Skilled Nursing Facility Healthcare Associated Infections Requiring Hospitalization (SNF HAI) measure		Included	Included	Included
Total Nursing Hours per Resident Day (Total Nurse Staffing) measure		Included	Included	Included
Total Nursing Staff Turnover (Nursing Staff Turnover) measure		Included	Included	Included
Discharge to Community – Post-Acute Care Measure for Skilled Nursing Facilities (DTC PAC SNF) measure			Included	Included
Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (Falls with Major Injury (Long Stay)) measure			Included	Included
Discharge Function Score for SNFs (DC Function) measure			Included	Included
Number of Hospitalizations per 1,000 Long Stay Resident Days (Long Stay Hospitalization) measure			Included	Included
Skilled Nursing Facility Within-Stay Potentially Preventable Readmissions (SNF WS PPR) measure				Included

2. Measure Selection, Retention, and Removal Policy Beginning With the FY 2026 SNF VBP Program Year

Section 1888(h)(2) of the Act requires the Secretary to apply the measure specified under section 1888(g)(1) (currently the SNFRM) and replace that measure, as soon as practicable, with the measure specified under section 1888(g)(2) (currently the SNF WS PPR measure). Section 1888(h)(2) of the Act also allows the Secretary to apply, as appropriate, up to nine additional measures to the SNF VBP Program, in addition to the statutorily required SNF readmission measure. We have now adopted seven additional measures for the Program (see the FY 2023 SNF PPS final rule (87 FR 47564 through 47580) and the FY 2024 SNF PPS final rule (88 FR 53280 through 53296)).

Now that the SNF VBP Program includes measures in addition to the SNFRM (which will be replaced with the SNF WS PPR measure beginning with the FY 2028 program year), we stated in the FY 2025 SNF PPS proposed rule (89 FR 23471 through 23472) that we believe it is appropriate to adopt a policy that governs the retention of measures in the Program, as well as criteria we will use to consider whether a measure should be removed from the Program. These policies will help ensure that the Program's measure set remains focused on the best and most appropriate metrics for assessing care quality in the SNF setting. We also believe that the proposed measure removal policy will streamline the rulemaking process by providing a sub-regulatory process that we can utilize to remove measures from the Program that raise safety concerns while also providing sufficient opportunities for the public to consider, and provide input on, future proposals to remove a measure.

Other CMS quality programs, including the SNF QRP and Hospital Inpatient Quality Reporting (IQR) Program, have adopted similar policies. For example, in the FY 2016 SNF PPS final rule (80 FR 46431 through 46432), the SNF QRP adopted 7 removal factors and, in the FY 2019 SNF PPS final rule (83 FR 39267 through 39269), the SNF QRP adopted an additional measure removal factor, such that a total of eight measure removal factors are now used to determine whether a measure should be removed. The SNF QRP also codified those factors at § 413.360(b)(2).

For the purposes of the SNF VBP Program, we proposed to adopt a measure selection, retention, and removal policy beginning with the FY 2026 SNF VBP program year. The proposed policy would apply to all SNF VBP measures except for the SNF readmission measure because we are statutorily required to retain that measure in the measure set.

First, we proposed that when we adopt a measure for the SNF VBP Program for a particular program year, that measure will be automatically retained for all subsequent program years unless we propose to remove or replace the measure. We believe that this policy will make clear that when we adopt a measure for the SNF VBP Program, we intend to include that measure in all subsequent program years. This policy will also avoid the need to continuously propose a measure for subsequent program years.

Second, we proposed that we will use notice and comment rulemaking to remove or replace a measure in the SNF VBP Program to allow for public comment. We also proposed that we will use the following measure removal factors to determine whether a measure should be considered for removal or replacement:

(1) SNF performance on the measure is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made;

(2) Performance and improvement on a measure do not result in better resident outcomes;

(3) A measure no longer aligns with current clinical guidelines or practices;

(4) A more broadly applicable measure for the particular topic is available;

(5) A measure that is more proximal in time to the desired resident outcomes for the particular topic is available;

(6) A measure that is more strongly associated with the desired resident outcomes for the particular topic is available;

(7) The collection or public reporting of a measure leads to negative unintended consequences other than resident harm; and

(8) The costs associated with a measure outweigh the benefit of its continued use in the Program.

Each of these measure removal factors represent instances where the continued use of a measure in the Program would not support the Program's objective, which is to incentivize improvements in quality of care by linking SNF payments to performance on quality measures. Therefore, we believe that these are appropriate criteria for determining whether a measure should be removed or replaced.

Third, upon a determination by CMS that the continued requirement for SNFs to submit data on a measure raises specific resident safety concerns, we proposed that we may elect to immediately remove the measure from the SNF VBP measure set. Upon removal of the measure, we will provide notice to SNFs and the public, along with a statement of the specific patient safety concerns that will be raised if SNFs continue to submit data on the measure. We will also provide notice of the removal in the **Federal Register**.

We proposed to codify this policy at § 413.338(l)(2) and (3) of our regulations.

We invited public comment on the proposed measure selection, retention, and removal policy. We also invited public comment on our proposal to codify this policy at § 413.338(l)(2) and (3).

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Many commenters supported CMS' proposal to adopt a measure selection, retention, and removal policy. A few commenters appreciated that the policy aligns with the policies used in other CMS quality programs. A few commenters believed this policy allows CMS to prioritize evidence-based quality measures that are focused on critical aspects of quality and helps reduce the provider burden associated with data collection when a measure that is no longer valuable is removed from the Program. A few commenters supported the proposal to use notice and comment rulemaking to propose removal or replacement of a measure as well as to provide public notification when a measure is removed. One commenter supported the measure removal criteria believing that these criteria should be met before a measure is removed from the Program. One commenter believed this policy provides CMS flexibility to remove measures with safety concerns, which the commenter believed is important for maintaining high standards of care. One commenter believed this policy aligns with the criteria used by the Consensus-Based Entity (CBE) during the measure endorsement process.

Response: We thank the commenters for their support. We agree that this policy will help ensure that the Program's measure set remains focused on the best and most appropriate metrics for assessing care quality in the SNF setting.

Comment: A few commenters supported the measure selection, retention, and removal policy but also provided recommendations related to the proposed policy. One commenter encouraged CMS to seek input from

interested parties when deciding to remove a measure based on measure removal factor 8 (the costs associated with a measure outweigh the benefit of its continued use in the Program) because the cost/benefit relationship may be viewed differently by different interested parties. One commenter recommended that CMS create publicly available monitoring reports that assess whether a measure shows or lacks meaningful performance improvement because many factors influence the threshold for determining when facilities can no longer make improvements, and the commenter believed it is important for the industry to understand these changes over time. One commenter recommended that CMS consider the correlation between existing SNF VBP measures and alternative metrics as part of the measure selection, retention, and removal policy. The commenter believed that if the correlation for the same desired outcome between the measures is high, CMS should also consider the measure for removal.

Response: We thank the commenters for their recommendations. With respect to the commenter's recommendation that we seek input from interested parties when deciding to remove a measure based on measure removal factor 8, we proposed to use notice and comment rulemaking to remove or replace a measure in the SNF VBP Program unless we determine that the continued requirement for SNFs to submit data on a measure raises specific resident safety concerns. We believe this proposal provides ample opportunity for interested parties to provide input. With respect to commenters' other recommendations, we intend to take these into consideration as part of our normal monitoring and evaluation efforts related to SNF VBP Program policies.

Comment: One commenter recommended that measures not endorsed by the CBE be removed and considered ineligible for inclusion in the SNF VBP Program.

Response: Although section 1888(h) of the Act does not require that measures adopted in the SNF VBP Program be endorsed by the CBE, we consider CBE-endorsed measures when selecting new measures to propose for the Program. In some cases, there is not a CBE-endorsed measure for a measure topic that we consider important for inclusion in the SNF VBP Program. For example, the Nursing Staff Turnover measure that we adopted in the FY 2024 SNF PPS final rule (89 FR 53281 through 53286) is not endorsed by the CBE, but we believe this measure is important for the SNF VBP Program given the well-documented impact of nursing staff turnover on resident outcomes.

Comment: One commenter did not support CMS' proposal to immediately remove a measure that raises resident safety concerns because it was not clear to the commenter how CMS would assess and make such a determination. The commenter also believed that this policy would give CMS the ability to make immediate decisions on removing measures without public input and without explaining to the public how the determination was made.

Response: We acknowledge the commenter's concern. We note that this proposed SNF VBP policy to immediately remove a measure that raises resident safety concerns is based on the policies finalized in other Programs such as the SNF QRP, which finalized this policy in the FY 2016 SNF PPS final rule (80 FR 46431), and the Hospital Value-Based Purchasing Program, which finalized this policy in the FY 2017 IPPS/LTCH PPS final rule (83 FR 41446). We intend to use this proposed authority narrowly and only in those circumstances where continued reporting on a measure poses specific and serious resident safety concerns. When making such a determination, we intend to review and analyze the available evidence raising a specific and serious resident safety concern and be transparent about our concerns and findings when the measure is removed and during subsequent rulemaking. For example, we announced in December 2008 that we would immediately remove the AMI–6-Beta blockers at arrival measure from the Hospital IQR Program (then known as the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) Program) following the release of updated clinical guidance and evidence of increased mortality risk for some patients. We subsequently confirmed the removal of the AMI–6-Beta blockers at arrival measure in the FY 2010 IPPS final rule (74 FR 43863). We also note that since we first adopted a version of this policy in FY 2010, we have applied the policy only sparingly.

Further, as stated in the proposed rule (89 FR 23472), if we elect to immediately remove a measure from the Program, we will provide notice to SNFs and the public through regular communication channels, along with a statement of the specific resident safety concerns that result from the continued use of the measure in the Program. We will also provide notice of the removal in the **Federal Register**.

After consideration of public comments, we are finalizing the measure selection, retention, and removal policy beginning with the FY 2026 program year as proposed. We are also finalizing our proposal to codify this policy at § 413.338(l)(2) and (3) of our regulations.

3. Future Measure Considerations

Section 1888(h)(2) of the Act allows the Secretary to apply, as appropriate, up to nine additional measures to the SNF VBP Program, in addition to the statutorily required SNF readmission measure. These measures may include measures of functional status, patient safety, care coordination, or patient experience.

In the FY 2022 SNF PPS proposed rule (86 FR 20009 through 20011), we requested public comment on potential future measures to include in the expanded SNF VBP Program. After considering the public input we received, we adopted three new measures in the FY 2023 SNF PPS final rule (87 FR 47564 through 47580). Two of those measures will be scored beginning with the FY 2026 program year: the SNF HAI and Total Nurse Staffing measures; and the third measure will be scored beginning with the FY 2027 program year: the DTC PAC SNF measure. In the FY 2024 SNF PPS final rule (88 FR 53280 through 53296), we adopted four additional measures. One of those measures, the Nursing Staff Turnover measure, will be scored beginning with the FY 2026 program year, while the other three measures will be scored beginning with the FY 2027 program year: the Falls with Major Injury (Long Stay), DC Function, and Long Stay Hospitalizations measures.

With the adoption of those seven measures, in addition to the statutorily required SNF readmission measure, the SNF VBP Program will include eight measures that cover a range of quality measure topics important for assessing the quality of care in the SNF setting. Therefore, as permitted under section 1888(h)(2)(A)(ii) of the Act, we can add up to two additional measures in the Program unless and until we remove measures in the future.

As part of our efforts to build a robust measure set for the SNF VBP Program, we are considering several options related to new measures and other measure set adjustments. First, we recognize that gaps remain in the current measure set and therefore, we are considering which measures are best suited to fill those gaps. Specifically, we are assessing several resident experience measures to determine their appropriateness and feasibility for

inclusion in the Program. We are also testing the appropriateness of measures that address other CMS priorities, such as interoperability and health equity/social determinants of health.

Beyond the adoption of new measures, we are also considering other measure set adjustments. For example, we are assessing the feasibility of a staffing composite measure that would combine the two previously adopted staffing measures. We are also considering whether measure domains and domain weighting are appropriate for the SNF VBP Program.

While we did not propose any new measures or measure set adjustments in the proposed rule, we will continue to assess and determine which, if any, of these options would help us maximize the impact of the SNF VBP Program measure set and further incentivize quality of care improvements in the SNF setting. We welcomed commenters' continuing feedback on potential new measure topics and other measure set adjustments.

We received public comments related to future measure considerations for the SNF VBP Program. The following is a summary of the comments we received.

Comment: Several commenters supported CMS' consideration of an interoperability measure for the SNF VBP Program. Specifically, a few commenters recommended that a potential future interoperability measure assess electronic exchange of data elements critical to care transitions and that the measure be aligned with other Federal policies on this topic. A few commenters also recommended that any future measure on interoperability be paired with financial resources or other assistance to support the adoption of electronic health records (EHRs) and other health information technology (IT) resources in the SNF setting, and that CMS provide a transition period of 3 to 5 years for facilities to incorporate these technologies. One commenter suggested exploring interoperability measures to enable more consistent care across various health settings. One commenter recommended testing the interoperability measure prior to inclusion in the Program.

A few commenters expressed support for the potential future adoption of a resident experience measure noting that resident experience is a key measure of a provider's quality and that the lack of such a measure is the largest gap in the current SNF VBP measure set. One commenter recommended adoption of the CoreQ measure as it is a measure of resident satisfaction endorsed by the CBE. Another commenter recommended that CMS consider the Patient Activation Measure® performance measure (PAM–PM) for future application in the Program.

A few commenters recommended other measure topics that CMS should consider for the SNF VBP Program including a vaccination measure, specifically the Adult Immunization Status (AIS) measure, as well as measure topics being considered for the SNF QRP, such as depression and pain management. One commenter recommended that CMS consider a measure that assesses SNF residents' access to physical medicine and rehabilitation (PM&R) physicians because the commenter believes that PM&R engagement is important in SNFs where staff may not have the expertise to address medical complications or barriers to therapy participation and progression. Another commenter recommended a measure that evaluates the quality of health benefits being provided to direct care workers. One commenter recommended measures that appropriately incentivize and financially reward high-performing SNFs and identified the Measures Under Consideration (MUC) process as especially important to developing and refining measures.

One commenter recommended that CMS revise the specifications for the Nursing Staff Turnover measure so that the measure only counts gaps in employment of more than 120 days, instead of the current 60 days, as turnover. The commenter expressed that there are many reasons an employee may be on an extended leave of absence for more than 60 days with the intention of returning to work. The commenter believed that the current specifications may unfairly penalize providers and may mislead the public.

One commenter did not support a staffing composite measure because it could reduce the contribution of each staffing metric (Total Nurse Staffing and Nursing Staff Turnover) in assessing a provider's performance.

One commenter recommended that CMS exclude quality measures that are unrelated to the Program's intent. Specifically, the commenter did not support the use of the Total Nurse Staffing and Nursing Staff Turnover measures in the Program because the commenter believed these measures only add reporting and administrative burden for SNFs. Another commenter did not support the inclusion of measures that have not been captured or publicly reported for at least 3 years. This commenter believed that new measures take time for SNFs to understand and establish evidence-based practices for improving performance.

One commenter did not support the use of MDS-based measures in the SNF VBP Program as the commenter believed MDS data are not sufficiently accurate. Another commenter did not support the addition of long stay measures, such as the Falls with Major Injury (Long Stay) and Long Stay Hospitalization measures, because the commenter believed these do not align with the intent of the Program, which is to link Medicare FFS reimbursement with the care and outcomes of Medicare FFS beneficiaries.

Response: We thank the commenters for their continuing feedback. We will take all of this feedback into consideration as we develop future measure-related policies for the SNF VBP Program.

D. SNF VBP Performance Standards

1. Background

We refer readers to the FY 2024 SNF PPS final rule (88 FR 53299 through 53300) for a detailed history of our performance standards policies.

In the FY 2024 SNF PPS final rule (88 FR 53300), we adopted the final numerical values for the FY 2026 performance standards and the final numerical values for the FY 2027 performance standards for the DTC PAC SNF measure.

2. Performance Standards for the FY 2027 Program Year

In the FY 2024 SNF PPS final rule (88 FR 53300), we adopted the final numerical values for the FY 2027 performance standards for the DTC PAC SNF measure, which we provide for SNFs' reference at the bottom of Table 32.

To meet the requirements at section 1888(h)(3)(C) of the Act, we are providing the final numerical performance standards for the remaining measures applicable for the FY 2027 program year: SNFRM, SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, Falls with Major Injury (Long Stay), Long Stay Hospitalization, and DC Function measures. In accordance with our previously finalized methodology for calculating performance standards (81 FR 51996 through 51998), the final numerical values for the FY 2027 program year performance standards are shown in Table 32.

TABLE 32: FY 2027 SNF VBP Program Performance Standards

Measure Short Name	Achievement Threshold	Benchmark
SNFRM	0.78709	0.82702
SNF HAI Measure	0.92219	0.94693
Total Nurse Staffing Measure	3.21488	5.81159
Nursing Staff Turnover Measure	0.38000	0.72959
Falls with Major Injury (Long Stay) Measure	0.95349	0.99950
Long Stay Hospitalization Measure	0.99758	0.99959
DC Function Measure	0.40000	0.78800
DTC PAC SNF Measure	0.42946	0.66370

3. Performance Standards for the FY 2028 Program Year

In the FY 2024 SNF PPS final rule (88 FR 53280 through 53281), we finalized that the SNF WS PPR measure will replace the SNFRM beginning with the FY 2028 program year. In that final rule (88 FR 53299 through 53300), we also finalized that the baseline and performance periods for the SNF WS PPR measure will each be 2 consecutive years, and that FY 2025 and FY 2026 is the performance period for the SNF WS PPR measure for the FY 2028 program year.

To meet the requirements at section 1888(h)(3)(C) of the Act, we are providing the final numerical performance standards for the FY 2028 program year for the SNF WS PPR measure as well as the DTC PAC SNF measure. In accordance with our previously finalized methodology for calculating performance standards (81 FR 51996 through 51998), the final numerical values for the FY 2028 program year performance standards for the DTC PAC SNF and SNF WS PPR measures are shown in Table 33.

We note that we will provide the estimated numerical performance standards values for the remaining measures applicable in the FY 2028 program year in the FY 2026 SNF PPS proposed rule.

TABLE 33: FY 2028 SNF VBP Program Performance Standards

Measure Short Name	Achievement Threshold	Benchmark
DTC PAC SNF Measure	0.42612	0.67309
SNF WS PPR Measure	0.86372	0.92363

4. Policy for Incorporating Technical Measure Updates Into Measure Specifications and for Subsequent Updates to SNF VBP Performance Standards Beginning With the FY 2025 Program Year

We are required under section 1888(h)(3) of the Act to establish performance standards for SNF VBP measures for a performance period for a fiscal year. Under that section, we are also required to establish performance standards that include levels of achievement and improvement, the higher of which is used to calculate the SNF performance score, and to announce those performance standards no later than 60 days prior to the beginning of the performance period for the applicable fiscal year. We refer readers to the FY 2017 SNF PPS final rule (81 FR 51995 through 51998) for details on our previously finalized performance standards methodology.

In the FY 2019 SNF PPS final rule (83 FR 39276 through 39277), we finalized a policy that allows us to update the numerical values of the performance standards for a fiscal year if we discover an error in the performance standards calculations. Under this policy, if we discover additional errors with respect to that fiscal year, we will not further update the numerical values for that fiscal year.

We currently calculate performance standards for SNF VBP measures using baseline period data, which are then used, in conjunction with performance period data, to calculate performance scores for SNFs on each measure for the applicable program year. However, during the long interval between the time we finalize the performance standards for the measures and the time that we calculate the achievement and improvement scores for those measures based on actual SNF performance, one or more of the measures may have been technically updated in a way that inhibits our ability to make appropriate comparisons between the baseline and performance period. We believe that to calculate the most accurate achievement and improvement scores for a measure, we should calculate the performance standards, baseline period measure results, and performance period measure results using the same measure specifications.

Therefore, we proposed to adopt a policy that allows us to incorporate technical measure updates into the measure specifications we have adopted for the SNF VBP Program so that these measures remain up-to-date and ensure that we can make fair comparisons between the baseline and performance periods that we adopt under the Program. Further, we proposed that we will incorporate these technical measure updates in a sub-regulatory manner and that we will inform SNFs of any technical measure updates for any measure through postings on our SNF VBP website, listservs, and through other educational outreach efforts to SNFs. These types of technical measure updates do not substantively affect the measure rate calculation methodology. We also recognize that some updates to measures are substantive in nature and may not be appropriate to adopt without further rulemaking. In those instances, we proposed to continue to use rulemaking to adopt substantive updates to SNF VBP measures.

With respect to what constitutes substantive versus non-substantive (technical) measure changes, we

proposed to make this determination on a case-by-case basis. Examples of technical measure changes may include, but are not limited to, updates to the case-mix or risk adjustment methodology, changes in exclusion criteria, or updates required to accommodate changes in the content and availability of assessment data. Examples of changes that we might consider to be substantive are those in which the changes are so significant that the measure is no longer the same measure.

We also proposed to expand our performance standards correction policy beginning with the FY 2025 program year such that we will be able to update the numerical values for the performance standards for a measure for a program year if a measure's specifications were technically updated between the time that we published the performance standards for a measure and the time that we calculate SNF performance on that measure at the conclusion of the applicable performance period. Any update we make to the numerical values would be announced via the SNF VBP website, listservs, and through other educational outreach efforts to SNFs. In addition, this policy would have the effect of superseding the performance standards that we establish prior to the start of the performance period for the affected measures, but we stated that we believe them to be necessary to ensure that the performance standards in the SNF VBP Program's scoring calculations enable the fairest comparison of measure performance between the baseline and performance period.

We noted that these proposed policies align with the Technical Updates Policy for Performance Standards that we adopted for the Hospital VBP Program in the FY 2015 IPPS/LTCH PPS final rule (79 FR 50077 through 50079).

Further, we proposed to codify these policies in our regulations. Specifically, we proposed to codify our policy to incorporate technical measure updates into previously finalized SNF VBP measure specifications in a sub-regulatory manner by adding a new paragraph (l)(4) to our regulations at § 413.338. Our current performance standards policies are codified at § 413.338(d)(6) of our regulations. However, we proposed to redesignate that paragraph as new § 413.338(n) of our regulations and to include in paragraph (n) both the existing performance standards policies and this newly proposed expansion of our performance standards correction policy.

We invited public comment on our proposal to adopt a policy for incorporating technical measure updates into the SNF VBP measure specifications and for subsequent updates to the SNF VBP performance standards beginning with the FY 2025 program year. We also invited public comment on our proposal to codify these policies in our regulations.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: One commenter supported CMS' proposal to use a sub-regulatory process to incorporate technical measure updates into SNF VBP measure specifications and to update the numerical values for a measure's performance standards if that measure was technically updated between the time we published the performance standards and the time CMS calculates SNF performance on that measure. The commenter further believed that CMS should use notice and comment rulemaking to make substantive measure changes.

Response: We thank the commenter for their support. As stated in the proposed rule (89 FR 23473), we will continue to use rulemaking to adopt substantive updates to SNF VBP measures.

Comment: One commenter supported CMS' proposal to incorporate technical measure updates into the measure specifications adopted for the SNF VBP Program using a sub-regulatory process. However, the commenter recommended that when CMS incorporates technical measure updates for SNF VBP measures outside of regular rulemaking, CMS exclude and suppress the affected measure(s) for all SNFs and base the SNF performance score for the affected program year on the remaining measures.

Response: We thank the commenter for their support of this proposal. With regard to the commenter's recommendation to exclude and suppress SNF VBP measures that have been technically updated, we reiterate that these measure updates are technical in nature and are not anticipated to impact SNF performance significantly. Therefore, we do not see any reason to suppress or exclude these measures from a SNF's performance score. Further, as stated in the proposed rule (89 FR 23473), we would continue to use notice and comment rulemaking to propose and adopt substantive measure updates that significantly affect the measure. These substantive measure updates would be adopted prior to or in conjunction with our announcement of performance standards that reflect the updated measure specifications for the measure for the applicable program year. We would determine whether an update is substantive or non-substantive on a case-by-case basis. Further, we intend to evaluate the impacts of this policy on SNF performance as part of our regular monitoring and evaluation efforts.

Comment: A few commenters did not support CMS' proposal to use a sub-regulatory process to update the numerical values for a measure's performance standards for a program year if that measure's specifications were technically updated between the time we published the performance standards and the time we calculate SNF performance on that measure. The commenters believed that updating previously established performance standards, without proper notice, would limit SNFs' ability to set quality improvement goals and achieve adequate performance, and it would cause confusion among SNFs and consumers because the data are used in more than 1 program year.

Response: We proposed that a measure's specifications may be technically updated between the time we publish the performance standards and the time we calculate the achievement and improvement scores for that measure based on actual SNF performance. We make technical measure updates to measure specifications to ensure the measure scores reflect SNF performance as accurately and completely as possible. However, as stated earlier in this section, since these updates would be technical in nature, they are not anticipated to impact SNF performance significantly. We do not believe that it is fair or appropriate to calculate performance period measure results using the updated measure specifications and then compare those results to the performance standards and baseline period measure results that were calculated using the previous measure specifications to generate the achievement and improvement scores. We view this policy, which allows us to update the numerical values for a measure's performance standards if that measure's specifications were technically updated, as necessary to ensure the accuracy of SNF performance scores, which are based on the performance standards.

We intend to announce updates to the numerical values of the performance standards as soon as we can calculate the updated performance standards after the measure specifications have been technically updated. These

announcements would be made via the SNF VBP website, listservs, and through other educational outreach efforts to SNFs. Further, we would not update the performance standards for a measure after the applicable performance period has ended.

We disagree with commenters' suggestion that updating the performance standards for a measure would impact a SNF's ability to set quality improvement goals or their ability to achieve adequate performance. We make technical updates to a measure's specifications to ensure we measure SNF performance as accurately as possible. As stated earlier in this section, we view this policy, which allows us to update the numerical values for a measure's performance standards if that measure's specifications were technically updated, as necessary to ensure that the performance standards in the SNF VBP Program's scoring calculations enable the fairest comparison of measure performance between the baseline and performance period and to ensure the accuracy of SNF performance scores. We also note that while the performance standards we establish under the SNF VBP Program reflect levels of achievement and improvement and are used for the purposes of assessing SNF performance on the measures, they are not intended to be the ceiling for SNF performance on a measure. Therefore, we encourage SNFs to set quality improvements goals that are not limited to the measure rates reflected in the performance standards. With respect to achieving adequate performance, we note that accurate performance standards, which is the goal of this proposed policy, are essential for calculating measure scores and SNF performance scores that reflect the actual provision of care in SNFs.

We also disagree with the commenters' suggestion that this policy would cause confusion because the measure data are used for more than one program year. It is true that measure data are used for more than one program year. For example, the performance period for the DC Function measure for the FY 2027 program year is FY 2025 and the baseline period for the FY 2029 program year is also FY 2025. However, if we make technical updates to a measure's specifications, all future calculations related to that measure will utilize the updated measure specifications. Therefore, we do not believe this would cause confusion among SNFs. We would not be able to update calculations for prior program years because SNFs would have already received their SNF performance scores and payment adjustments. Using the same example as above, if we make technical updates to the measure specifications for the DC Function measure for the FY 2027 program year, we would announce the updated performance standards before the end of the FY 2025 performance period. We would subsequently calculate baseline period results and performance standards for the FY 2029 program year after the end of the FY 2025 baseline period, which would automatically utilize the updated measure specifications.

For our measures with 2-year baseline and performance periods, it may be the case, due to performance periods overlapping, that we need to update the performance standards for more than one program year. If this situation arises, we intend to be as transparent as possible to ensure SNFs have a clear understanding of the impact of the technical measure updates.

In addition, as stated in the proposed rule (89 FR 23474), we intend to announce any updates to the numerical values of the performance standards for affected measures via the SNF VBP website, listservs, and through other outreach efforts to SNFs.

After consideration of public comments, we are finalizing our proposal to incorporate technical measure updates into measure specifications and for subsequent updates to SNF VBP performance standards beginning with the FY 2025 program year. We are also finalizing our proposal to codify these policies in our regulations.

E. SNF VBP Performance Scoring Methodology

1. Background

We refer readers to the FY 2024 SNF PPS final rule (88 FR 53300 through 53304) for a detailed history of our performance scoring methodology. Our performance scoring methodology is codified at § 413.338(d) and (e) of our regulations. We have also codified the Health Equity Adjustment (HEA) at § 413.338(k) of our regulations.

While we did not propose any changes to the previously adopted case minimum requirements, we received one comment. The following is a summary of the comment and our response.

Comment: One commenter expressed concern that the existing case minimum requirements in the SNF VBP Program may reward and penalize random variation, not actual performance, for some providers. The commenter recommended that CMS adopt case minimum requirements that meet a reliability standard of 0.7, which could be accomplished by increasing the minimum case counts to 60. The commenter defined the 0.7 reliability standard as 70 percent of the variation being explained by differences in performance and 30 percent being attributed to random chance. The commenter also suggested extending the performance periods to include multiple years because they believe this will allow more SNFs to meet the higher reliability threshold.

Response: We refer readers to the FY 2023 SNF PPS final rule (87 FR 47585 through 47587) and the FY 2024 SNF PPS final rule (88 FR 53301 through 53302) for the case minimums we have finalized for each of the SNF VBP Program measures. We stated that those case minimums are appropriate for the SNF VBP Program because they ensure the Program requirements only apply to SNFs for which we can calculate reliable measure rates and SNF performance scores. Our testing has also indicated that increasing the case minimum requirements to achieve the reliability standard of 0.7 would result in minimal improvements to a measure's reliability while simultaneously increasing the number of SNFs that would not meet the higher case minimum requirement, which does not align with our goal to ensure as many SNFs as possible can receive a score on a given measure. Therefore, we do not believe it is currently necessary or feasible to adopt case minimum requirements that meet a reliability standard of 0.7.

We also acknowledge the commenter's recommendation to increase measure reliability through longer performance periods and baseline periods and agree this could increase measure reliability. However, as stated in the FY 2016 SNF PPS final rule (80 FR 46422) and the FY 2017 SNF PPS final rule (81 FR 51998 through 51999), we aim to balance measure reliability with recency of data to ensure clear connections between quality measurement and value-based payment. We do not believe that adopting longer performance and baseline periods for all SNF VBP measures appropriately balance these factors. Specifically, longer performance and baseline periods would mean that SNF performance scores and the resulting value-based payments would be based on data further in the past, which is not consistent with our desire to calculate SNF performance scores and value-based payments using as recent as possible measure data.

2. Measure Minimum Policies

a. Background

We refer readers to the FY 2024 SNF PPS final rule (88 FR 53301 through 53303) for details on our previously adopted case minimums and measure minimums. Our case minimum and measure minimum policies are also codified at § 413.338(b) of our regulations. In the proposed rule, we proposed to apply the previously finalized FY 2027 measure minimum to the FY 2028 program year and subsequent years. We did not propose any changes to our previously finalized case minimums.

b. Application of the FY 2027 Measure Minimum to the FY 2028 SNF VBP Program Year and Subsequent Years

In the FY 2024 SNF PPS final rule (88 FR 53301 through 53303), we adopted an updated measure minimum for the FY 2027 program year. Specifically, we finalized that for a SNF to receive a SNF performance score and value-based incentive payment for the FY 2027 program year, SNFs must report the minimum number of cases for four of the eight measures during the applicable performance period. As discussed in the proposed rule, we proposed to apply this measure minimum to the FY 2028 program year and subsequent years, such that SNFs must report the minimum number of cases for at least four measures during the applicable performance period. SNFs that do not meet this measure minimum requirement would be excluded from the applicable program year and receive their adjusted Federal per diem rate for that fiscal year.

Based on our analyses for the FY 2028 program year, which are also applicable to subsequent program years for which we use the same measure set, we estimated that, under this measure minimum, approximately 6 percent of SNFs would be excluded from the Program compared to the approximately 8 percent of SNFs that we estimate would be excluded from the Program in FY 2027. This estimated decrease indicates fewer SNFs would be excluded from the FY 2028 program year than the FY 2027 program year due to the SNF WS PPR measure replacing the SNFRM beginning in FY 2028. We also assessed the consistency of incentive payment multipliers (IPMs), or value-based incentive payment adjustment factors, between FY 2027 and FY 2028 as a proxy for SNF performance score reliability. We found that applying the FY 2027 measure minimum to the FY 2028 program year would have minimal impact on the percentage of SNFs that would receive a net positive IPM and receive a net negative IPM between those 2 fiscal years, which indicates that the reliability of the SNF performance score would be minimally impacted if we applied the FY 2027 measure minimum to the FY 2028 program year. Based on these testing results for FY 2028, we stated that applying the FY 2027 measure minimum to the FY 2028 program year and subsequent years best balances SNF performance score reliability with our desire to ensure that as many SNFs as possible can receive a SNF performance score. We noted in the proposed rule that if we propose in future years to revise the total number of measures in the Program, we would reassess this measure minimum policy to ensure it continues to meet our previously stated goals. If needed, we would propose updates in future rulemaking.

We invited public comment on our proposal to apply the FY 2027 measure minimum to the FY 2028 SNF VBP program year and subsequent program years, such that SNFs must report the minimum number of cases for at least four measures during the applicable performance period.

We received public comments on this proposal. The following is a summary of the comments we received and our responses.

Comment: A few commenters supported the proposed measure minimum for the FY 2028 program year and subsequent years.

Response: We thank the commenters for their support of the measure minimum for FY 2028 program year and subsequent years.

Comment: One commenter did not support the proposed measure minimum and instead recommended that CMS increase the proposed measure minimum to at least six of the eight measures to ensure the program addresses quality in multiple areas.

Response: We disagree with the commenter's recommendation that we adopt a measure minimum of six measures, which the commenter believes would better ensure that the Program addresses quality in multiple areas. As stated in the proposed rule (89 FR 23474), we believe that requiring SNFs to report a minimum of four measures best balances SNF performance score reliability with our desire to ensure that as many SNFs as possible can receive a SNF performance score.

We note that swing bed facilities can report a maximum of four of the eight SNF VBP measures because those facilities do not report Payroll Based Journal (PBJ) data and they do not care for long stay residents, which is defined as stays greater than 100 days. Specifically, subsection 1128I(g) of the Act requires SNFs and NFs to report staffing information based on payroll data. This requirement does not apply to swing bed facilities. Further, the direct care staff in a swing bed facility may not solely provide SNF care and therefore, we do not believe that the payroll (PBJ) data would accurately reflect the staffing levels for providing SNF care only. For this reason, we do not believe that it is fair or appropriate to require swing bed facilities to report PBJ data for the two SNF VBP staffing measures (Total Nurse Staffing and Nursing Staff Turnover measures). In addition, because swing bed facilities do not care for long stay residents, those facilities do not meet the minimum case thresholds to report the Long Stay Hospitalization and Falls with Major Injury (Long Stay) measures. Therefore, if we increased the measure minimum to more than four measures, all swing bed facilities would be excluded from the Program. This does not align with our desire to ensure that as many SNFs as possible are included in the Program and can receive a SNF performance score.

Further, in our testing for the measure minimum of four measures, we found that approximately 60 percent of SNFs would continue to be scored on all eight measures, approximately 87 percent of SNFs would continue to be scored on at least six measures, and as described earlier in this section, over 90 percent will be scored on at least four measures. Therefore, as indicated by our testing of a four measure minimum, the vast majority of SNFs would be included in the Program and would be assessed on their performance across multiple quality areas.

After consideration of public comments, we are finalizing the measure minimum for the FY 2028 program year and subsequent program years as proposed.

3. Potential Next Steps for Health Equity in the SNF VBP Program

In the FY 2024 SNF PPS final rule (88 FR 53304 through 53318), we adopted a Health Equity Adjustment (HEA) that allows SNFs that provide high quality care and care for high proportions of SNF residents who are underserved to earn bonus points. We refer readers to that final rule for an overview of our definition of health equity, current disparities in quality of care in the SNF setting, our commitment to advancing health equity, and the details of the HEA.

In the FY 2024 SNF PPS proposed rule (88 FR 21393 through 21396), we also included a request for information (RFI) entitled ''Health Equity Approaches Under Consideration for Future Program Years,'' where we noted that significant disparities in quality of care persist in the SNF setting. We stated that the goal of explicitly incorporating health equity-focused components into the Program was to both measure and incentivize equitable care in SNFs. Although the HEA rewards high performing SNFs that care for high proportions of SNF residents with underserved populations, it does not explicitly measure or reward high provider performance among the underserved population. We remain committed to achieving equity in health outcomes for residents by promoting SNF accountability for addressing health disparities, supporting SNFs' quality improvement activities to reduce these disparities, and incentivizing better care for all residents. Through the RFI, we solicited public comment on possible health equity advancement approaches to incorporate into the Program in future program years that could supplement or replace the HEA. We refer readers to the FY 2024 SNF PPS final rule (88 FR 53322) for a summary of the public comments we received in response to the health equity RFI. We are considering these comments as we continue to develop policies, quality measures, and measurement strategies on this important topic.

We are currently exploring the feasibility of proposing future health equity-focused metrics for the Program. Specifically, we are considering different ways of measuring health equity that could be incorporated into the Program as either a new measure, combined to form a composite measure, or as an opportunity for SNFs to earn bonus points on their SNF performance score. These performance metrics described in more detail in the proposed rule would utilize the existing SNF HAI, DC Function, DTC PAC SNF, and SNF WS PPR measures that we previously adopted in the Program. We are considering the development of health-equity-focused versions of these measures because they are either cross-setting or could be implemented in multiple programs. The health-equity focused measures or metrics for bonus points include:

- A high-social risk factor (SRF) measure that utilizes an existing Program measure where the denominator of the measure only includes residents with a given SRF, which would allow for comparisons of care for underserved populations across SNFs;
- A worst-performing group measure that utilizes an existing Program measure and compares the quality of care among residents with and without a given SRF on that measure and places greater weight on the performance of the worst-performing group with the goal of raising the quality floor at every facility; and
- A within-provider difference measure that assesses performance differences between residents (those with and without a given SRF) within a SNF on an existing Program measure, creating a new measure of disparities within SNFs.

We are testing these various measure concepts to determine where current across- and within-provider disparities exist in performance, how we can best incentivize SNFs to improve their quality of care for all residents, including those who may be underserved, and the feasibility of incorporating a health equity-focused measure into the Program.

As we explore these and other options, we are focusing on approaches that:

- Include as many SNFs as possible and are feasible to implement;
- Integrate feedback from interested parties;
- Encourage high quality performance for all SNFs among all residents and discourage low quality performance;
- Are simple enough for SNFs to understand and can be used to guide SNFs in improvement; and
- Meet the goal of incentivizing equitable care to ensure all residents in all SNFs receive high quality care.

We are also exploring how constraints, such as sample size limitations, may impact our ability to effectively incorporate certain approaches into the Program. Lastly, we continue to explore opportunities to align with other CMS quality programs to minimize provider burden.

We received public comments related to potential next steps for health equity in the SNF VBP Program. The following is a summary of the comments we received.

Comment: Several commenters supported incorporating additional health equity components into the SNF VBP Program and offered recommendations for doing so. A few commenters offered recommendations related to health equity-focused measures. Specifically, one commenter recommended a workforce equity metric to incentivize SNFs to promote workforce equity and another commenter encouraged CMS to prioritize the DC Function and DTC PAC SNF measures when assessing for different performance outcomes based on the existence of social determinants of health. One commenter requested that CMS not create additional burden when developing health equity-focused measures and instead utilize existing claims or MDS data. One commenter recommended that CMS consider and incorporate feedback from interested parties, such as nurses and other providers, when developing possible health equity-focused measures. Another commenter encouraged CMS to work with the CBE to develop meaningful health equity-focused measures.

A few commenters recommended that CMS consider utilizing proxies other than DES for defining the underserved population. One commenter recommended that CMS assess the impact of health equity measures in non-SNF settings and develop a methodology that can be applied across multiple care settings. Another commenter suggested that CMS should require all SNFs to submit data on health equity to be eligible for SNF VBP incentive payments. Lastly, one commenter recommended that CMS offer education and resources that help SNFs learn how health equity impacts their population and how to make changes and develop interventions based on that information.

Response: We thank commenters for their recommendations. We will take these into consideration as we continue our work on developing the best approaches for incorporating health equity into the Program.

F. Updates to the SNF VBP Review and Correction Process

1. Background

We refer readers to the FY 2024 SNF PPS final rule (88 FR 53325 through 53326) and to § 413.338(f) of our regulations for details on the SNF VBP Program's public reporting requirements and the two-phase review and correction process that we have adopted for the Program. We also refer readers to the SNF VBP website (*https://www.cms.gov/medicare/quality/nursing-home-improvement/value-based-purchasing/confidential-feedback-reporting-review-and-corrections*) for additional details on our review and correction process. In Phase One of the review and correction process, we accept corrections for 30 days after distributing the following quarterly confidential feedback reports to SNFs: the two Full-Year Workbooks (one each for the baseline period and

performance period), generally released in December and June, respectively. Corrections are limited to errors made by CMS or its contractors when calculating a measure rate. In the FY 2022 SNF PPS final rule (86 FR 42516 through 42517), we finalized that SNFs are not able to correct any of the underlying administrative claims data used to calculate a SNF's readmission measure rate during Phase One of the SNF VBP review and correction process. For corrections to the underlying administrative claims data to be reflected in the SNF VBP Program's quarterly confidential feedback reports, the SNF must submit the claims correction request to their MAC and the MAC must process the correction before the ''snapshot date.'' For the SNFRM, the quarterly confidential feedback reports will not reflect any claims corrections processed after the date of the claims snapshot, which is 3 months following the last index SNF admission in the applicable baseline period or performance period.

In Phase Two of the review and correction process, SNFs may submit corrections to SNF performance scores and rankings only. We accept Phase Two corrections for 30 days after distributing the Performance Score Report that we generally release in August of each year.

Under our current review and correction policy, the SNF must identify the error for which it is requesting correction, explain its reason for requesting the correction, and submit documentation or other evidence, if available, supporting the request. SNFs must submit correction requests to the SNF VBP Program Help Desk, which is currently available at *SNFVBP@rti.org,* and the requests must contain:

- The SNF's CMS Certification Number (CCN),
- The SNF's name,
- The correction requested, and
- The reason for requesting the correction, including any available evidence to support the request.

For all review and correction requests, we will review the requests and notify the requesting SNF of the final decision. We will also implement any approved corrections before the affected data becomes publicly available.

In the FY 2025 SNF PPS proposed rule (89 FR 23476), we proposed to apply our existing Phase One review and correction process to all measures adopted in the Program regardless of the data source for a particular measure. We also proposed ''snapshot dates'' for the new SNF VBP measures and to codify those snapshot dates at revised § 413.338(f)(1). We also proposed to redesignate current § 413.338(f)(1) as § 413.338(f)(2) and to revise that paragraph to state that the underlying data used to calculate measure rates cannot be corrected by SNFs during the SNF VBP review and correction process.

We received comments on our review and correction proposals. The following is a summary of the comments we received and our responses.

Comment: Several commenters expressed support for CMS' proposal to apply the existing review and correction policies to additional measure types.

Response: We thank the commenters for their support.

Comment: A few commenters recommended that CMS make additional allowances in the review and correction process for SNFs. Specifically, one commenter suggested that CMS extend the ''snapshot dates'' to ensure that SNFs have adequate time to report accurate measure data. Another commenter suggested that CMS adopt a waiver policy for data errors that fall outside the ''snapshot dates'' that would allow SNFs to incorporate corrections into their performance data provided that the SNF otherwise complied with reporting deadlines.

Response: We thank the commenters for these suggestions. In general, we adopt ''snapshot dates'' for the purposes of review and correction so we can ensure that we have as much complete and accurate data as possible to calculate measure scores and performance scores. We proposed to calculate the measure rates using a static ''snapshot'' of data accessed on a specific date. The use of a data ''snapshot'' enables us to provide as timely quality data as possible, both to SNFs for the purpose of quality improvement, and to the public for the purpose of transparency. After the data ''snapshot'' is taken through our extraction of Medicare claims data, PBJ staffing data, or MDS assessment data, it takes several months to incorporate other data needed for the measure calculations, generate and check the calculations, as well as program, populate, and deliver the confidential quarterly reports and accompanying data to SNFs. Because several months lead-time is necessary after acquiring the input data to generate these calculations, if we were to delay our data extraction point beyond the proposed measure snapshot dates, we believe this would create an unacceptably long delay both for SNFs to receive timely data for quality improvement and transparency, and incentive payments for purposes of this Program. For the SNFRM and other claims-based measures, we believe that a 3-month claims ''run-out'' period is a reasonable period that allows SNFs time to correct their administrative claims or add any missing claims before those claims are used for measure calculation purposes while enabling us to timely calculate the measure. For PBJ staffing data and MDS assessment data, the snapshot date aligns with the timeline to which SNFs already adhere for corrections to their data within the Nursing Home Quality Improvement Program and SNF QRP, respectively. We believe this proposed policy would address both fairness and operational concerns associated with calculating measure rates and would provide consistency across value-based purchasing programs. We understand that these ''snapshot dates'' may occasionally require SNFs to work quickly to review their performance data, but we believe that these deadlines are necessary to ensure that the scoring and payment calculations that we make are as accurate as possible while also meeting our statutory deadlines.

2. Application of the Existing Phase One Review and Correction Policy to All Claims-Based Measures Beginning With the FY 2026 Program Year and ''Snapshot Dates'' for Recently Adopted SNF VBP Claims-Based Measures

In the FY 2023 SNF PPS final rule, we adopted the SNF HAI measure beginning with the FY 2026 SNF VBP program year (87 FR 47564 through 47570), and the DTC PAC SNF measure beginning with the FY 2027 SNF VBP program year (87 FR 47576 through 47580). In the FY 2024 SNF PPS final rule, we adopted the Long Stay Hospitalization measure beginning with the FY 2027 SNF VBP program year (88 FR 53293 through 53296), as well as the SNF WS PPR measure beginning with the FY 2028 SNF VBP program year (88 FR 53277 through 53280). Each of these measures is calculated using claims data.

We proposed to apply our existing Phase One review and correction process to all SNF VBP Program measures calculated using claims data. That is, Phase One corrections for claims-based measures would be limited to errors made by CMS or its contractors when calculating the measure rates. For corrections to the underlying administrative claims data to be reflected in the SNF VBP Program's quarterly confidential feedback reports, the SNF must submit any claims correction requests to their MAC before the ''snapshot date'' to ensure that those corrections are reflected fully in measure calculations. Any corrections made to claims following the ''snapshot

date'' would not be reflected in our subsequent scoring calculations.

For the SNF HAI, DTC PAC SNF, and SNF WS PPR measures, we proposed to define the ''snapshot date'' as 3 months following the last SNF discharge in the applicable baseline period or performance period to align with the ''snapshot date'' we previously adopted for the SNFRM. We refer readers to the FY 2022 SNF PPS final rule (86 FR 42516 through 42517) where we explain our rationale for selecting 3 months as the ''snapshot date.''

For the Long Stay Hospitalization measure, we proposed to define the ''snapshot date'' as 3 months following the final quarter of the applicable baseline period or performance period. For example, for the FY 2027 SNF VBP program year, the performance period is FY 2025. The final quarter of the performance period is July 1 through September 30, 2025. The ''snapshot date'' for this performance period is December 31, 2025.

We invited public comment on our proposal to apply our existing Phase One review and correction process to all SNF VBP claims-based measures and to adopt ''snapshot dates'' for recently adopted SNF VBP claims-based measures.

We received public comments on these proposals. The following is a summary of the comments we received and our response.

Comment: A few commenters supported CMS' proposal to define the ''snapshot date'' for the Long Stay Hospitalization measure as the 3 months following the final quarter of the applicable baseline period or performance period. One commenter noted that the proposed ''snapshot date'' is consistent with the ''snapshot dates'' CMS previously adopted for other claims-based measures, such as the SNFRM. Another commenter agreed that three months should be sufficient for SNFs to identify HAIs that may need to be corrected for the SNF HAI measure and therefore supported our proposal to align its time period with previously adopted ''snapshot dates''.

Response: We thank the commenters for their support. We agree that this ''snapshot date'' is consistent with other ''snapshot dates'' CMS has previously adopted. In the FY 2022 SNF PPS final rule (86 FR 42516 through 42517), we noted that since several months of lead-time is necessary after acquiring the input data to generate the SNFRM calculations, if we were to delay our data extraction point beyond the proposed measure ''snapshot date'', we believed this would create an unacceptably long delay both for SNFs to receive timely data for quality improvement and transparency, and incentive payments for purposes of this program. We believe that this rationale for the SNFRM also applies to the additional SNF VBP claims-based measures. We believe that a 3-month claims ''run-out'' period allows SNFs time to correct their administrative claims or add any missing claims before those claims are used for measure calculation purposes, while enabling us to timely calculate the measure.

After consideration of public comments, we are finalizing these policies as proposed.

3. Application of the Existing Phase One Review and Correction Policy to PBJ-Based Measures Beginning With the FY 2026 Program Year and ''Snapshot Dates'' for SNF VBP PBJ-Based Measures

In the FY 2023 SNF PPS final rule (87 FR 47570 through 47576), we adopted the Total Nurse Staffing measure beginning with the FY 2026 SNF VBP program year. Additionally, in the FY 2024 SNF PPS final rule (88 FR 53281 through 53286), we adopted the Nursing Staff Turnover measure beginning with the FY 2026 SNF VBP program year. Each of these measures is calculated using electronic staffing data submitted by each SNF for each quarter through the Payroll Based Journal (PBJ) system, along with daily resident census information derived from MDS 3.0 standardized patient assessments in the case of the Total Nurse Staffing measure.

We proposed to apply our existing Phase One review and correction process to SNF VBP Program measures calculated using PBJ staffing data. That is, Phase One corrections would be limited to errors made by CMS or its contractors when calculating the measure rates for the PBJ-based measures applicable in the SNF VBP Program. For corrections to the underlying PBJ data to be reflected in the SNF VBP Program's quarterly confidential feedback reports, the SNF must make any corrections to the underlying data within the PBJ system before the ''snapshot date.'' Any corrections made to PBJ staffing data following the ''snapshot date'' would not be reflected in our subsequent scoring calculations.

For measures calculated using PBJ staffing data, we proposed to define the ''snapshot date'' as 45 calendar days after the last day in each fiscal quarter. This deadline is consistent with the CMS Nursing Home Quality Improvement deadline, which requires that PBJ data submissions must be received by the end of the 45th calendar day (11:59 p.m. Eastern Time (ET)) after the last day in each fiscal quarter to be considered timely. We aim to align CMS quality programs to the extent possible to reduce confusion and burden on providers. For more information about submitting staffing data through the PBJ system, we refer readers to the CMS Staffing Data Submission web page at *https://www.cms.gov/medicare/quality/nursing-home-improvement/staffing-data-submission.*

We invited public comment on our proposal to apply our existing Phase One review and correction process to SNF VBP PBJ-based measures and to adopt ''snapshot dates'' for SNF VBP PBJ-based measures.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: One commenter recommended that CMS adopt a ''snapshot date'' for PBJ-based measures that allows PBJ staffing data corrections for up to 3 months after the end of the applicable baseline period or performance period. The commenter believed that this ''snapshot date'' would provide consistency with the claims-based measures. The commenter also suggested that, if CMS considers claims-based measures as the gold standard of measurement, then CMS should treat other types of measures similarly where possible.

Response: We thank the commenter for this feedback. However, as we noted in the proposed rule (89 FR 23476), we proposed the ''snapshot date'' for PBJ data as 45 calendar days after the last day in each fiscal quarter to align with the CMS Nursing Home Quality Improvement deadline. For the Nursing Home Quality Improvement Program, data submissions must be received in PBJ by the end of the 45th calendar day after the last day in each fiscal quarter to be considered timely. If the SNF VBP Program were to allow corrections to this data past this date as the commenter suggests, it could result in different reported measure rates for the SNF VBP program and the Nursing Home Quality Improvement for the same measures. This could result in confusion from SNFs and the public when these data are publicly reported.

Comment: One commenter recommended that CMS provide SNFs a preview report (like the 1705D PBJ Staffing Data Report) after the final submission is complete for the quarter. The commenter further suggested that facilities should be provided at least 15 days after this point to review and correct the submitted PBJ data. The

commenter explained that, if a facility uses a vendor to submit data on their behalf, the facility is held responsible for errors even if those errors were made by the vendor and were outside of the SNF's control. In addition, the commenter stated that there may be unexpected circumstances where there are errors or missed information identified by the facility later despite the facility's good faith efforts to submit PBJ data accurately and in a timely manner. The commenter noted that this additional time is important for PBJ-based measures, as the recently developed Nursing Staff Turnover measure requires 6 consecutive months of PBJ data and if any quarter of data is missing or unusable, the staff turnover rates may not be calculated or may be flawed, leaving consumers without information on a facility's true performance.

Response: We will consider whether it would be feasible to provide SNFs with preview reports in addition to the quarterly confidential feedback reports that we provide to SNFs under section 1888(g) and the SNF performance score reports that we provide to notify SNFs of their performance scores and incentive payment percentages. However, we note that we proposed the 45-day ''snapshot date'' for PBJ data to align with the CMS Nursing Home Quality Improvement deadline, and we continue to believe that this alignment will help SNFs comply with measure and data requirements across CMS quality programs. While the PBJ data is used for multiple measures across CMS quality programs, SNFs are required to submit the direct care staffing information in one centralized location via the PBJ.

Further, we believe that SNFs must work closely with any vendors with which they operate to ensure that data submissions are fully accurate before they are provided to CMS.

After consideration of public comments, we are finalizing these policies as proposed.

4. Application of the Existing Phase One Review and Correction Policy to MDS-Based Measures Beginning With the FY 2027 Program Year and ''Snapshot Dates'' for SNF VBP MDS-Based Measures

In the FY 2024 SNF PPS final rule (88 FR 53286 through 53293), we adopted the Falls with Major Injury (Long Stay) and DC Function measures, both beginning with the FY 2027 SNF VBP program year. These two measures are calculated using data reported by SNFs on the MDS 3.0.

We proposed to apply our existing Phase One review and correction process to SNF VBP Program measures calculated using MDS data. That is, Phase One corrections would be limited to errors made by CMS or its contractors when calculating the measure rates for the MDS-based measures applicable in the SNF VBP Program. For corrections to the underlying MDS data to be reflected in the SNF VBP Program's quarterly confidential feedback reports, the SNF must make any corrections to the underlying data via the internet Quality Improvement Evaluation System (iQIES) before the ''snapshot date.'' Any corrections made to the MDS data following the ''snapshot date'' would not be reflected in our subsequent scoring calculations.

For the DC Function and Falls with Major Injury (Long Stay) measures, we proposed that the ''snapshot date'' is the February 15th that is 4.5 months after the last day of the applicable baseline or performance period. However, if February 15th falls on a Friday, weekend, or Federal holiday, the data submission deadline is delayed until 11:59 p.m. ET on the next business day. For example, for the FY 2027 SNF VBP program year, the performance period is FY 2025 (October 1, 2024, through September 30, 2025). The ''snapshot date'' for this performance period would normally be February 15, 2026. However, because February 15, 2026, falls on a Sunday, the snapshot date would be extended until the next business day, which is Tuesday, February 17, 2026, due to Monday, February 16, 2026, being a Federal holiday. This is consistent with the SNF QRP QM User's Manual available at *https://www.cms.gov/files/document/snf-qm-calculations-and-reporting-users-manual-v50.pdf-0.*

We invited public comment on our proposal to apply our existing Phase One review and correction process to SNF VBP MDS-based measures and to adopt ''snapshot dates'' for SNF VBP MDS-based measures.

We received one public comment on these proposals. The following is a summary of the comment we received and our response.

Comment: One commenter supported CMS' proposal to define the ''snapshot date'' for MDS-based measures as 4.5 months after the last day of the applicable baseline or performance period, noting that this timeline closely aligns with deadlines for claims-based measures.

Response: We thank the commenter for their support.

After consideration of public comments, we are finalizing these policies as proposed.

G. Updates to the SNF VBP Extraordinary Circumstances Exception Policy

1. Background

Our Extraordinary Circumstances Exception (ECE) policy, which allows SNFs to request an exception to the SNF VBP requirements for one or more calendar months when there are certain extraordinary circumstances beyond the control of the SNF, is currently codified at § 413.338(d)(4) of our regulations. We proposed to redesignate that paragraph as new § 413.338(m) of our regulations to ensure the policy remains effective beyond FY 2025. We also proposed to amend our existing ECE policy to include the proposed changes discussed later in this section, as well as to make other technical updates to enhance the clarity of the ECE policy in our regulations.

2. Expanding the Reasons a SNF May Submit an Extraordinary Circumstance Exception Request Beginning With the FY 2025 Program Year

Section 413.338(d)(4)(ii) of our regulations currently states that a SNF may request an ECE if the SNF is able to demonstrate that an extraordinary circumstance affected the care provided to its residents and subsequent measure performance. We proposed to expand this policy to also allow a SNF to request an ECE if the SNF can demonstrate that, because of the extraordinary circumstance, it cannot report SNF VBP data on one or more measures by the specified deadline. This expanded policy would avoid penalizing SNFs due to circumstances out of their control and would also align the SNF VBP ECE policy with the ECE policies we have adopted for the SNF QRP and Home Health QRP.

If we grant an ECE to a SNF under the SNF VBP, we would, as previously finalized, calculate a SNF performance score that does not include the SNF's performance on the measure or measures during the months the SNF was affected by the extraordinary circumstance.

We discuss the comments we received on this proposal and our responses in the next section.

3. Updates to the Instructions for Requesting an Extraordinary Circumstance Exception Beginning With the FY 2025 Program Year

Under our current ECE policy, when a SNF requests an ECE, the SNF must

complete an Extraordinary Circumstances Request form (available on *https://qualitynet.cms.gov*) and send the form, along with supporting documentation, to the SNF VBP Program Help Desk within 90 days of the date that the extraordinary circumstance occurred.

The most recent version of the ECE Request Form no longer includes information related to the SNF VBP Program. Although the previous form is still available, once it is replaced with the new version, SNFs will no longer be able to use this new version of the form when submitting an ECE request for the SNF VBP Program. Accordingly, we proposed to update our policy to align with the current SNF QRP ECE request submission process, which does not require the completion of a form and instead requires SNFs to submit specific information via email to a Help Desk. We proposed that, beginning with the FY 2025 program year, a SNF may request an ECE by sending an email with the subject line ''SNF VBP Extraordinary Circumstances Exception Request'' to the SNF VBP Program Help Desk with the following information:

- The SNF's CMS Certification Number (CCN);
- The SNF's business name and business address;
- Contact information for the SNF's chief executive officer (CEO) or CEO-designated personnel, including all applicable names, email addresses, telephone numbers, and the SNF's physical mailing address (not a P.O. Box);
- A description of the event, including the dates and duration of the extraordinary circumstance;
- Available evidence of the impact of the extraordinary circumstance on the care the SNF provided to its residents or the SNF's ability to report SNF VBP measure data, including, but not limited to, photographs, media articles, and any other materials that would aid CMS in determining whether to grant the ECE;
- A date when the SNF believes it will again be able to fully comply with the SNF VBP Program's requirements and a justification for the proposed date.

We invited public comment on our proposals to expand the reasons a SNF may request an extraordinary circumstances exception, to update the instructions for requesting an extraordinary circumstances exception under the SNF VBP Program, and to codify this expanded ECE policy in our regulations.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: A few commenters supported CMS' proposal to expand the ECE policy to allow SNFs to request an ECE if the SNF can demonstrate that, as a result of an extraordinary circumstance, the SNF cannot report SNF VBP data on one or more measures by the specified deadline.

Response: We thank the commenters for their support. As we stated in the proposed rule, we believe this policy will avoid penalizing SNFs due to circumstances out of their control.

Comment: One commenter supported CMS' proposal to amend the existing regulation text for the ECE policy so that the policy remains in place past FY 2025.

Response: We thank the commenter for their support of this proposal.

Comment: A few commenters supported CMS' proposal to update the instructions for requesting an ECE because it will align the SNF VBP process with the existing process used by the SNF QRP. One commenter believed that eliminating the requirement to submit the distinct ECE form will be effective and efficient.

Response: We thank the commenters for their support. We agree that these updates will streamline the process and enhance alignment with the SNF QRP process for requesting an ECE.

Comment: A few commenters recommended that CMS align and streamline the process for submitting and receiving an ECE across programs, such as the SNF VBP Program and SNF QRP, so that SNFs can easily request an ECE. One commenter specifically recommended further streamlining the process for submitting an ECE request so that if a SNF is granted an ECE by CMS for another program, that ECE is automatically applied to the SNF VBP Program. Another commenter recommended that CMS provide clear information regarding the ECE request processes.

Response: We thank the commenters for their recommendations. We will consider ways to further streamline the ECE process in future rulemaking. We also intend to work to ensure that information related to ECE request processes is accessible to providers. We note that the current instructions for requesting an ECE are available on the SNF VBP website (available at: *https://www.cms.gov/medicare/quality/nursing-home-improvement/value-based-purchasing/extraordinary-circumstance-exception*). We will update those instructions to include the changes that we are finalizing in this final rule. Along with providing the new ECE instructions on the SNF VBP website, we will consider additional channels of communication that we can leverage to introduce the new ECE request instructions and to clarify any details. Potential methods include, but are not limited to Listservs, Open Door Forums, Listening sessions and webinars, and the CMS News Bulletin. Furthermore, the SNF VBP Program Help Desk, which is currently available at *SNFVBP@rti.org,* will be accessible to SNFs who are seeking support for the new ECE request instructions or have any questions regarding them.

After consideration of public comments, we are finalizing our proposals to expand the reasons a SNF may request an extraordinary circumstances exception and to update the instructions for requesting an extraordinary circumstances exception under the SNF VBP Program as proposed. We are also finalizing our proposal to codify this expanded ECE policy in our regulations.

IX. Nursing Home Enforcement

A. Background

The Biden-Harris Administration is committed to ensuring that all residents living in nursing homes receive safe, high-quality care. This includes making certain that all Americans, including older Americans and people with disabilities, live in a society that is accessible, inclusive, and equitable. To ensure that residents are receiving high-quality, and safe care, Long-Term Care (LTC) facilities that participate in the Medicare and/or Medicaid program, must be certified as meeting Federal participation requirements. LTC facilities are certified as a skilled nursing facility (SNF) in Medicare and a nursing facility (NF) in Medicaid, or a dually-certified SNF/NF in both programs, as specified in sections 1819 and 1919 of the Social Security Act (Act), respectively, and in regulations at 42 CFR part 483, subpart B.

Section 1864(a) of the Act authorizes the Secretary to enter into agreements with State Survey Agencies (SSAs) to conduct surveys (that is, inspections) to determine whether SNFs and NFs meet the Federal participation requirements for Medicare (generally referred to as requirements or Conditions of Participation (CoPs)). Section 1902(a)(33)(B) of the Act provides for SSAs to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. See also, section 1919(g) of the Act. The results of these surveys are used by CMS and the State Medicaid agency, respectively, as the basis for a decision to enter into, deny, or terminate a provider agreement with the facility.

They are also used to determine whether one or more enforcement remedies should be imposed when noncompliance with requirements is identified. Sections 1819(h) and 1919(h) of the Act. Surveyors observe the provision of care and services to residents, conduct interviews, and review facility and residents' documentation to determine compliance with Federal requirements and ensure the residents' health and safety are adequately protected.

Under sections 1819(f)(1) and 1919(f)(1) of the Act, the Secretary must ensure that the enforcement of compliance with the participation requirements is adequate to protect the health, safety, welfare, and rights of the residents and to promote the effective use of public money. Additionally, under sections 1819(h)(2)(B) and 1919(h)(3)(C) of the Act, criteria must be specified as to when and how enforcement remedies are applied, the amounts of fines, and the severity of each remedy imposed. Criteria must also be designed to minimize the time between the identification of violations and the final imposition of the remedies. Under sections 1819(h)(2)(B) and 1919(h)(3)(C) of the Act, civil money penalties (CMPs) are one of the Federal statutory enforcement remedies available to the Secretary and the States to address facility noncompliance with the requirements. Under sections 1819(h)(2)(B)(ii)(I) and 1919(h)(3)(C)(ii)(I) of the Act, CMPs may be imposed to remedy noncompliance at amounts not to exceed $10,000 for each day of noncompliance (as annually adjusted by inflation by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The statute also permits the Secretary and the States to impose a CMP for each day of noncompliance, even if a facility has since returned to substantial compliance as documented by an intervening standard survey (sections 1819(h)(2)(A) and 1919(h)(1) and (3) of the Act providing that if a facility is found to be in compliance with the requirements, ''. . . but, as of a previous period, did not meet such requirements, [the Secretary provide for] a civil money penalty . . . for the days in which he finds that the facility was not in compliance with such requirements''). The Secretary must follow the procedures set out in section 1128A of the Act in processing these CMP remedies. (Sections 1819(h)(2)(B)(ii)(I) and 1919(h)(3)(C)(ii)(I) of the Act)

The regulations that govern the imposition of CMPs and other remedies authorized by the statute were published on November 10, 1994 (59 FR 56116), and subsequently revised on September 28, 1995 (60 FR 50118), March 18, 1999 (64 FR 13354 through 13360), March 18, 2011 (76 FR 15106), and September 6, 2016 (81 FR 61538). The nursing home enforcement rules are set forth in 42 CFR part 488, subpart F, and the provisions directly affecting CMPs imposed for noncompliance with the requirements are set forth in §§ 488.430 through 488.444. In general, an enforcement action imposed is based on the severity of harm or potential for more than minimal harm to residents that results and the scope of how many residents were affected by the cited noncompliance. This is intended to ensure prompt and sustained compliance for the future, incentivizing the facility to take appropriate actions to permanently correct their noncompliance and protect residents' health and safety in the future. For example, if residents experienced serious harm due to noncompliance (including death), a less impactful enforcement remedy may not compel the facility to take the appropriate actions to correct and prevent a similar event from occurring in the future, leaving residents at risk for serious harm, injury, or death.

Under 42 CFR 488.438, the amount of CMPs increases based on the severity and/or extent of the harm or potential for more than minimal harm that might result from noncompliance. Current regulations at § 488.408 allow for penalties to be assessed in the upper range of $3,050 to $10,000 per day (PD) or $1,000 to $10,000 per instance (PI), as annually adjusted for inflation for noncompliance that constitutes immediate jeopardy (IJ) to resident health and safety, while penalties in the lower range of $50 to $3,000 PD or $1,000 to $10,000 PI of noncompliance, as annually adjusted for inflation, may be imposed where immediate jeopardy does not exist.

Under the current regulations, the State and/or CMS must decide whether to select either a PD or PI CMP when considering whether a CMP will be used as a remedy. A PD CMP is an amount that may be imposed for each day a facility is not in compliance until the facility corrects the noncompliance and achieves substantial compliance. A PI CMP is an amount imposed for each instance in which a facility is not in substantial compliance. The current enforcement regulations at 42 CFR part 488, subpart F, do not authorize the use of both types of CMPs during the same survey, nor do they allow for multiple PI CMPs to be imposed for multiple instances within the same noncompliance deficiency that occurred on different days during a survey.

While there is no statutory limitation of both a PI and PD being imposed on the same survey, we specified in the rulemaking that revised § 488.430(a) (published on March 18, 1999 (64 FR 13360)), that we would not impose both PD and PI CMPs during a survey. Instead, the 1999 rule required that ''a concomitant decision must be made whether the civil money penalty will be based on a determination of per instance or per day'' (64 FR 13356). Additionally, we noted that an ''instance'' means a singular event of noncompliance or single deficiency under a distinct regulatory area identified by an administrative ''F tag'' number used as reference on the CMS–2567, Statement of Deficiencies. (*Id.*) We proposed revisions to this limitation to enable more types of CMPs to be imposed during a survey once a CMP remedy is selected, within the statutory and regulatory limits, allowing penalties to be better aligned with the noncompliance identified during the survey and for more consistency of CMP amount across the nation. PI CMPs are often imposed in certain circumstances, such as when noncompliance existed but was corrected prior to the survey and for isolated instances of noncompliance unrelated to resident abuse. PI CMPs may also be imposed in cases where a deficiency is found, but the facility has not had any citations of actual or serious harm on any survey in the past three years. A PI CMP has typically not been imposed for findings of abuse or neglect, when there is continued noncompliance, or when the facility has a history of the same type of noncompliance causing actual harm to residents. PD CMPs, however, are generally imposed when these scenarios do not exist, and the facility has a history of similar noncompliance. For example, if a facility was found to be out of compliance with the requirements to prevent accidents where a resident was injured during a transfer from a wheelchair to the bed, and this was cited as an isolated instance of noncompliance that caused actual harm to a resident, a PI CMP may be imposed. We developed a Civil Money Penalty Analytic Tool to help determine CMP amounts when a CMP is one of the selected remedies, per sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act; 42 CFR 488.404 and 488.438.

The Biden-Harris Administration is committed to ensuring that all residents living in Medicare and Medicaid nursing homes receive safe, high-quality care. Specifically, in February 2022,

alongside a suite of other reforms, CMS committed to expanding financial penalties and other enforcement remedies to improve the safety and quality of care in the Nation's certified nursing homes.[106] As part of this effort, CMS examined the use of PD and PI CMPs and CMP impositions across states from January 1, 2022, to December 31, 2022. Based on this analysis, CMS believes that the prior approach regarding CMPs was not as effective as desired to improve patient safety. We found national variations in the length of time PD CMPs are imposed based on when the noncompliance occurred, when the survey was performed, and when the facility was found to have corrected the noncompliance. For example, from January 1, 2022, to December 31, 2022, the State with the shortest average number of days for PD CMP imposition was 1 day, and the longest average number of days in a State was 43 days. This results in vastly differing PD CMP amounts across the States based on the number of days of noncompliance, as well as the date the survey was conducted, rather than being more focused on the potential or actual harm that a deficiency may cause to residents. In other words, the same type of noncompliance could exist in two facilities in different states, but the PD CMP amounts would be different simply due to the number of days between the identification of noncompliance by the surveyor and the date of correction by the facility. We believe that this results in at least two problems. First, it could create a perception of inequity in the total amount calculated for a CMP. Second, it prevents us from holding some facilities responsible for failing to adequately protect residents' health, safety, and well-being. Take, for example, a survey that finds noncompliance with the requirements of participation that increases the likelihood of serious injury, harm, impairment, or death to residents—such as when residents are susceptible to falls while not being monitored (even when no resident actually fell as a result of the failure to monitor). If this deficiency is identified to have started 100 days prior to the survey, a PD CMP would accrue for each of the 100 days and each additional day until the facility corrected its noncompliance, resulting in a very high CMP. Conversely, another facility's similar noncompliance might result in serious harm to a resident, such as when two residents fall due to failures to monitor, resulting in serious injury. However, if these falls are identified to have occurred one and two days prior to the survey, a PD CMP would only accrue for 2 days and each additional day until the noncompliance was corrected, resulting in a relatively low CMP that may not encourage prompt or lasting compliance.

These scenarios show how the timing of a survey can potentially result in a higher CMP for similar noncompliance that resulted in less harm to residents. As such, we want to ensure that CMS retains the authority to impose CMPs related to the nature of the harm that is caused by—or could be caused by—a facility's noncompliance and the length of such noncompliance, rather than the date that a standard survey was conducted or a finding of noncompliance was identified, even if the administration of imposing the CMP occurs after another survey has been conducted. This approach can help prevent noncompliance from occurring writ large, rather than just addressing it once identified.

Therefore, as discussed in the proposed rule, we proposed to expand and strengthen our enforcement process by revising the regulations to increase CMS's flexibility when a CMP is the selected remedy and allow for multiple PI CMPs to be imposed for the same type of noncompliance, allow for both PD and PI CMPs to be imposed for noncompliance findings in the same survey, as well as ensure that the amount of a CMP does not depend solely on the date that the most recent standard survey is conducted or the date that surveyors identified a finding of noncompliance. With these revisions, in certain circumstances, CMS or the State may use the survey start date when imposing a PD CMP instead of the beginning date of the noncompliance, which maintains the benefit of CMPs accruing to incentivize swift correction to protect existing residents' safety and continuous compliance to protect future residents' safety. In other words, by creating the ability to impose a PI CMP and PD CMP on the same survey, CMS or the State could impose a PI CMP to address the noncompliance that occurred in the past or prior to the survey, and a PD CMP beginning at the start of the survey and continuing until the facility has corrected its noncompliance. Additionally, if multiple instances of noncompliance occurred prior to the survey, CMS or the State could impose multiple PI CMPs, as well as a PD CMP. This helps ensure that similar types of noncompliance receive similar CMPs regardless of how many days prior to the survey it occurred and ensures facilities are motivated to correct their noncompliance as soon as possible after the surveyors identify it.

These revisions are not intended to expand the type of deficiencies that are subject to PD and PI CMPs. The States and CMS would continue to follow the existing criteria for imposing a PD CMP or PI CMP, including imposing a PD or PI CMP for noncompliance that occurred prior to the start of a survey. Rather, these revisions would allow for more consistent CMP amounts imposed across the nation and would expand the current enforcement to allow for CMPs that more closely align with the noncompliance that occurred. These actions will help to better ensure that compliance is quickly achieved and is lasting to ensure resident safety.

In the April 3, 2024, **Federal Register** (89 FR 23424), we published the proposed rule setting forth our proposal for revising the requirements for imposing CMPs. In the proposed rule, we stated that our goal is to enable CMS and the States to impose CMPs to better reflect the type of noncompliance that occurred.

1. Imposing Multiple Per Instance Civil Money Penalties for the Same Type of Noncompliance

We proposed at § 488.408(e)(2)(ii), that for each instance of noncompliance, CMS and the State may impose a PD CMP of $3,050 to $10,000 (as adjusted under 45 CFR part 102), a PI CMP of $1,000 to $10,000 (adjusted under 45 CFR part 102), or both, in addition to the remedies specified in § 488.408(e)(2)(i).

2. Imposing Per Instance and Per Day Civil Money Penalties on the Same Survey

We proposed at §§ 488.408(e)(2)(ii) and 488.430(a) to expand our authority to impose both a PI CMP and a PD CMP, not to exceed the statutory and regulatory maximum amount on any given day, even when combined, when surveyors identify noncompliance.

3. Timing of Enforcement

We proposed at § 488.430(b) to allow the imposition of CMPs for noncompliance that was identified since the last three standard surveys.

[106] *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/.*

B. Provisions of the Proposed Regulations

1. Imposing Multiple Per Instance Civil Money Penalties for the Same Type of Noncompliance

Sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act authorize the Secretary to impose a CMP for each day of noncompliance. Section 1128A(d) of the Act further states that the Secretary shall consider (1) the nature of claims and the circumstances under which they were presented, (2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and (3) such other matters as justice may require when determining the amount or scope of any penalty. The regulations at § 488.454(d) state that, in the case of a CMP imposed for an instance of noncompliance, the remedy is the specific amount of the CMP imposed for the particular noncompliance deficiency. The meaning of an ''instance,'' therefore, focuses on a single deficiency citation of the applicable requirements of part 483, subpart B, referenced on the facility's statement of deficiencies (Form CMS–2567) and, under the current regulations, only one type of CMP can be imposed per F tag deficiency.

The statute grants the Secretary broad discretion to determine how appropriate CMPs should be enforced and only limits the imposition to a maximum daily amount. As discussed in the proposed rule, we proposed to expand the circumstances in which a PI CMP can be imposed to allow for more than one PI CMP to be imposed when multiple occurrences, or ''instances'' of a specific noncompliance are identified during a survey, regardless of whether they are cited at the same regulatory deficiency tag number in the statement of deficiencies.

As previously mentioned, CMS imposes CMPs based on sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act and §§ 488.404 and 488.438 which provides the amount of penalty, the ranges, the basis for penalty amount, increase/decrease of penalty amounts, and factors affecting the amount. While we may impose various enforcement remedies, CMPs are frequently imposed for deficiencies that result in serious injury, harm, impairment, or death to nursing home residents. Currently, we can only impose PI CMPs for different types of noncompliance identified on a survey, while other instances of the same noncompliance would not receive a CMP due to current regulatory limitations.

To strengthen our enforcement policies, we proposed to revise § 488.401 to define ''instance'' or ''instance of noncompliance'' as a separate factual and temporal occurrence when a facility fails to meet a participation requirement. We further proposed that each instance of noncompliance would be sufficient to constitute a deficiency and that a deficiency may be comprised of multiple instances of noncompliance. We received combined comments in response to sections IX.B.1 and IX.B.2. A summary of the comments and our responses are listed at the conclusion of section IX.B.2 in this final rule. We received several comments in support of the proposed revision to § 488.401.

2. Imposing Per Instance and Per Day Civil Money Penalties on the Same Survey

As we noted earlier, the Act does not limit the imposition of both a PD and a PI on the same survey, but only limits the total amount a penalty may be imposed for any individual day. Section 488.408(d)(2)(iii) through (iv) and (e)(1)(iii) through (iv) outline the type of remedies that may be imposed based on the severity of the noncompliance. However, these regulations do not state the manner in which the remedies may be imposed.

Because CMPs are designed to spur permanent resolution of deficiencies to maintain resident safety, we believe CMS and the States need flexibility to determine the range of CMPs that can be imposed on facilities that fail to meet the conditions of participation.

As discussed in the proposed rule, we proposed to revise §§ 488.408(e)(2)(ii) and 488.430(a) to expand our authority to impose both a PI CMP and a PD CMP, not to exceed the statutory and regulatory maximum amount on any given day even when combined, when surveyors identify noncompliance. Specifically, in § 488.408(e)(2)(ii), we proposed that for each instance of noncompliance, CMS and the State may impose a PD CMP of $3,050 to $10,000 (as adjusted under 45 CFR part 102), a PI CMP of $1,000 to $10,000 (as adjusted under 45 CFR part 102), or both, in addition to the remedies specified in § 488.408(e)(2)(i). Additionally, we proposed that when a survey contains multiple instances of noncompliance, CMS and the State may impose any combination of per instance or per day CMP for each instance of noncompliance within the same survey. Additionally, we proposed to revise § 488.430(a) to allow for each instance of noncompliance, a PD CMP, PI CMP, ''or both'' may be imposed, regardless of whether the deficiencies constitute immediate jeopardy. We also proposed to add that when a survey contains multiple instances of noncompliance, a combination of PI and PD CMPs for each instance of noncompliance may be imposed within the same survey.

Additionally, we proposed to make conforming changes by revising § 488.434(a)(2)(iii) to clarify that both PD and PI CMPs can be imposed on the same survey and thus are included in the penalty notice to the facility. Furthermore, we proposed to revise § 488.434(a)(2)(v) to indicate that the date and instance of noncompliance is not a singular event but rather can be multiple ''date(s) of the instance(s) of noncompliance.'' Lastly, we proposed to revise § 488.440(a)(2) to remove the phrase, ''for that particular deficiency,'' and replace with, ''per instance,'' which will allow for more than one PI CMP to be imposed on the same type of noncompliance or ''F tag'' citation. We sought public comment on these proposed revisions and received over a 100 public comments on these proposals from various parties interested in addressing LTC facilities' issues, including advocacy groups, long-term care ombudsmen, providers and provider industry associations, nursing home staff and administrators, and others. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the revised definition of ''instance(s) of noncompliance'' at § 488.401 and the proposed language at § 488.434(a)(2)(v) that indicates instances of the same noncompliance (F-tag) can occur on multiple dates. Commenters also agreed with the revisions at § 488.434(a)(2)(iii), clarifying that both PD and PI CMPs can be imposed simultaneously in the same survey, stating that both CMP types may be warranted based on the facility's noncompliance. Commenters stated that these regulatory changes as proposed, would allow for flexibility in imposing enforcement and align with the goal of enforcement remedies to ensure facility compliance with the Federal participation requirements.

Response: We appreciate the feedback from commenters and agree that by improving the definition of instance(s), our authority to impose multiple PI CMPs and both PI and PD in the same survey will strengthen our enforcement and promote resident safety and quality of care and life.

Comment: Many commenters opposed the change to impose multiple PI CMPs for the same type of noncompliance and PD and PI CMPs in the same survey.

One commenter noted that when the scope of a deficiency is cited, it already reflects the extent of the noncompliance when scope and severity are assigned to a deficiency, as doing so may unfairly punish the facility. For example, a PI CMP is imposed based on the scope (isolated, pattern, or widespread) of the cited deficiency, and the revised provision will also allow for multiple PI CMPs imposed at the same scope and severity for each instance of noncompliance. Essentially this commenter noted that the revised process implies that the facility would be fined twice with PI CMPs at the higher scope level of pattern or widespread. Another commenter stated these changes would deviate practices of CMP imposition significantly for nursing homes as compared to other providers, such as hospitals, home health agencies, and hospices causing inconsistencies across enforcement settings. Additionally, they added that the use of CMPs in nursing homes would thus be more extreme than in these other settings.

Response: We disagree with these comments. While the scope and severity level of a deficiency does reflect the extent of the noncompliance, under current regulations, the resultant CMP may not. For example, imposing a single PI CMP may only reflect the scope of a single instance of noncompliance that occurred on a day, but that may not accurately reflect the type of noncompliance and harm to residents that may have occurred on other days. Therefore, the proposed revision will allow CMS to impose CMPs for multiple instances of noncompliance to more accurately reflect the type of noncompliance that occurred on multiple days, and does not represent that a facility would be fined twice at the higher scope and severity level.

Furthermore, in response to comments opposing the imposition of PD and PI CMPs in the same survey, we note that under a PD CMP, a facility may already be fined for each day until the facility is in substantial compliance. This may include the days where specific instances of noncompliance occurred until the facility is determined to be in substantial compliance. The proposed revision gives CMS the ability to also impose a CMP for each instance that noncompliance occurred on different days within that timeframe, rather than a broader CMP that applies to all days from the start of the noncompliance until the facility is in substantial compliance.

These changes are not intended to punish a facility, but rather to ensure the imposition of CMPs, like all enforcement remedies imposed on nursing homes voluntarily choosing to participate in the program, ''ensure[s] prompt compliance with program requirements'' and are ''applied on the basis of noncompliance found during surveys conducted by CMS or by the State survey agency.'' 42 CFR 488.402(a) and (b). Congress enacted sections 1819 and 1919 of the Act to provide the Secretary with expansive authority to craft remedies to address noncompliance with Federal standards for nursing home quality care, which is what these revisions are designed to do. The legislative history of the Nursing Home Reform Act of 1987 (NHRA) does not support an assertion that changes cannot be made to the implementing regulations after careful consideration and evaluation of new information, nor that changes cannot be made to encourage achieving and maintaining compliance. Congress has expressly instructed the Secretary that the purpose of ''Federal Remedies'' is to ''assure compliance in Medicaid facilities'' with the rules. H.R. Rep. No. 100–391, pt. 1 at 475 (1987). Congress also instructed the Secretary to create penalties that would prevent ''yo-yo'' or ''roller coaster'' providers that ''correct their deficiencies, and then quickly lapse into noncompliance.'' *Id.* at 471. *See also id.* at 474 (''The Committee is particularly concerned with the patterns of repeated noncompliance noted by both the [Institute of Medicine] Committee and the GAO.''). As part of this authority, we have found that changes to the implementing regulations are needed to better effectuate the Medicare and Medicaid statutes and overall regulatory enforcement scheme, that is, ensuring providers take all reasonable steps to care for a vulnerable population and help them to ''attain or maintain [their] highest practicable physical, mental, and psychosocial well-being.'' Sections 1819(b)(2) and 1919(b)(2) of the Act. We are making these revisions precisely because currently repeat noncompliance has been an issue, and these changes will, we hope, remedy that problem.

Because CMPs are designed to spur permanent resolution of deficiencies so that facilities achieve and maintain compliance, we believe CMS and the States need flexibility to determine the range of CMPs that can be imposed on facilities that fail to meet the conditions of participation. For example, if a survey identifies isolated noncompliance that occurred prior to the start of the survey and also identifies separate noncompliance that began and continued to occur during the survey, we are currently unable to impose both a PI CMP and a PD CMP, that are within the requisite daily limits to address these two separate occurrences of noncompliance identified during the same survey. In other words, if a survey identified numerous instances of medication administration errors as well as systemic noncompliance with infection control policies, we believe imposing a PI CMP for the medication errors and a PD CMP for the infection control deficiencies, in this general example, could be a more effective enforcement response to both the isolated medication noncompliance incidents from prior to the survey and the current noncompliance with infection control policies. Due to the additional instances of noncompliance identified, a PD CMP that covers the noncompliance with infection control requirements alone may not encourage the facility to sustain compliance with medication administration. Without this type of flexibility, CMS cannot impose remedies that are sufficient to ensure that any systemic issues that caused the noncompliance are permanently corrected. Moreover, we have found that the failure of nursing homes to take the necessary steps to permanently resolve systemic problems increases the probability that deficiencies will recur, progressing to a higher scope and severity that ultimately results in harm or increased harm to residents. For example, if noncompliance occurred on a date prior to the start of a survey, and noncompliance was also identified during the survey, under the current structure, CMS could impose a PD CMP that would start accruing from the first date of noncompliance. Under the new revision, CMS could impose a PI CMP for the noncompliance that occurred prior to the survey, and PD CMP for the noncompliance that was identified during the survey. This will allow CMS to impose a CMP that is commensurate with the actual noncompliance that occurred, rather than having the CMP amount be impacted by the timing of the survey.

We also disagree that there is an issue in the application of CMPs for nursing homes as compared to other providers. CMPs for noncompliance with program participation requirements are not an available remedy for hospitals. Though they are available for home health agencies and hospices, unlike these providers, the NHRA is a nursing home specific statute in which Congress has expressly instructed the Secretary to pay especial attention to nursing home compliance with the standards of participation in order to ensure that

facilities not simply meet the conditions of participation, but also comply with the statutory mandate that nursing homes *must* provide services and activities to ''attain or maintain the highest practicable physical, mental, and psychosocial *well-being* of each resident'' and in such manner and such environment that will ''promote maintenance or enhancement of the quality of life of each resident.'' Sections 1819(b)(1), 1819(b)(2), 1919(b)(1), and 1919(b)(2) of the Act (emphasis added). Other providers have very different conditions for participation and enforcement of those conditions. The revisions in this rule are to ensure that nursing homes comply to the unique requirements for participation for long term care facilities.

Comment: Commenters questioned the necessity of the revisions to impose PD and PI CMPs in the same survey and multiple PI CMPs for the same type of noncompliance. They note that CMS has existing enforcement authority to impose a per day CMP amount up to the regulatory maximum as adjusted by the 2015 Act. As such, the commenter expressed concerns that CMS could use the regulatory revisions to impose multiple CMPs that exceed the daily regulatory maximum.

Response: We thank the commenter for their comment. As noted in the proposed rule and the preamble of this final rule, CMS recognizes that the statute limits the daily amount of a CMP imposition up to the regulatory maximum in accordance with § 488.408, as adjusted by the 2015 Act. Additionally, given that the timing of a revisit survey can vary and potentially result in a disparate CMP total among facilities for similar noncompliance, even when the noncompliance may have resulted in relatively less harm to residents, we believe these revisions would allow for improved consistency in the imposition of CMPs. Also, the regulatory revisions will provide CMS additional flexibility to impose CMPs at an amount that aligns with the severity of the noncompliance, but that does not exceed the statutory and regulatory maximum amount on a given day.

Comment: Many commenters objected to the CMP proposals which they described as an expansion, which the commenters believed may divert a facility's funds away from recruiting and retaining direct care staff to meet the new minimum nursing home staffing requirements that would help improve resident quality of care. Commenters referenced the statements on Improving Safety and Quality in the Nation's nursing homes,[107] which outlined a set of reforms including assuring that every nursing home provides a sufficient number of staff who are adequately trained to provide high-quality care. There is concern with how these CMP enforcement updates will interact with the finalized minimum staffing requirements for long-term care facilities. One commenter also expressed an additional concern that increased financial penalties may lead to additional facility closures and create issues related to access to care.

Response: We thank the commenters for their comments. The ''Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency'' final rule [108] was issued on April 22, 2024. This final rule establishes minimum nurse staffing requirements, which aim to significantly reduce the risk of residents receiving unsafe and low-quality care within LTC facilities. The enforcement of the new staffing requirements will not begin until those requirements are implemented, which is staggered over time; the relevant implementation dates are provided in the final rule. The revisions to the enforcement regulations in this final rule, however, will adjust our ability to impose PD and PI CMPs for noncompliance with any requirement and are not exclusive to the new staffing requirements. CMS has a statutory obligation to assure the enforcement of Federal requirements are adequate to protect the health, safety, welfare and rights of residents. Enforcement remedies, such as CMPs, address noncompliance with any requirement, and these revisions intend to improve our ability to do so in a more targeted and effective manner. We further note that the revisions to the CMP authorities are not intended to cause an increase of facility closures or create any access to care issues. As per § 488.438(f)(2), when choosing to impose a CMP remedy, CMS considers a facility's financial condition, among other factors. CMS remains focused on improving the health and safety of nursing home residents by ensuring quality care and ensuring access to care. Reforming the CMP system can further help to improve the quality and safety of care that residents in SNFs and NFs receive by incentivizing facility violations to be remedied faster.

Comment: CMS received a comment stating concerns that CMS will be assessing more CMPs while suggesting CMS include a limit of $5,000 on projects submitted to the Civil Money Penalty Reinvestment Program (CMPRP). The commenter notes that ''although we understand the importance of CMPs as an enforcement tool, we believe that the combination of these changes will remove even more funding from the nursing home sector at the same that CMS has made it extremely challenging to use those funds for their intended purpose of protecting or improving resident care.''

Response: This comment regarding the CMPRP project limits is outside the scope of this final rule; however, we note that the proposed revisions to §§ 488.430(a) and 488.434(a)(2)(iii) do not impact facilities' ability to apply for or receive grants through the CMPRP for eligible quality improvement programs that benefit residents.

Comment: Commenters also articulated concerns regarding consistency in the survey process, stating, ''survey findings can vary significantly regardless of the actual instances of noncompliance.''

Response: We appreciate the commenters' concerns. However, all surveyors are required to use CMS published protocols and interpretive guidance for the regulatory requirements when assessing a facility's compliance with Federal requirements. Noncompliance citations are based on violations of the regulations, which are based on observations of the nursing home's performance or practices as well as record review and interviews. We acknowledge that there are occasional variations in survey findings due to the unique facts and circumstances of each individual situation. However, while CMPs are imposed based on survey findings, we believe this rule may actually improve CMS' ability to impose CMPs in a more consistent manner nationwide and in a manner that better aligns with the severity of the noncompliance that occurred.

After consideration of public comments, we are finalizing the revisions as proposed. This final rule is effective 60 days after it is published in the **Federal Register**. These requirements will be operationalized beginning March 3, 2025. This will allow CMS to make the corresponding changes in our systems (iQIES) while we are transitioning to a new technology

[107] *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/.*

[108] 89 FR 40876 (May 10, 2024); *https://www.federalregister.gov/documents/2024/05/10/2024-08273/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid.*

platform, and to provide the necessary training to implement these changes.

3. Timing of Enforcement

Sections 1819(h)(2)(A) and 1919(h)(1) and (3) of the Act state that when a facility is found to be in compliance with the requirements but ''. . . as of a previous period, did not meet such requirements,'' the Secretary and the State may impose a CMP for the days that the facility is found out of compliance with the requirements. The regulation at § 488.430(b) states that ''CMS or the State may impose a civil money penalty for the number of days of past noncompliance since the last standard survey, including the number of days of immediate jeopardy.''

As discussed in the proposed rule, due to an increase in the number of complaint surveys being conducted (for example, over 10,000 additional surveys since 2015) and resulting increased enforcement actions, the current regulation may result in an unanticipated limit on CMS's authority to impose remedies for the noncompliance deficiencies identified when the last standard survey was performed. For example, a complaint survey might need to be conducted shortly after a standard survey, not leaving enough time to impose a CMP for deficiencies identified in the first survey before the second survey is concluded because the regulation limits how far back CMS or the State may go when calculating a CMP amount: since the last standard survey. We proposed to revise § 488.430(b) by changing ''since the last standard survey'' to ''since the last three standard surveys.'' We believe this proposed revision aligns with the statutory mandate that the Secretary ensure that enforcement remedies ensure quality care and adequately protect the health and safety of nursing home residents in facilities where the Medicare and/or Medicaid programs pay for services. These proposed revisions are designed to enable CMS or State survey agencies to impose a variety of CMPs for noncompliance, particularly when surveyors have identified deficiencies during one survey that cannot be addressed because, for example, a subsequent survey has taken place. In these situations, it is important for CMS and the State to be able to impose a CMP (per day, per instance, or both), as warranted, to help ensure that the facility's correction is swift and its compliance is permanent. Additionally, as discussed in the proposed rule, limiting the imposition of CMPs for noncompliance that occurred and was cited since the last three standard surveys is more reflective of a facility's current compliance performance and is consistent with current CMS practices of posting survey results from the last three standard surveys and last three years of complaint surveys on Nursing Home Care Compare as well as the Nursing Home Five Star Quality Rating System.

We sought public comments on this proposal and an alternative look-back period that would also ensure CMPs are imposed in a manner that is not dependent on when the next standard survey is conducted. There were no comments regarding an alternative look-back period. The following is a summary of the comments we received and our responses.

Comment: Some commenters supported the revision to § 488.430(b) that authorizes the imposition of CMPs for noncompliance that was previously cited since the last three standard surveys.

Response: We appreciate the support for this proposal and thank the commenters for their comments.

Comment: We also received comments questioning how this revision would be used to enforce new regulations such as the ''Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency'' final rule.[109]

Response: As stated previously, the enforcement of the new requirements for minimum staffing standards will not begin until the requirements become effective; the relevant effective and implementation dates are stated in the final rule. The revisions in this final rule will enable CMS to look-back three standard surveys for any noncompliance that was previously cited but no CMP was yet imposed and will allow for imposition of CMPs. The revision's intent is not to instruct that surveyors look-back to the last three standard surveys for noncompliance that was not previously cited. The revisions will not impact the new staffing regulations any differently than they impact CMS' ability to impose CMPs for any other noncompliance where the imposition of a CMP is warranted.

Comment: We received comments voicing concerns about how the proposed revisions would be affected by the current survey backlog. The commenters are concerned that facilities affected by the survey backlog should not be penalized with a lengthy lookback period when they have no ability to change it. Additionally, in the current environment where some States are using contracted surveyors and there is inconsistency, the commenter believes it is inequitable to apply a national standard that could penalize some States.

Response: We thank the commenters for their concerns, but we disagree. We wish to clarify that the proposal to look-back to the last three standard surveys pertains only to CMPs issued as part of CMS' oversight and enforcement of regulatory noncompliance that occurred and was specifically cited in a previous period, but no CMP was yet imposed. This regulatory revision is not intended to create a new ability for surveyors to investigate and cite potential or alleged noncompliance that occurred during the proposed look-back period that had not already been cited and included on a Statement of Deficiencies. The intent of the proposed revision is to ensure the imposition of CMPs, when warranted as an enforcement response, is equitable and that all providers, regardless of their location will be subject to the same amount of enforcement in accordance with the CMP Analytic Tool.[110] This revision allows CMS to impose a variety of CMPs, as necessary, for regulatory noncompliance that occurred in a previous period even if a subsequent survey has taken place. We do note however, that the current regulatory scheme still requires that CMS investigate any received complaints, without any temporal limitation on the specific alleged deficiencies complained of, and thus the possibility of investigations into allegations during the proposed look-back period is possible. *See* 42 CFR 488.308(f).

After consideration of public comments we received and for the reasons discussed earlier in this section and in the proposed rule, we are finalizing the proposed revision with two modifications at § 488.430(b). First, we are replacing ''past noncompliance'' with ''previously cited noncompliance'' as we are concerned that stakeholders are confusing the reference to past noncompliance with noncompliance that occurred and was already previously cited on a Statement of Deficiencies that was issued to a provider. Therefore, as discussed earlier in this section, ''previously cited noncompliance'' means noncompliance that was already previously cited on a Statement of Deficiencies that was issued to a provider for a survey that occurred since the last three standard

[109] 89 FR 40876 (May 10, 2024); *https://www.federalregister.gov/documents/2024/05/10/2024-08273/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid.*

[110] *https://qcor.cms.gov/report_select.jsp?which=0.*

surveys but a CMP has not yet been imposed. Also, as previously stated, this regulatory revision is not intended to create a new ability for surveyors to investigate and cite potential or alleged noncompliance that occurred during the proposed look-back period that had not already been cited and included on a Statement of Deficiencies.

Second, we proposed that CMS or the State may impose a civil money penalty for the ''number of days'' of previously cited noncompliance, but are adding, ''or instances,'' as a conforming change to specify that either a PD or PI CMP, or both, may be imposed for previously cited noncompliance, consistent with the revisions that are finalized in this rule. This final rule is effective 60 days after it is published in the **Federal Register**. These requirements will be operationalized beginning March 3, 2025. This will allow CMS to make the corresponding changes in our system while we are transitioning to a new technology platform (iQIES), and to provide the necessary training to implement these changes.

X. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 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 solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Using the following format describe the information collection requirements that are in each section.

A. Information Collection Requirements (ICRs)

1. ICRs Regarding the Skilled Nursing Facility Value-Based Purchasing Program

We are not removing or adding any new or revised SNF VBP measure-related requirements or burden in this rule. Consequently, this final rule does not set out any new SNF VBP-related collections of information that would be subject to OMB approval under the authority of the PRA.

2. 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.

As stated in section VI.C.3. of the proposed rule and VII.C.3. of this final rule, we proposed to adopt four new items as standardized patient assessment data elements under the SDOH category and modify one item collected as a standardized patient assessment data element under the SDOH category beginning with the FY 2027 SNF QRP. In section VI.E.3. of the proposed rule and VII.E.3. of this final rule, we also proposed that SNFs participating in the SNF QRP, be required to participate in a validation process. Specifically, we proposed adopting a similar validation process for the SNF QRP that we adopted for the SNF VBP beginning with the FY 2027 SNF QRP.

As stated in section VI.C.3. of the proposed rule and section VII.C. of this final rule, we proposed to adopt four new items as standardized patient assessment data elements under the SDOH category and modify one item collected as a standardized patient assessment data element under the SDOH category beginning with the FY 2027 SNF QRP. The proposed new and modified items would be collected using the MDS. The MDS, in its current form, has been approved under OMB control number 0938–1140. Four items would need to be added to the MDS at admission to allow for collection of these data, and one would be modified. Additionally, as stated in section VI.E.2. of the proposed rule and section VII.E.2. of this final rule, we are finalizing our proposal to require SNFs to collect and submit data on the four new and one modified SDOH standardized patient assessment data elements at admission beginning October 1, 2025. However, we are finalizing a modification to the data specifications of the new and modified SDOH items so that they exclude any SNF residents who, immediately prior to their hospitalization that preceded a new SNF stay, resided in a NF for at least 366 continuous days. SNFs can monitor the MDS 3.0 Technical Information web page at *https://www.cms.gov/medicare/quality/nursing-home-improvement/minimum-data-set-technical-information* for updates.

The net result of collecting four new items at admission and modifying the Transportation item (including the modification that this item be collected at admission only, rather than at admission and discharge) is an increase of 0.9 minutes or 0.015 hour of clinical staff time at admission [(4 items × 0.005 hour) minus (1 item × 0.005 hour)]. We identified the staff type based on past SNF burden calculations, and our assumptions are based on the categories generally necessary to perform an assessment. We believe the new and modified items will be completed equally by a Registered Nurse (RN) and Licensed Practical and Licensed Vocational Nurse (LPN/LVN). However, individual SNFs determine the staffing resources necessary.

For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates.[111] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 34. We established a composite cost estimate using our adjusted wage estimates. The composite estimate of $65.31/hr was calculated by weighting each hourly wage equally [($78.10/hr × 0.5) plus ($52.52/hr × 0.5) = $65.31].

[111] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

TABLE 34: U.S. Bureau of Labor and Statistics' May 2022 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Median Hourly Wage ($/hr)	Other Indirect Costs and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Registered Nurse (RN)	29-1141	$39.05	$39.05	$78.10
Licensed Practical and Licensed Vocational Nurse (LPN/LVN)	29-2061	$26.26	$26.26	$52.52

We estimate that the burden and cost for SNFs for complying with requirements of the FY 2027 SNF QRP will increase under this requirement to collect and submit these new and modified items on the MDS for each resident at admission. Therefore, we are providing a revised estimate of burden and cost from what we estimated in section IX.A.2. of the proposed rule. Using FY 2023 data, we estimate 199,856 5-day PPS assessments would be impacted by the modification within the MDS data specifications in order to decrease the burden of capturing this information on any SNF residents who, immediately prior to their hospitalization that preceded a new SNF stay, resided in a NF for at least 366 continuous days. As a result, we estimate a new total of 1,766,806 admissions. Our estimate of planned discharge assessments is not changing and remains at 754,287 planned discharges. We are changing the number of SNFs based on more recent information and more recent provider to CBSA matching from 15,393 SNFs annually to 15,477 SNFs annually. The result is a revised increase of 30,565.41 hours in burden for all SNFs [(1,766,806 5-day PPS assessments × 0.02 hour for the four new SDOH items) minus [(199,856 5-day PPS assessments × 0.005 hour for the modified Transportation item) plus (754,287 planned discharges × 0.005 hour)]], reflecting a reduction of 4,996.41 hours from the estimate in the proposed rule (89 FR 23424). Given 0.02 hour at $65.31 per hour to complete an average of 114 5-day PPS assessments per provider per year minus the sum of 0.005 hour at $65.31 per hour to complete an average of 12.91 5-day PPS assessments per provider per year and 0.005 at $65.31 per hour to complete an average of 49 Planned Discharge assessments, we estimate the total cost would be increased by $128.98 per SNF annually, or $1,996,226.60 for all SNFs annually, a reduction of $21.90 per SNF annually or $326,314.88 for all SNFs annually from the estimate in the proposed rule (89 FR 23424). The increase in burden will be accounted for in a revised information collection request under OMB control number (0938–1140). The required 60-day and 30-day notices would publish in the **Federal Register** and the comment periods will be separate from those associated with this rulemaking.

In summary, under OMB control number (0938–1140), as a result of finalizing the policies in this final rule, we estimate the SNF QRP will result in an overall increase of 30,565.41 hours annually for 15,477 SNFs. The total revised cost increase related to this information collection is approximately $1,996,226.60 and is summarized in Table 35.

TABLE 35: Estimated Burden Associated with OMB Control Number 0938-1140 (CMS-10387) Related to the SNF QRP

Requirement	Per SNF		All SNFs	
	Change in annual burden hours	Change in annual cost	Change in annual burden hours	Change in annual cost
Proposed Estimated Change in Burden associated with Collecting Four New Items as Standardized Patient Assessment Data Elements and Modifying One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2027 SNF QRP	+2.31	+$150.88	+35,561.81	+$2,322,541.48
Revised Estimated Change in Burden associated with Collecting Four New Items as Standardized Patient Assessment Data Elements and Modifying One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2027 SNF QRP	+1.97	+$128.98	+30,565.41	+$1,996,226.60
Difference between Proposed and Final Estimates	-0.34	-$21.90	-4,996.41	-$326,314.88

We invited public comments on the proposed information collection requirements. We have summarized the comments we received in section VII.E.2 of this final rule and provided responses. After careful consideration of the public comments we received, we are finalizing our proposal with modification as stated above.

3. ICRs Regarding the Minimum Data Set (MDS) Beginning October 1, 2025

The MDS is used for meeting the SNF Requirements of Participation, requirements under the SNF QRP, and for payment purposes under the SNF PPS. As outlined in the FY 2019 SNF PPS final rule (83 FR 39165 through 39265), several MDS items are not needed in case-mix adjusting the per diem payment for PDPM. However, they were not accounted for in the FY 2019 SNF PPS final rule. Therefore, we are removing these items from the 5-day Medicare-required assessment beginning October 1, 2025. We have provided an estimate of the reduction in burden here and in Table 36. The items to be removed are:

- O0400.A.1. Speech-Language Pathology and Audiology Services; Individual minutes.
- O0400.A.2. Speech-Language Pathology and Audiology Services; Concurrent minutes.
- O0400.A.3. Speech-Language Pathology and Audiology Services; Group minutes.
- O0400.A.3A. Speech-Language Pathology and Audiology Services; Co-treatment minutes.
- O0400.A.4. Speech-Language Pathology and Audiology Services; Days.
- O0400.A.5. Speech-Language Pathology and Audiology Services; Therapy start date.
- O0400.A.6. Speech-Language Pathology and Audiology Services; Therapy end date.
- O0400.B.1. Occupational Therapy; Individual minutes.
- O0400.B.2. Occupational Therapy; Concurrent minutes.
- O0400.B.3. Occupational Therapy; Group minutes.
- O0400.B.3A. Occupational Therapy; Co-treatment minutes.
- O0400.B.4. Occupational Therapy; Days.
- O0400.B.5. Occupational Therapy; Therapy start date.
- O0400.B.6. Occupational Therapy; Therapy end date.
- O0400.C.1. Physical Therapy; Individual minutes.
- O0400.C.2. Physical Therapy; Concurrent minutes.
- O0400.C.3. Physical Therapy; Group minutes.
- O0400.C.3A. Physical Therapy; Co-treatment minutes.
- O0400.C.4. Physical Therapy; Days.
- O0400.C.5. Physical Therapy; Therapy start date.
- O0400.C.6. Physical Therapy; Therapy end date.
- O0400.E.2. Psychological Therapy; Days.

The net result of removing the collection of these items is a decrease of 6.6 minutes of clinical staff time at admission. We believe that these items are completed equally by a RN and LPN/LVN. Individual SNFs determine the staffing resources necessary.

For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the BLS May 2022 National Occupational Employment and Wage Estimates.[112] To account for other indirect costs and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 36. We

[112] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

established a composite cost estimate using our adjusted wage estimates. The composite estimate of $65.31/hr was calculated by weighting each hourly wage equally [($78.10/hr × 0.5) plus ($52.52/hr × 0.5) = $65.31].

Using FY 2023 data, we estimate a total of 1,966,662 admissions to 15,477 SNFs annually. This equates to a decrease of 216,332.82 hours in burden for all SNFs. Given 0.11 hour at $65.31 per hour to complete an average of 127 5-day PPS assessments per provider per year, we estimate the total cost will be decreased by $912.88 per SNF annually, or $14,128,696.47 for all SNFs annually.

TABLE 36: Estimated SNF Reduction in Burden Associated with OMB Control Number 0938-1140 (CMS-10387) Related to the Minimum Data Set Collection and Submission

Requirement	Per SNF		All SNFs	
	Change in annual burden hours	Change in annual cost	Change in annual burden hours	Change in annual cost
Removal of MDS items O0400.A, O0400.B, O0400.C, and O0400.E effective October 1, 2025	-14.05	-$917.87	-216,332.82	-$14,128,696.47
Revised Estimated Change in Burden associated with Removal of MDS items O0400.A, O0400.B, O0400.C, and O0400.E effective October 1, 2025	-13.98	-$912.88	-216,332.82	-$14,128,696.47
Difference between Proposed and Final Estimates	+0.07	+$4.99	0.00	$0.00

As noted previously in this section of the final rule, we did not formally propose the changes to the MDS. Rather we used this opportunity to provide SNFs the information collection requirements associated with a change that was not accounted for in the FY 2019 SNF PPS final rule. We received a limited number of comments about this notification, and are providing a summary of those here, with our responses.

Comment: Three commenters supported the removal of several MDS items that are not needed in case-mix adjusting the per diem payment for PDPM but were not accounted for in the 2019 SNF PPS. These commenters acknowledged CMS' efforts to reduce provider burden. One of these commenters appreciated that CMS was not removing the Therapy items in Section O on the PPS Discharge Assessment that collect the number of physical, occupational, and speech-language pathology and audiology minutes provided since the start date of the resident's most recent Medicare Part A stay.

Response: We appreciate the support from commenters and agree that removing the requirement to collect the data at the time of the Medicare Part A admission, while retaining the requirement to collect the data at the time of discharge from the Medicare Part A stay, balances the need to monitor the data, while also minimizing provider burden.

Comment: Several commenters urged CMS not to remove these items from the 5-day PPS assessment because it gave the appearance that rehabilitation therapy was being devalued and CMS would not be able to track functional outcomes. Two of these commenters suggested that there are not enough safeguards in place to ensure patients receive the appropriate skilled therapy they need to achieve desired outcomes, and one of these commenters suggested the therapy minutes items provided a trigger for nursing staff to consider whether therapy should be implemented. One of the commenters stated it is too early to eliminate the items from the MDS given that PDPM was implemented approximately 5 years ago. Other commenters noted that they were concerned that without these minutes documented, residents may only receive ''low'' skilled therapies. Finally, one of the commenters stated collection of these items allows CMS to ensure that when they make a therapy payment, therapy services are delivered.

Response: We acknowledge the commenters concerns, and it is not our intent to devalue therapy. In fact, functional outcomes are a key component of our SNF QRP measure set, including the Discharge Function Score measure that was adopted in the FY 2024 SNF PPS final rule (88 FR 53233 through 53243). As we stated at the time, 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 (88 FR 53234). We take the quality of care residents receive in SNFs seriously, and monitor the impact of policy decisions, including adding or removing quality measures and assessment items. We do not believe it is necessary to retain these items on the 5-day PPS admission assessment to trigger a decision as to whether therapy services are needed. SNFs have a responsibility to develop and implement a baseline care plan for each resident that includes the instructions needed to provide effective and person-centered care of the resident that meet professional standards of quality care (§ 483.21(a)). Additionally, the facility must develop and implement a comprehensive person-centered care plan for each resident (§ 483.21(b)) that has been prepared by an interdisciplinary team (§ 483.21(b)(2)(ii)). The comprehensive person-centered care plan must include the services to be furnished in order to

attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § 483.24, § 483.25, or § 483.40.

We believe retaining the therapy items on the PPS discharge assessment will achieve the same goals, but with less burden on SNFs. Specifically, we will still collect the total number of individual, concurrent, group, and cotreatment therapy minutes by discipline, as well as the number of days of each therapy discipline a resident received over the course of their Part A stay. Therefore, we will be able to ensure there is no significant change in the intensity of therapy a resident receives and understand the relationship between the delivery of therapy services with functional outcomes.

Regarding the comment that residents may receive ''low'' skilled therapies, we are unclear how to interpret what the commenter may have been referring to as ''low'' skilled therapies. Medicare only has one definition of skilled therapy,[113] and the MDS RAI manual has consistently provided guidance to SNFs that the number of days and minutes recorded on the MDS may only include the skilled therapy treatment time. And, as noted previously in this final rule, SNFs have a responsibility to provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care (42 CFR 483.25). Regarding the comment that CMS will be unable to ensure that when they make a therapy payment, therapy services are delivered, we remind commenters that the SNF PPS does not use the number of therapy minutes to determine SNF payment. The SNF PDPM was implemented on October 1, 2019, replacing the Resource Utilization Groups (RUG) which was dependent on Section O for therapy minutes. The PDPM consists of five case-mix adjust components, all based on data-driven, interested parties-vetted patient characteristics, rather than therapy utilization minutes.

Comment: Two commenters urged CMS to continue tracking the therapy start date, which is only collected on the 5-day PPS assessment, since this datapoint may be useful for research on best practices and functional outcomes, including determining whether or how delays in the start of rehabilitation care may impact patient outcomes and discharge disposition.

Response: We thank these commenters for their input. However, CMS no longer uses start dates because the data are not needed for Federal governmental purposes. As we noted in the FY 2019 SNF PPS final rule, we closely monitor service utilization, payment, and quality trends when evaluating patient care outcomes.

Comment: One commenter stated the therapy start date is necessary to retain since it is used in calculating the Discharge Function Score measure, and requested CMS clarify how this measure would be calculated without the data point.

Response: The Discharge Function Score measure does not use the O0400A5 Speech-Language Pathology and Audiology Services Start date, the O0400B5 Occupational Therapy Services Start date, or the O0400C5 Physical Therapy Services Start date in the calculation. Therefore, these data will have no effect on the calculation of the measure scores.

Comment: One commenter recognized that removing items from the MDS reduces administrative burden but noted that CMS overestimated the amount of time that it takes to track therapy utilization using the MDS tool and did not agree that the collection and submission of these items takes more than 6 minutes of staff time per patient at admission.

Response: The commenter did not provide specific information to support why they believe the burden was overestimated. The 6.6 minutes per MDS is based on past MDS burden calculations and represents the time it takes to encode the MDS. Our assumptions for staff type were based on the categories generally necessary to perform an assessment, and subsequently encode it, and is consistent with past collection of information estimates.

After careful consideration of the public comments we received, we are finalizing our intention to remove the Section O0400 items identified above from the MDS.

4. ICRs Regarding the Proposal for SNFs To Participate in a Validation Process

In section VI.E.3. of the proposed rule, we proposed to require SNFs to participate in a validation process beginning with the FY 2027 SNF QRP. We provided an estimate of burden in Table 37, and noted that the increase in burden will be accounted for in a new information collection request.

As stated in section VI.E.3(a) of the proposed rule and section VII.E.3(a) of this final rule, we proposed to require SNFs to participate in a validation process for assessment-based measures beginning with the FY 2027 SNF QRP. We identified the staff type based on past SNF burden calculations, and our assumptions are based on the categories generally necessary to perform an assessment. We believe that the medical records will be collected and submitted by a Medical Records and Health Information Technologist and Medical Registrar (HIT/MR). However, individual SNFs determine the staffing resources necessary. For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the BLS May 2022 National Occupational Employment and Wage Estimates.[114] To account for other indirect costs and fringe benefits, we doubled the hourly wage to establish an adjusted wage estimate of $56.02/hr. These amounts are detailed in Table 37.

[113] Medicare Benefit Policy Manual 100–02; Chapter 8—Coverage of Extended Care (SNF) Services Under Hospital Insurance; Section 30.2—Skilled Nursing and Skilled Rehabilitation Services.

[114] *https://www.bls.gov/oes/current/oes_nat.htm.*

TABLE 37: U.S. Bureau of Labor and Statistics' May 2022 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Median Hourly Wage ($/hr)	Other Indirect Costs and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Medical Records and Health Information Technologists and Medical Registrars (HIT/MR)	29-9021	$28.01	$28.01	$56.02

We proposed that our validation contractor will select, on an annual basis, up to 1,500 SNFs and up to 10 medical records from each of the selected SNFs. We proposed that the selected SNFs will have the option to submit digital or paper copies of the requested medical records to the validation contractor.

For the purposes of burden estimation, we assume all the activities associated with the SNF QRP validation process will be completed by a HIT/MR. For selected SNFs utilizing electronic health records (EHR), we anticipate an increase of 3 hours up to 7.5 hours of HIT/MR time per SNF to submit a sample of up to 10 records. For selected SNFs that do not utilize EHRs, we anticipate an increase of 5 hours up to 12.5 hours of HIT/MR time per SNF to submit a sample of up to 10 records. Additionally, SNFs that do not utilize EHRs may incur printing and shipping costs if they are unable to submit the records via an electronic portal, and for these SNFs, we estimate the cost to print and ship a sample of up to 10 records would range from $842.67 up to $4,114.35.

We also anticipate that a sample of up to 10 medical records will consist of SNF stays that vary in length of stay. We estimate the length of stay for each of the selected medical records could range from 20 days (or less) up to or exceeding 366 days. For purposes of our burden estimate, we anticipate the average sample of up to 10 medical records will be distributed among the possible lengths of stay (that is, approximately 40 percent of stays or 4 stays would be 1 to 30 days, 40 percent of stays or 4 stays would be 31 to 100 days, and 20 percent of stays or 2 stays would last 101 to 366 or more consecutive days). We also estimate that approximately 85 percent of nursing homes utilize some form of EHRs.[115] Therefore, we estimate the total cost to submit up to 10 medical records will range between $335,699.85 and $477,368.10 for all 1,500 SNFs selected, depending on the length of stay of the sample medical records and whether the SNFs use an EHR. We also estimate that total cost to submit up to 10 medical records will range between $263.29 [$335,699.85/(1,500 × 0.85 SNFs)] and $2,121.64 [$477,368.10/(1,500 × 0.15 SNFs)] per SNF selected depending on the length of stay of the sample of medical records and whether the SNF uses an EHR. On average we estimate the total cost will be increased by $813,067.95 for all 1,500 selected SNFs [[($263.29 × (1,500 × 0.85)] plus [$2,121.64 × (1,500 × 0.15)]] and $542.05 per selected SNF ($813,067.95/1,500 SNFs) annually.

In section VI.E.3(b). of the proposed rule and section VII.E.3.(b) of this final rule, we proposed to require SNFs to participate in a validation process for Medicare fee-for-service claims-based measures beginning with the FY 2027 SNF QRP. All Medicare fee-for-service claims-based measures are already reported to the Medicare program for payment purposes, and therefore there is no additional burden for SNFs.

TABLE 38: Estimated SNF Burden for a Validation Process (OMB Control Number 0938-NEW, CMS-10895)

Requirement	Per Selected SNF		All Selected SNFs	
	Change in annual burden hours	Change in annual cost	Change in annual burden hours	Change in annual cost
Participation in a Validation Process	+5.12	+$542.05	+7,680	+$813,067.95

We invited public comments on the proposed information collection requirements. We have summarized the comments we received in section VII.E.3 of this final rule and provided responses. After careful consideration of the public comments received, and for the reasons outlined in this section of the final rule and our comment responses, we are finalizing the requirements as proposed.

5. ICRs Regarding Nursing Home Enforcement

This rule finalizes our proposals to expand and strengthen enforcement processes to increase CMS' flexibility when imposing CMPs. While Omnibus Budget Reconciliation Act of 1987 (OBRA '87) exempts nursing home enforcement requirements from the PRA, the anticipated increase in penalties due to facility noncompliance being cited are quantified in the regulatory impact analysis (RIA) section of this preamble.

[115] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6591108/#:~:text=In%20a%20nationwide%20sample%2C%20we,EHR%20adoption%20by%20nursing%20facilities.*

XI. Economic Analyses

A. Regulatory Impact Analysis

1. Statement of Need

a. Statutory Provisions

This rule updates the FY 2025 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, we proposed and are finalizing several updates beginning with the FY 2027 SNF QRP as described in section VII. of this final rule. Specifically, we are finalizing our proposal to collect four new items as standardized patient assessment data elements under the SDOH category and modify one item collected as a standardized patient assessment data element under the SDOH category in the MDS beginning with the FY 2027 SNF QRP with one modification. Specifically, we are finalizing the data specifications of the new and modified SDOH items so that they exclude any SNF residents who, immediately prior to their hospitalization that preceded a new SNF stay, resided in a NF for at least 366 continuous days. We believe these new and modified items advance the CMS National Quality Strategy Goals of equity and engagement by encouraging meaningful collaboration between healthcare providers, caregivers, and community-based organizations to address SDOH prior to discharge from the SNF. We also are finalizing our proposal to adopt a validation process for the SNF QRP beginning with the FY 2027 SNF QRP with modification. Specifically, we are finalizing that our validation contractor will select, on an annual basis, up to 1,500 SNFs that submit at least one MDS record in the FY 2 years prior, rather than the CY 3 years prior, to the applicable FY SNF QRP. We believe this validation process satisfies section 111(a)(4) of Division CC of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) which requires that the data submitted under the SNF QRP (section 1888(e)(6) of the Act) be subject to a validation process. We are also finalizing revisions to our regulation at § 413.360.

With respect to the SNF VBP Program, this final rule updates SNF VBP Program requirements for FY 2025 and subsequent years. 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 final rule includes numerical values of the performance standards for the FY 2027 program year for the SNFRM, SNF HAI, Total Nurse Staffing, Nursing Staff Turnover, Falls with Major Injury (Long-Stay), DC Function, and Long Stay Hospitalization measures; and numerical values of the performance standards for the FY 2028 program year for the DTC PAC SNF and SNF WS PPR measures. We are also required under section 1888(h)(1)(C) of the Act to establish a minimum number of measures that apply to a facility for the applicable performance period. Therefore, we are finalizing the measure minimum for the FY 2028 program year and subsequent program years, which will be the same as the measure minimum we previously finalized for the FY 2027 program year (88 FR 53303).

b. Discretionary Provisions

In addition, this final rule includes the following discretionary provisions:

(1) SNF Market Basket Adjustment

We are rebasing and revising the SNF market basket to reflect a 2022 base year. Since the inception of the SNF PPS, the market basket used to update SNF PPS payments has been periodically rebased and revised to reflect more recent data. We last rebased and revised the market basket applicable to the SNF PPS in the FY 2022 SNF PPS final rule (86 FR 42444 through 42463) where we adopted a 2018-based SNF market basket.

Given changes to the industry in recent years and public comments about the timeliness of the weights, we have been monitoring the Medicare cost report data to determine if a more frequent rebasing schedule than our standard schedule (which has generally been about every 4 years) is necessary. In light of this analysis, we are incorporating data that is more reflective of recent SNF expenses.

(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 each year with the actual SNF market basket increase in that year. In evaluating the data for FY 2023, we found that the forecast error for that year was 1.7 percentage points, exceeding the 0.5 percentage point threshold we established in regulation to trigger a forecast error adjustment. Given that the forecast error exceeds the 0.5 percentage point threshold for FY 2023, current regulations require that the SNF market basket percentage increase for FY 2025 be adjusted upward by 1.7 percentage points to account for forecasting error in the FY 2023 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 rule, we are finalizing several substantive changes to the PDPM ICD–10 code mapping.

2. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094, entitled ''Modernizing Regulatory Review'' (April 6, 2023), 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), 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). Executive Order 14094, entitled ''Modernizing Regulatory Review'', amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended 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 $200 million or more in any 1 year (adjusted every 3 years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, 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) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A RIA must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) ($200 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) as measured by the $200 million or more in any 1 year, and hence also a major rule under subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). Accordingly, we have prepared a RIA that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed the proposed regulations, and the Departments have provided the following assessment of their impact.

3. Overall Impacts

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2024 (88 FR 53200). We estimate that the aggregate impact will be an increase of approximately $1.4 billion (4.2 percent) in Part A payments to SNFs in FY 2025. This reflects a $1.4 billion (4.2 percent) increase from the update to the payment rates. We noted in the proposed rule that these impact numbers do not incorporate the SNF VBP Program reductions that we estimate would total $187.69 million in FY 2025. 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 2024 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 2025. The impact to Medicare is included in the total column of Table 39. The annual update in this rule applies to SNF PPS payments in FY 2025. 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 2025 SNF PPS payment impacts appear in Table 39. Using the most recently available claims data, in this case FY 2023 we apply the current FY 2024 case-mix indices (CMIs), wage index and labor-related share value to the number of payment days to simulate FY 2024 payments. Then, using the same FY 2023 claims data, we apply the FY 2025 CMIs, wage index and labor-related share value to simulate FY 2025 payments. We tabulate the resulting payments according to the classifications in Table 39 (for example, facility type, geographic region, facility ownership), and compare the simulated FY 2024 payments to the simulated FY 2025 payments to determine the overall impact. The breakdown of the various categories of data in Table 39 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 changes contained in this final rule 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 update to the SNF PPS wage index due to adopting the updated census data and revised CBSAs in OMB Bulletin 23–01. This represents the effect of only the adoption of the revised CBSAs, independent of the effect of the annual update to the wage index.
- The fourth column shows the effect of the annual update to the wage index, including the updates to the labor related-share discussed in section VI.A of this final rule. 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 change.
- The fifth column shows the effect of all of the changes on the FY 2025 payments. The update of 4.2 percent is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 4.2 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 39, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes in this rule, rural providers will experience a 5.1 percent increase in FY 2025 total payments.

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TABLE 39: Impact to the SNF PPS for FY 2025

Impact Categories	Number of Facilities	Census Data Update	Update Wage Data	Total Change
Group				
Total	15,477	0.0%	0.0%	4.2%
Urban	11,202	0.0%	-0.2%	4.1%
Rural	4,275	-0.1%	0.9%	5.1%
Hospital-based urban	364	0.1%	-1.0%	3.2%
Freestanding urban	10,838	0.0%	-0.1%	4.1%
Hospital-based rural	376	-0.1%	0.8%	4.9%
Freestanding rural	3,899	-0.1%	1.0%	5.1%
Urban by region				
New England	715	-0.3%	-1.1%	2.7%
Middle Atlantic	1,469	-1.0%	-0.9%	2.3%
South Atlantic	1,906	0.6%	1.0%	5.8%
East North Central	2,174	1.0%	-0.6%	4.6%
East South Central	568	0.4%	2.3%	7.0%
West North Central	950	0.0%	0.4%	4.6%
West South Central	1,473	0.2%	0.9%	5.4%
Mountain	541	0.1%	1.5%	5.8%
Pacific	1,401	-0.1%	-1.4%	2.6%
Outlying	5	0.0%	-2.5%	1.5%
Rural by region				
New England	120	0.6%	-1.4%	3.4%
Middle Atlantic	226	-0.7%	3.8%	7.4%
South Atlantic	532	-0.1%	0.4%	4.5%
East North Central	897	-0.1%	0.5%	4.6%
East South Central	475	-0.1%	1.6%	5.8%
West North Central	990	0.0%	1.1%	5.3%
West South Central	752	-0.1%	1.0%	5.1%
Mountain	195	0.0%	1.8%	6.0%
Pacific	87	0.0%	-0.7%	3.5%
Outlying	1	0.0%	0.0%	4.2%
Ownership				
For profit	10,937	0.0%	0.0%	4.1%
Non-profit	3,513	0.1%	0.1%	4.3%
Government	1,027	-0.1%	0.6%	4.8%

Note: The Total column includes FY 2025 SNF market basket update of 4.2 percent. The values presented in Table 39 may not sum due to rounding.

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5. Impacts for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) for FY 2027

Estimated impacts for the SNF QRP are based on analysis discussed in section XI. of the 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 stated in section VII.C.3. of this final rule, we are finalizing our proposal to adopt four new items as standardized patient assessment data elements under the SDOH category and modify the Transportation item collected as a standardized patient assessment data element under the SDOH category beginning with residents admitted on October 1, 2025, for the FY 2027 SNF QRP. However, we are finalizing a modification to the data specifications of the new and modified SDOH items so that they exclude any SNF residents who, immediately prior to their hospitalization that preceded a new SNF stay, resided in a NF for at least 366 continuous days.

Although the increase in burden for collecting four new SDOH items and the modified Transportation item via the MDS for each resident at admission only will be accounted for in a revised information collection request under OMB control number (0938–1140), we are providing revised impact information as reflected in Table 40. As discussed in section X.A.2. of this final rule, while the net result of these finalized new and modified SDOH items will increase the burden, the burden of the modified Transportation item will decrease slightly as we are finalizing that SNFs will be required to collect this item at admission only, rather than at admission and discharge as is currently required. With 1,766,806 admissions to and 754,287 planned discharges from 15,477 SNFs annually, we estimate an annual burden increase of

30,565.41hours [(1,766,806 5-day PPS assessments × 0.02 hour for the four new SDOH items) minus [(199,856 5-day PPS assessments × 0.005 hour for the modified Transportation item) plus (754,287 planned discharges × 0.005 hour)]], reflecting a reduction of 4,996.41 hours from the estimate in the proposed rule (89 FR 23424). For each SNF, we estimate an annual burden increase of 1.97 hours (30,565.41hours/15,477 SNFs) at an additional cost of $128.98 ($1,996,226.60 total burden/15,477 SNFs).

As stated in section VII.E.3. of this final rule, we also are finalizing our proposal with modification to require SNFs participating in the SNF QRP to participate in a validation process that will apply to data submitted using the MDS and SNF Medicare fee-for-service claims. Specifically, we are finalizing our proposal with modification to adopt a validation process for the SNF QRP, similar to the process that we adopted for the SNF VBP, beginning with the FY 2027 SNF QRP. This validation process is in accordance with section 111(a)(4) of Division CC of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) which requires that the measures and data submitted under the SNF QRP Program (section 1888(e)(6) of the Act) be subject to a validation process.

In section VII.E.3(a). of this final rule, we are finalizing our proposal to require SNFs to participate in a validation process for assessment-based measures beginning with the FY 2027 SNF QRP with two modifications. First, as discussed in section VII.E.3.(a) of this final rule, we are finalizing that our validation contractor will select, on an annual basis, up to 1,500 SNFs that submit at least one MDS record in the FY 2 years prior, rather than the CY 3 years prior, to the applicable FY SNF QRP. We are also finalizing regulation text at § 413.360(g)(1)(i) that reflects this new policy. Second, we are modifying the regulation text at § 413.360(g)(1)(iii) to correct a minor technical error, so it properly cross-references paragraph (g)(1) instead of paragraph (g)(2). Our validation contractor will select, on an annual basis, up to 1,500 SNFs and request that each SNF selected for the validation process submit up to 10 medical records. Although the increase in burden will be accounted for in a new information collection request, we are providing impact information. We estimated the burden per selected SNF will range from 3 hours up to 7.5 hours for SNFs utilizing electronic health records and 5 hours up to 12.5 hours for SNFs who do not utilize electronic health records.

We also anticipated that a sample of 10 medical records will consist of SNF stays that vary in length of stay. We estimated the length of stay for each of the selected medical records could range from 1 day up to or exceeding 366 days. We also estimated that approximately 85 percent of nursing homes utilize some form of electronic health records (EHR),[116] and will not incur the costs of printing and shipping records. However, selected SNFs who do not utilize EHRs may incur printing and shipping costs if they are unable to submit the records via an electronic portal, and we estimate the cost to print and ship a sample of up to 10 records will range between $842.67 up to $4,114.35. Therefore, depending on the length of stay of the sample and whether the selected SNF uses an EHR, we estimated the total cost to submit medical records will range between $335,699.85 and $477,368.10 for all 1,500 selected SNFs and $263.29 [$335,699.85/(1,500 × 0.85 SNFs)] and $2,121.64 [$477,368.10/(1,500 × 0.15 SNFs)] per selected SNF. On average, we estimated the total cost will increase by $813,067.95 for all 1,500 selected SNFs [[($263.29 × (1,500 × 0.85)] plus [$2,121.64 × (1,500 × 0.15)]] and $542.05 per selected SNF ($813,067.95/1,500 SNFs) annually.

In section VII.E.3(b). of this final rule, we are finalizing our proposal to require SNFs to participate in a validation process for Medicare fee-for-service claims-based measures beginning with the FY 2027 SNF QRP.

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[116] *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6591108/#:~:text=In%20a%20nationwide%20sample%2C%20we,EHR%20adoption%20by%20nursing%20facilities.*

TABLE 40: Estimated Impacts for the FY 2027 SNF QRP

Estimated burden for the FY2027 SNF QRP	Per SNF		All SNFs	
	Estimated change in annual burden hours	Estimated change in annual cost	Estimated change in annual burden hours	Estimated change in annual cost
Proposed Estimated Change in Burden associated with Collecting Four New Items as Standardized Patient Assessment Data Elements and Modifying One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2027 SNF QRP	+2.31	+$150.88	+35,561.81	+$2,322,541.48
Revised Estimated Change in Burden associated with the Collection of Four New SDOH Assessment Items and Modification of One SDOH Assessment Item beginning with the FY 2027 SNF QRP	+1.97	+$128.98	+30,565.41	+$1,996,226.60
Difference between Proposed and Final Estimates	-0.34	-$21.90	-4,996.41	-$326,314.88
	Per Selected SNF		All Selected SNFs	
Estimated Change in Burden associated with the Validation Process for SNFs Participating in the SNF QRP beginning with the FY 2027 SNF QRP	+5.12	+$542.05	+7,680.00	+$813,067.95

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We invited public comments on the overall impact of the SNF QRP proposals for FY 2027 displayed in Table 40.

We have summarized the comments we received in section VII of this final rule and provided responses. After careful consideration of the public comments we received, we are finalizing our proposal with modification as stated above.

6. Impacts for the Minimum Data Set Beginning October 1, 2025

As stated in section X.A.3. of the proposed rule and this final rule, we are removing MDS items that are not needed for case-mix adjusting the SNF per diem payment for PDPM but were not accounted for in the FY 2019 SNF PPS final rule (83 FR 39165 through 39265). We are providing impact information here and in Table 41. With 1,966,662 admissions to 15,477 SNFs annually, we estimate an annual burden decrease of 216,332.82 hours (1,966,662 admissions × 0.11 hour) and a decrease of $14,128,696.47 (216,332.82 hours × $65.31/hr). For each SNF, we estimated an annual burden decrease of 13.98 hours (216,332.82 hours/15,477 SNFs) for a reduction in cost of $912.88 ($14,128,696.47 total burden/15,477 SNFs).

TABLE 41: Estimated Impacts for the Proposed Changes to the MDS Data Set Collection and Submission Beginning October 1, 2025

Estimated change in burden for the MDS removal of assessment items	Per SNF		All SNFs	
	Estimated change in annual burden hours	Estimated change in annual cost	Estimated change in annual burden hours	Estimated change in annual cost
Estimated Change in Burden associated with Removal of MDS items O0400A, O0400B, O0400C, and O0400E effective October 1, 2025	-14.05	-$917.87	-216,332.82	-$14,128,696.47
Revised Estimated Change in Burden associated with Removal of MDS items O0400.A, O0400.B, O0400.C, and O0400.E effective October 1, 2025	-13.98	-$912.88	-216,332.82	-$14,128,696.47
Difference between Proposed and Final Estimates	+0.07	+$4.99	0.00	$0.00

As noted previously in this section of the final rule, we did not formally propose the changes to the MDS. Rather we used this opportunity to provide SNFs the information collection requirements associated with a change that was not accounted for in the FY 2019 SNF PPS final rule. We received a limited number of comments about this notification, and have summarized the comments we received in section X.A.3 of this final rule with our responses.

After careful consideration of the public comments we received, we are finalizing our intention to remove these items.

7. Impacts for the SNF VBP Program

The estimated impacts of the FY 2025 SNF VBP Program are based on historical data and appear in Table 42. We modeled SNF performance in the Program using SNFRM data from FY 2019 as the baseline period and FY 2023 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 2025 program year, we will reduce each SNFs adjusted Federal per diem rate by 2 percent. We will then redistribute 60 percent of that 2 percent withhold to SNFs based on their measure performance. Additionally, in the FY 2023 SNF PPS final rule (87 FR 47585 through 47587), we finalized a case minimum requirement for the SNFRM, as required by section 1888(h)(1)(C)(ii) of the Act. As a result of these provisions, SNFs that do not meet the case minimum specified for the SNFRM for the FY 2025 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 2025 program year. Based on the 60 percent payback percentage, we estimated that we would redistribute approximately $281.53 million (of the estimated $469.22 million in withheld funds) in value-based incentive payments to SNFs in FY 2025, which means that the SNF VBP Program is estimated to result in approximately $187.69 million in savings to the Medicare Program in FY 2025.

Our detailed analysis of the impacts of the FY 2025 SNF VBP Program is shown in Table 42.

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TABLE 42: Estimated SNF VBP Program Impacts for FY 2025

Characteristic	Number of facilities	Mean Risk-Standardized Readmission Rate (SNFRM) (%)	Mean performance score	Mean incentive payment multiplier	Percent of total payment
Group					
Total*	10,858	20.21	31.8725	0.99154	100.00
Urban	8,509	20.32	30.4525	0.99093	86.41
Rural	2,349	19.81	37.0163	0.99375	13.59
Hospital-based urban**	181	19.64	41.4823	0.99545	1.51
Freestanding urban**	8,319	20.33	30.1971	0.99082	84.88
Hospital-based rural**	71	19.36	43.5091	0.99626	0.27
Freestanding rural**	2,223	19.81	36.9289	0.99374	13.19
Urban by region					
New England	610	20.31	30.3760	0.99108	5.59
Middle Atlantic	1,259	20.03	34.4195	0.99264	19.04
South Atlantic	1,662	20.58	27.9590	0.99001	16.85
East North Central	1,543	20.63	25.7922	0.98890	11.47
East South Central	448	20.33	30.6263	0.99112	3.26
West North Central	573	19.86	36.0210	0.99327	3.82
West South Central	894	20.92	21.0260	0.98683	6.72
Mountain	385	19.62	40.0497	0.99492	3.70
Pacific	1,135	19.80	37.3699	0.99366	15.96
Outlying	0	.	.	.	.
Rural by region					
New England	69	18.64	56.1674	1.00285	0.52
Middle Atlantic	159	19.23	46.9484	0.99845	1.06
South Atlantic	340	20.32	29.8026	0.99065	2.01
East North Central	566	19.66	38.5666	0.99422	3.29
East South Central	371	19.98	34.4449	0.99282	2.06
West North Central	345	19.67	37.5009	0.99383	1.52
West South Central	332	20.65	24.5102	0.98828	1.84
Mountain	97	18.88	51.9212	1.00002	0.57
Pacific	69	17.94	68.9668	1.00744	0.72
Outlying	1	22.54	0.0000	0.98025	0.00
Ownership					
Government	432	19.95	33.9489	0.99235	2.86
Profit	8,065	20.31	30.2597	0.99085	78.39
Non-Profit	2,361	19.88	37.0019	0.99376	18.74

* The total group category excludes 3,842 SNFs that did not meet the finalized measure minimum policy. The total group category includes 19 SNFs that did not have historical payment data used for this analysis.

** The group category which includes hospital-based/freestanding by urban/rural excludes 64 swing bed SNFs that satisfied the current measure minimum policy.

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In the FY 2024 SNF PPS final rule (88 FR 53324 through 53325), we adopted a validation process that applies to SNF VBP measures calculated using MDS data beginning with the FY 2027 program year. Specifically, we finalized that, on an annual basis, the validation contractor will randomly select up to 1,500 SNFs for validation and that for each SNF selected, the validation contractor will request up to 10 medical records. This new medical record submission requirement for the purposes of SNF VBP MDS validation would result in new burden on SNFs for the FY 2027 program year. We refer readers to the SNF QRP section at XI.A.5. of this final rule for details on the estimated annual burden increase that would result from this new chart submission requirement. We did not include additional details on burden in this SNF VBP section, to avoid double counting burden with the SNF QRP because the same charts will be utilized for both the SNF QRP and SNF VBP Program. We also note that this burden will be accounted for in the information collection request that has been submitted to OMB for approval.

8. Impacts for Nursing Home Enforcement Revisions

A nursing home certified to participate in either the Medicare program as a SNF and Medicaid program as a NF or in both programs as a dually-certified SNF/NF is expected to be in compliance with all applicable Federal requirements of participation as a condition of receiving payment for services provided to beneficiaries. If a facility is determined to be out of compliance and an enforcement decision is reached to impose a civil monetary penalty (CMP) remedy, the finalized provisions set out in these regulatory revisions will be applied as applicable.

We view the anticipated results of this rule as beneficial to nursing home residents as it incentivizes care quality and resident safety. Specifically, we believe that additional flexibility to impose CMPs will allow us to better tailor the response to facility noncompliance in a way that assures that appropriate resident care occurs as well as lasting facility compliance with participation requirements is achieved. We also recognize that not all of the potential effects of this rule can be anticipated. It is difficult to quantify the full future effect of this rule on facilities' compliance activities or costs. If a facility is in substantial compliance with the participation requirements, there is no basis to use any enforcement remedy. However, should a remedy be indicated as an appropriate enforcement response for noncompliance, several alternative remedies may be considered in addition to or in lieu of a CMP. Since CMP amounts, once that remedy is selected as an appropriate enforcement response, are based on when noncompliance occurred and the level of noncompliance, we are unable to predict the number or amount of CMPs that will be imposed. However, we do expect that the total amount of CMPs imposed will increase as a result of these updates.

In 2022, the number of facilities that had a CMP remedy imposed was 6,149 (40 percent). The average total amount of the CMPs imposed for each facility in 2022 was $17,818. The total dollar amount of per day (PD) CMPs imposed on facilities in 2022 was $187.0 million and the total dollar amount of per instance (PI) CMPs imposed was $41.2 million. Additionally, 45 percent of surveys of facilities in 2022 that had multiple findings of harm to residents and that were imposed a PI CMP as the remedy of choice only received one PI CMP. Under the proposed revisions, we anticipate an increased workload to CMS and States, and increased total CMP amounts to providers when multiple instances of noncompliance resulting in harm or immediate jeopardy (IJ) are cited.

We calculated the additional costs for SNFs and NFs, CMS, and States for the multiple PI policy revision by analyzing the number of surveys in CY2022 that would have had additional PI CMPs imposed by identifying surveys with multiple citations of noncompliance resulting in harm or immediate jeopardy (IJ), but only one PI CMP was imposed, or a PD CMP was imposed (109 surveys). We then multiplied the number of these surveys by the average number of citations resulting in harm or IJ (2.3 citations per survey), and by the average PI CMP amount ($9,959). For the PD and PI on the same survey revision, we calculated the additional CMP amounts for surveys that may qualify for PD and PI CMPs by multiplying the number of surveys with at least 2 citations resulting in harm or IJ and were only imposed a PD CMP (787) by the average number of harm or IJ citations per survey (2.8) and also multiplying by the average PI CMP amount ($9,959). Adding the estimated additional cost to nursing homes for enabling multiple PI CMPs for a survey with the estimated additional cost for enabling PI CMPs to surveys with PD CMPs resulted in a total of approximately $25 million for all nursing homes for CY2022.

We calculated the additional costs for CMS and States by multiplying the average hourly rate of CMS staff ($84.00 per hour) by the average number of hours spent by CMS staff per CMP (0.8 hours per CMP) by the total number of anticipated increased CMPs for surveys that qualify for either multiple PI CMPs (109 surveys $\times$ 2.3 average citations resulting in harm or IJ) or surveys that qualify for PD and PI CMPs (787 surveys $\times$ 2.8 average citations resulting in harm or IJ). We estimate this will result in a total increased cost to CMS and the States of $164,929 per year. Note: The estimated impact of the third proposed change related to the timing of imposing a CMP is embedded in these amounts, as these estimates are inclusive of any cases where CMS needs to impose a CMP for noncompliance that was previously cited, but no CMP has yet been imposed.

9. Alternatives Considered

As described in this section, we estimate that the aggregate impact of the provisions in this final rule will result in an increase of approximately $1.4 billion (4.2 percent) in Part A payments to SNFs in FY 2025. This reflects a $1.4 billion (4.2 percent) increase from the update to the payment rates.

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 adopting four new assessment items as standardized patient assessment data elements under the SDOH category and modifying the Transportation standardized patient assessment data element in the SDOH category beginning with the FY 2027 SNF QRP, we believe these new and modified items advance the CMS National Quality Strategy Goals of equity and engagement. We considered the alternative of delaying the collection of these four new assessment items. However, given the fact they will encourage meaningful collaboration between healthcare providers, residents, caregivers, and community-based organizations to address SDOH prior to discharge from the SNF, we believe further delay is unwarranted.

With regard to removing 22 items from the MDS beginning October 1, 2025, we routinely review the MDS for opportunities to simplify data submission requirements. We have identified that these items are no longer used in the calculation of the SNF per diem payment for PDPM but were not accounted for in the FY 2019 SNF PPS final rule (83 FR 39165 through 39265), and therefore no alternatives were considered.

With regard to requiring SNFs participating in the SNF QRP to participate in a validation process beginning with the FY 2027 SNF QRP, we are required to implement a process to satisfy section 1888(h)(12) of the Act (as added by Division CC, section

111(a)(4) of the Consolidated Appropriations Act, 2021 (Pub. L. 116–120)). Because the validation process is statutorily required, no alternatives were considered.

With regard to the updates for the SNF VBP Program, we discussed alternatives considered within those sections. In section VII.E.3. of the proposed rule, we discussed other approaches to incorporating health equity into the Program.

With regard to the updates for the nursing home enforcement program, we discussed alternatives within those sections. In section IX.A. of the proposed rule, we discussed how current regulatory limitations create inequity in the imposition of PD CMPs and the need for additional flexibility to ensure that CMP amounts are more closely aligned with the noncompliance that occurred and are thus effective to encourage facilities to return and sustain compliance.

10. Accounting Statement

As required by OMB Circular A–4 (available online at *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf*), in Tables 43 through 47, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of the proposed rule for FY 2025. Tables 39 and 43 provide our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies outlined in this final rule, based on the data for 15,477 SNFs in our database. Tables 40, 44, and 45 provide our best estimate of the additional cost to SNFs to submit the data for the SNF QRP as a result of the policies outlined in this final rule. Table 46 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 47 provides our best estimate of the Nursing Home Enforcement provisions.

TABLE 43: Accounting Statement: Classification of Estimated Expenditures, from the 2024 SNF PPS Fiscal Year to the 2025 SNF PPS Fiscal Year

Category	Transfers
Annualized Monetized Transfers	$1.4 billion
From Whom To Whom?	Federal Government to SNF Medicare Providers

TABLE 44: Accounting Statement: Classification of Estimated Expenditures for the Changes to the FY 2027 QRP Program

Category	Transfers/Costs
Estimated Costs to SNFs for Changes to the FY 2027 QRP Program and to Selected SNFs for the Validation Process*	$2,809,294.55
Estimated Costs to SNFs for Changes to the FY 2027 QRP Program Who Are Not Selected for the Validation Process	$1,996,226.60

*Up to 1,500 SNFs would be selected for the Validation Process.

TABLE 45: Accounting Statement: Classification of Estimated Savings for the Removal of MDS Items No Longer Needed for Case-Mix Adjusting the Per Diem SNF Payment Beginning October 1, 2025

Category	Transfers/Costs
Savings to SNFs for Removing MDS Items	($14,128,696.47)

TABLE 46: Accounting Statement: Classification of Estimated Expenditures for the FY 2025 SNF VBP Program

Annualized Monetized Transfers	$281.53 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 $469.22 million) required by statute.

TABLE 47: Accounting Statement: Nursing Home Enforcement Provisions

Category	Transfers/Penalties
Estimated Increased Amount of Penalties	$25 million *
From Whom To Whom?	SNF Medicare Providers to Federal Government
Estimated additional cost to CMS and State Survey Agencies	$164,929

*This estimate includes the estimated increase in the amount of PI CMPs that may be imposed under these revisions.

11. Conclusion

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2024 (88 FR 53200). Based on the above, we estimate that the overall payments for SNFs under the SNF PPS in FY 2025 are projected to increase by approximately $1.4 billion, or 4.2 percent, compared with those in FY 2024. We estimate that in FY 2025, SNFs in urban and rural areas will experience, on average, a 4.1 percent increase and 5.1 percent increase, respectively, in estimated payments compared with FY 2024. Providers in the rural Middle Atlantic region will experience the largest estimated increase in payments of approximately 7.4 percent. Providers in the urban Outlying region will experience the smallest estimated increase in payments of 1.5 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, non-profit 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 $34 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 2024 (88 FR 53200). Based on the above, we estimate that the aggregate impact for FY 2025 will be an increase of $1.4 billion in payments to SNFs, resulting from the SNF market basket update to the payment rates. While it is projected in Table 39 that all providers will 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 2025 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 2024 Report to Congress (available at *https://www.medpac.gov/wp-content/uploads/2024/03/Mar24_Ch6_MedPAC_Report_To_Congress_SEC.pdf*), MedPAC states that Medicare covers approximately 10 percent of total patient days in freestanding facilities and 17 percent of facility revenue (March 2024 MedPAC Report to Congress, 168). As indicated in Table 39, the effect on facilities is projected to be an aggregate positive impact of 4.2 percent for FY 2025. As the overall impact on the industry as a whole, and thus on small entities specifically, meets the 3 to 5 percent threshold discussed previously, the Secretary has determined that this final rule will have a significant impact on a substantial number of small entities for FY 2025.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. This final 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 will be similar to the impact on SNF providers overall. Moreover, as noted in previous SNF PPS final rules (most recently, the one for FY 2024 (88 FR 53200)), the category of small rural hospitals is included within the analysis of the impact of the proposed rule on small entities in general. As indicated in Table 39, the effect on facilities for FY 2025 is projected to be an aggregate positive impact of 4.2 percent. As the overall impact on the industry as a whole meets the 3 to 5 percent threshold discussed previously, the Secretary has determined that this final rule will have a significant impact on a substantial number of small rural hospitals for FY 2025.

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 2024, that threshold is approximately $183 million. This final 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 final 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 final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on this year's proposed rule will be the number of reviewers of this year's final 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 the 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 final rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

The mean wage rate for medical and health service manages (SOC 11–9111) in BLS Occupational Employment and Wage Statistics (OEWS) is $64.64, assuming benefits plus other overhead costs equal 100 percent of wage rate, we estimate that the cost of reviewing this rule is $129.28 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 will take approximately 4 hours for the staff to review half of this final rule. For each SNF that reviews the rule, the estimated cost is $517.12 (4 hours × $129.28). Therefore, we estimate that the total cost of reviewing this regulation is $227,015.68 ($517.12 × 439 reviewers).

In accordance with the provisions of Executive Order 12866, this final rule is reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 24, 2024.

List of Subjects

42 CFR Part 413

Diseases, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 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

■ 1. 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.

■ 2. Section 413.337 is amended by revising paragraph (f) to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(f) *Adjustments to payment rates under the SNF Value-Based Purchasing Program.* Beginning with payment for services furnished on October 1, 2018, the adjusted Federal per diem rate (as defined in § 413.338(a)) otherwise applicable to a SNF for the fiscal year is reduced by the applicable percent (as defined in § 413.338(a)). The resulting amount is then adjusted by the value-based incentive payment amount (as defined in § 413.338(a)) based on the SNF performance score calculated for the SNF for that fiscal year under § 413.338.

■ 3. Section 413.338 is amended—

■ a. In paragraph (a) by—

■ i. Revising the definitions of ''Health equity adjustment (HEA) bonus points'' and ''Measure performance scaler'';

■ ii. Removing the definition of ''Performance score'';

■ iii. Adding the definition of ''SNF performance score'' in alphabetical order; and

■ iv. Revising the definitions of ''SNF readmission measure'', ''Top tier performing SNF'', and ''Underserved multiplier'';

■ b. Removing paragraphs (d)(4) through (6);

■ c. Redesignating paragraphs (f)(1) through (4) as paragraphs (f)(2) through (5);

■ d. Adding a new paragraph (f)(1) and revising newly redesignated paragraphs (f)(2) and (3);

■ e. In newly redesignated paragraph (f)(4) introductory text by removing the reference ''paragraphs (f)(1) and (2)'' and adding in its place the reference ''paragraphs (f)(2) and (3)'';

■ f. Revising paragraph (j)(3); and

■ g. Adding paragraphs (l), (m), and (n).

The revisions and additions read as follows:

§ 413.338 Skilled nursing facility value-based purchasing program.

(a) * * *

Health equity adjustment (HEA) bonus points means the points that a SNF can earn for a fiscal year based on its performance and proportion of SNF residents who are members of the underserved population.

* * * * *

Measure performance scaler means, for a fiscal year, the sum of the points assigned to a SNF for each measure on which the SNF is a top tier performing SNF.

* * * * *

SNF performance score means the numeric score ranging from 0 to 100 awarded to each SNF based on its performance under the SNF VBP Program for a fiscal year.

SNF readmission measure means, prior to October 1, 2027, the SNF 30-Day All-Cause Readmission Measure (SNFRM) specified under section 1888(g)(1) of the Social Security Act. Beginning October 1, 2027, the term SNF readmission measure means the SNF Within-Stay Potentially Preventable Readmission (SNF WS PPR) Measure specified under section 1888(g)(2) of the Social Security Act.

* * * * *

Top tier performing SNF means a SNF whose performance on a measure during the applicable fiscal year meets or exceeds the 66.67th percentile of SNF performance on the measure during the same fiscal year.

Underserved multiplier means the mathematical result of applying a logistic function to the number of SNF residents who are members of the underserved population out of the SNF's total Medicare population, as identified from the SNF's Part A claims, during the performance period that applies to the 1-year measures for the applicable fiscal year.

* * * * *

(f) * * *

(1) CMS will provide quarterly confidential feedback reports to SNFs on their performance on each measure specified for the fiscal year. Beginning with the baseline period and performance period quality measure quarterly reports issued on or after

October 1, 2021, CMS calculates the measure rates included in those reports using data that are current as of a specified date as follows:

(i) For the SNFRM, the specified date is 3 months after the last index SNF admission in the applicable baseline period or performance period.

(ii) For the Skilled Nursing Facility Healthcare Associated Infections Requiring Hospitalization (''SNF HAI''), Discharge to Community—Post-Acute Care Measure for Skilled Nursing Facilities (''DTC PAC SNF''), and Skilled Nursing Facility Within-Stay Potentially Preventable Readmissions (''SNF WS PPR'') measure, the specified date is 3 months after the last SNF discharge in the applicable baseline period or performance period.

(iii) For the Number of Hospitalizations per 1,000 Long Stay Residents (''Long Stay Hospitalization'') measure, the specified date is 3 months after the last day of the final quarter of the applicable baseline period or performance period.

(iv) For the Total Nursing Hours per Resident Day Staffing (''Total Nurse Staffing'') measure and the Total Nursing Staff Turnover (''Nursing Staff Turnover'') measure, the specified date is 45 days after the last day of each quarter of the applicable baseline period or performance period.

(v) For the Discharge Function Score for SNFs (''DC Function measure'') and Percent of Residents Experiencing One of More Falls with Major Injury (Long Stay) (''Falls with Major Injury (Long Stay)'') measure, the specified date is the February 15th that is approximately 4.5 months after the last day of the applicable baseline period or performance period.

(2) Beginning with the baseline period and performance period quality measure quarterly reports issued on or after October 1, 2021, which contain the baseline period and performance period measure rates, respectively, SNFs will have 30 days following the date CMS provides in each of these reports to review and submit corrections to the measure rate calculations contained in that report. The underlying data used to calculate the measure rates are not subject to review and correction under this paragraph (f)(2). Any such correction requests must include:

(i) The SNF's CMS Certification Number (CCN);

(ii) The SNF's name;

(iii) The correction requested; and

(iv) The reason for requesting the correction, including any available evidence to support the request.

(3) Beginning not later than 60 days prior to each fiscal year, CMS will provide reports to SNFs on their performance under the SNF VBP Program for a fiscal year. SNFs will have the opportunity to review and submit corrections to their SNF performance scores and ranking contained in these reports for 30 days following the date that CMS provides the reports. Any such correction requests must include:

(i) The SNF's CMS Certification Number (CCN);

(ii) The SNF's name;

(iii) The correction requested; and

(iv) The reason for requesting the correction, including any available evidence to support the request.

* * * * *

(j) * * *

(3) Beginning October 1, 2026, for all measures that are calculated using Minimum Data Set (MDS) information, CMS will validate the accuracy of this information. CMS will request medical records as follows:

(i) On an annual basis, a CMS contractor will randomly select up to 1,500 SNFs for validation. A SNF is eligible for selection for a year if the SNF submitted at least one MDS record in the calendar year that is 3 years prior to the applicable fiscal year or was included in the SNF VBP Program in the year prior to the applicable fiscal year.

(ii) For each SNF selected under paragraph (j)(3)(i) of this section, the CMS contractor will request in writing up to 10 medical records.

(iii) A SNF that receives a request for medical records under paragraph (j)(3)(ii) of this section must submit a digital or paper copy of each of the requested medical records within 45 days of the date of the request as documented on the request.

* * * * *

(l) *Measure selection, retention, and removal policy.* (1) The SNF VBP measure set for each fiscal year includes the SNF readmission measure CMS has specified under section 1888(g) of the Social Security Act for application in the SNF VBP Program.

(2) Beginning with FY 2026, the SNF VBP measure set for each fiscal year may include up to nine additional measures specified by CMS. Each of these measures remains in the measure set unless CMS removes or replaces it based on one or more of the following factors:

(i) SNF performance on the measure is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made.

(ii) Performance or improvement on a measure do not result in better resident outcomes.

(iii) A measure no longer aligns with current clinical guidelines or practices.

(iv) A more broadly applicable measure for the particular topic is available.

(v) A measure that is more proximal in time to the desired resident outcomes for the particular topic is available.

(vi) A measure that is more strongly associated with the desired resident outcomes for the particular topic is available.

(vii) The collection or public reporting of a measure leads to negative unintended consequences other than resident harm.

(viii) The costs associated with a measure outweigh the benefit of its continued use in the Program.

(3) Upon a determination by CMS that the continued requirement for SNFs to submit data on a measure specified under paragraph (l)(2) of this section raises specific resident safety concerns, CMS may elect to immediately remove the measure from the SNF VBP Program. Upon removal of the measure, CMS will provide notice to SNFs and the public, along with a statement of the specific patient safety concern that would be raised if SNFs continued to submit data on the measure. CMS will also provide notice of the removal in the **Federal Register**.

(4) CMS uses rulemaking to make substantive updates to the specifications of measures used in the SNF VBP Program. CMS makes technical measure specification updates in a sub-regulatory manner and informs SNFs of measure specification updates through postings on the CMS website, listservs, and other educational outreach efforts to SNFs.

(m) *Extraordinary circumstances exception policy.* (1) A SNF may request and CMS may grant exceptions to the SNF Value-Based Purchasing Program's requirements under this section for one or more calendar months when there are certain extraordinary circumstances beyond the control of the SNF.

(2) A SNF may request an exception within 90 days of the date that the extraordinary circumstances occurred. Prior to FY 2025, the request must be submitted in the form and manner specified by CMS on the SNF VBP website at *https://www.cms.gov/Medicare/Quality/Nursing-Home-Improvement/Value-Based-Purchasing/Extraordinary-Circumstance-Exception* and include a completed Extraordinary Circumstances Request form (available on *https://qualitynet.cms.gov/*) and any available evidence of the impact of the extraordinary circumstances on the care that the SNF furnished to patients including, but not limited to, photographs and media articles.

Beginning with FY 2025, a SNF may request an extraordinary circumstances exception by sending an email with the subject line ''SNF VBP Extraordinary Circumstances Exception Request'' to the SNF VBP Program Help Desk with the following information:

(i) The SNF's CMS Certification Number (CCN);

(ii) The SNF's business name and business address;

(iii) Contact information for the SNF's chief executive officer (CEO) or CEO-designated personnel, including all applicable names, email addresses, telephone numbers, and the SNF's physical mailing address (which cannot be a P.O. Box);

(iv) A description of the event, including the dates and duration of the extraordinary circumstance;

(v) Available evidence of the impact of the extraordinary circumstance on the care the SNF provided to its residents or the SNF's ability to report SNF VBP data, including, but not limited to, photographs, media articles, and any other materials that would aid CMS in determining whether to grant the exception; and

(vi) A date proposed by the SNF for when it will again be able to fully comply with the SNF VBP Program's requirements and a justification for the proposed date.

(3) Except as provided in paragraph (m)(4) of this section, CMS will not consider an exception request unless the SNF requesting such exception has complied fully with the requirements in paragraph (m)(2) of this section.

(4) CMS may grant exceptions to SNFs without a request if it determines that an extraordinary circumstance affected an entire region or locale.

(5) 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.

(n) *SNF VBP performance standards.* (1) CMS announces the performance standards for each measure no later than 60 days prior to the start of the performance period that applies to the measure for the fiscal year.

(2) Beginning with FY 2021, if CMS discovers an error in the performance standard calculations subsequent to publishing their numerical values for a fiscal year, CMS will update the numerical values to correct the error. If CMS subsequently discovers one or more other errors with respect to the fiscal year, CMS will not further update the numerical values for that fiscal year.

(3) Beginning with FY 2025, CMS may update the numerical values of the performance standards for a measure if, between the time that CMS announced the performance standards for the measure for that fiscal year and the time that CMS calculates SNF performance on the measure at the conclusion of the performance period for that measure for that fiscal year, CMS has made technical updates to the specifications for the measure that affect the measure rate calculations.

■ 4. Section 413.360 is amended by—

■ a. Revising paragraph (f)(1) introductory text;

■ b. Adding paragraph (f)(1)(iv);

■ c. Revising paragraph (f)(3); and

■ d. Adding paragraph (g).

The additions and revision read as follows:

§ 413.360 Requirements under the Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).

* * * * *

(f) * * *

(1) SNFs must meet or exceed the following data completeness thresholds with respect to a program year:

* * * * *

(iv) If selected for the data validation process under paragraph (g) of this section, the threshold set at 100 percent submission of medical charts.

* * * * *

(3) A SNF must meet or exceed each applicable threshold described in paragraph (f)(1) of this section to avoid receiving the applicable penalty for failure to report quality data set forth in § 413.337(d)(4).

(g) *Data validation process.* (1) Beginning with the FY 2027 payment year: for all measures that are calculated using Minimum Data Set (MDS) information, CMS will validate the accuracy of this information. The process by which CMS will request medical records and by which SNFs must submit the requested medical records is as follows:

(i) On an annual basis, a CMS contractor will select up to 1,500 SNFs for validation. A SNF is eligible for selection for a year if it submitted at least one MDS record to CMS in the fiscal year that is 2 years prior to the applicable program year, and if the SNF has been randomly selected for a periodic audit for the same year under § 413.338.

(ii) For each SNF selected under this paragraph (g)(1), the CMS contractor will request up to 10 medical records. Each SNF selected will only be required to submit records once in a fiscal year, for a maximum of 10 records for each SNF selected. Each requested medical record must be the same medical record that has been requested for submission by the SNF for the same year under § 413.338. CMS will submit its request in writing to the selected SNF.

(iii) A SNF that receives a request for medical records under this paragraph (g)(1) must submit a digital or paper copy of each of the requested medical records within 45 days of the date of the request.

(2) Beginning with the FY 2027 payment year: the information reported through claims for all claims-based measures are validated for accuracy by Medicare Administrative Contractors (MACs).

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 5. The authority citation for part 488 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 6. Section 488.401 is amended by adding the definition of ''Instance or instances of noncompliance'' in alphabetical order to read as follows:

§ 488.401 Definitions.

* * * * *

Instance or instances of noncompliance means a factual and temporal occurrence(s) when a facility is not in substantial compliance with the requirements for participation. Each instance of noncompliance is sufficient to constitute a deficiency and a deficiency may comprise of multiple instances of noncompliance.

* * * * *

■ 7. Section 488.408 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 488.408 Selection of remedies.

* * * * *

(e) * * *

(2) * * *

(ii) For each instance of noncompliance, CMS and the State may impose a civil money penalty of $3,050–$10,000 (as adjusted annually under 45 CFR part 102) per day, $1,000–$10,000 (as adjusted annually under 45 CFR part 102) per instance of noncompliance, or both, in addition to imposing the remedies specified in paragraph (e)(2)(i) of this section. For multiple instances of noncompliance, CMS may impose any combination of per instance or per day civil money penalties for each instance within the same survey. The aggregate civil money penalty amount may not exceed $10,000 (as adjusted annually under 45 CFR part 102) for each day of noncompliance.

* * * * *

■ 8. Section 488.430 is revised to read as follows:

§ 488.430 Civil money penalties: Basis for imposing penalty.

(a) CMS or the State may impose a civil money penalty for the number of days a facility is not in substantial compliance with one or more participation requirements or for each instance that a facility is not in substantial compliance, or both, regardless of whether or not the deficiencies constitute immediate jeopardy. When a survey contains multiple instances of noncompliance, CMS or the State may impose any combination of per instance or per day civil money penalties for each instance of noncompliance within the same survey.

(b) CMS or the State may impose a civil money penalty for the number of days or instances of previously cited noncompliance, including the number of days of immediate jeopardy, since the last three standard surveys.

■ 9. Section 488.434 is amended by revising paragraphs (a)(2)(iii) and (v) to read as follows:

§ 488.434 Civil money penalties: Notice of penalty.

(a) * * *

(2) * * *

(iii) Either the amount of penalty per day of noncompliance or the amount of the penalty per instance of noncompliance or both;

* * * * *

(v) The date(s) of the instance(s) of noncompliance or the date on which the penalty begins to accrue;

* * * * *

■ 10. Section 488.440 is amended by revising paragraph (a)(2) to read as follows:

§ 488.440 Civil money penalties: Effective date and duration of penalty.

(a) * * *

(2) A civil money penalty for each instance of noncompliance is imposed in a specific amount per instance.

* * * * *

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–16907 Filed 7–31–24; 4:15 pm]

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Part III

Nuclear Regulatory Commission

10 CFR Part 51
Renewing Nuclear Power Plant Operating Licenses—Environmental Review; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC–2018–0296]

RIN 3150–AK32

Renewing Nuclear Power Plant Operating Licenses—Environmental Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule and guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its environmental protection regulations by updating the Commission's 2013 findings on the environmental effect of renewing the operating license of a nuclear power plant. This final rule redefines the number and scope of the environmental issues that must be addressed during the review of each application for license renewal. As part of this update, the NRC is issuing Revision 2 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (LR GEIS), to account for new information and to address the impacts of initial license renewals, which the previous versions considered, as well as first subsequent license renewals. The LR GEIS, Revision 2, provides the technical basis for the final rule.

DATES:

Effective Date: This final rule is effective on September 5, 2024.

Compliance Date: Compliance with this final rule is required by August 6, 2025.

ADDRESSES: Please refer to Docket ID NRC–2018–0296 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0296.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *Technical Library:* The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at *Library.Resource@nrc.gov* between 8 a.m. and 4 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yanely Malave-Velez, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1519, email: *Yanely.Malave-Velez@nrc.gov;* Jennifer Davis, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3835, email: *Jennifer.Davis@nrc.gov;* or Kevin Folk, Office of Nuclear Material Safety and Safeguards, telephone 301–415–6944, email: *Kevin.Folk@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Purpose of the Regulatory Action

The Atomic Energy Act of 1954, as amended (AEA) authorizes the NRC to issue licenses to operate commercial nuclear power plants for up to 40 years. The AEA and the NRC's regulations allow for the renewal of these licenses for up to an additional 20 years for each renewal term, which could either be an initial license renewal (initial LR) or subsequent license renewal (SLR). There are no limitations in the AEA or the NRC's regulations restricting the number of times a license may be renewed. The NRC's review of a license renewal application proceeds along two independent regulatory tracks: one for safety issues and another for environmental issues. The NRC's regulations for the license renewal safety review are set forth in part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.'' The NRC's environmental protection regulations are set forth in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

The license renewal application includes both general and technical information that demonstrate an applicant is in compliance with the NRC's regulations in 10 CFR part 54. During the safety review, the license renewal applicant must demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation. Information in the application must be sufficiently detailed to permit the NRC staff to complete its review and develop the safety finding.

Separate from the safety analysis, the applicant prepares an evaluation of the potential impacts to the environment of facility operation for an additional 20 years, which the NRC uses to inform its environmental analysis. Under the NRC's environmental protection regulations in 10 CFR part 51, which implement the National Environmental Policy Act (NEPA), renewal of a nuclear power plant operating license requires the preparation of an environmental impact statement (EIS). The NRC uses the phrase ''operating license'' to refer to an initial operating license as well as a renewed operating license. The term ''operating license'' in 10 CFR 51.53(c) and the terms ''operating license'' and ''combined license'' in 10 CFR 51.95(c) are intended to have this meaning, encompassing initial licenses as well as those that have been previously renewed. To support the preparation of these EISs, the NRC issued a final rule in 1996 (61 FR 28467) and a supporting analysis in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (LR GEIS). The LR GEIS defines which impacts would essentially be the same at all nuclear power plants or a subset of plants (*i.e.,* generic or Category 1 issues) and which impacts could be different at different plants and would require a plant-specific analysis to determine the impacts (Category 2 issues). The determinations were codified in Table B–1, ''Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants,'' of appendix B to subpart A of 10 CFR part 51 (hereafter referred to as ''Table B–1'').[1] For each license renewal

[1] As stated in the introductory paragraph of appendix B to subpart A of 10 CFR part 51, the Commission has assessed the environmental impacts associated with granting a renewed

application, those impacts that require a plant-specific analysis must be analyzed by the applicant in its environmental report and by the NRC in a supplemental environmental impact statement (SEIS) to NUREG–1437. The 1996 rule was amended in 2013 (78 FR 37281) by the issuance of an updated rule and publication of LR GEIS, Revision 1. In 2014, the NRC issued a final rule that addressed the generic determination of the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's licensed life for operation (79 FR 56238). That rule amended 10 CFR part 51 by revising the findings of two environmental issues listed in Table B–1.

This final rule redefines the number and scope of the environmental issues that must be addressed by the NRC and applicants during license renewal environmental reviews. These changes are based primarily on the lessons learned and knowledge gained from initial LR and SLR reviews performed by the NRC since development of the 2013 LR GEIS. The changes also address Commission direction in Staff Requirements Memorandum (SRM)—SECY–22–0024, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32, NRC–2018–0296),'' by thoroughly evaluating SLR in this review and update. In addition, new scientific research, public comments, changes in environmental regulations and impacts methodology, and other new information were considered in evaluating the nature and significance of impacts associated with license renewal.

B. Major Provisions

In the 2013 rule, there were 78 environmental issues, 17 of which required a plant-specific analysis (Category 2 issues) during license renewal environmental reviews. In this final rule, there are 80 environmental issues, 20 of which require a plant-specific analysis. The following points summarize the primary changes to the NRC's requirements in part 51:

1. Several issues were consolidated, including some issues that were combined with other related Category 1 or Category 2 issues.

2. One new Category 1 issue was added: ''Greenhouse gas impacts on climate change.''

3. One issue was changed from Category 2 to Category 1: ''Severe accidents.''

4. Two new Category 2 issues were added: ''Climate change impacts on environmental resources'' and ''National Marine Sanctuaries Act: sanctuary resources.''

5. One Category 2 issue was divided into three separate Category 2 issues: ''Endangered Species Act: federally listed species and critical habitats under U.S. Fish and Wildlife Service jurisdiction,'' ''Endangered Species Act: federally listed species and critical habitats under National Marine Fisheries Service jurisdiction,'' and ''Magnuson-Stevens Act: essential fish habitat.''

C. Costs and Benefits

The NRC prepared a regulatory analysis to determine the expected quantitative and qualitative costs and benefits of the final rule and associated guidance. The regulatory analysis concluded that the final rule and associated guidance result in undiscounted total net savings of $89.5 million to the industry and $36 million to the NRC.

The regulatory analysis also reflected qualitative factors to be considered in the NRC's rulemaking decision. Qualitative factors include regulatory stability, predictability, and clarity in the licensing process. The final rule reduces the cost to the industry of preparing environmental reports for license renewal applications by focusing resources on plant-specific analyses. The NRC also recognizes similar reductions in cost and will be able to better focus its resources on plant-specific environmental issues during reviews of reactor license renewal applications.

For more information, see the regulatory analysis (available as indicated in Section XVI, ''Availability of Documents'' section of this document).

Table of Contents

I. Background

NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' (LR GEIS) is intended to streamline the NRC's license renewal environmental review by documenting a systematic approach that the NRC uses to evaluate the environmental impacts of renewing the operating licenses of commercial nuclear power plants. The LR GEIS also provides the technical basis for Table B–1, in appendix B to subpart A, and the Commission's other license renewal regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' This ''Background'' section provides an overview of the environmental review process and the rulemaking history related to the license renewal process under which a power reactor licensee may apply for a renewal of its operating license.

A. Environmental Review—Current 10 CFR Part 51 Regulations

As a Federal agency, the NRC must comply with the National Environmental Policy Act (NEPA) by assessing the potential environmental effects (impacts) of a proposed agency action before approving or disapproving that proposed action. The regulations implementing the NRC's NEPA review are found in 10 CFR part 51.

Under NEPA, Federal agencies prepare an environmental impact statement (EIS) for any major Federal action significantly affecting the quality of the human environment. In addition, the Commission has identified at § 51.20 certain categories of NRC proposed actions that require the preparation of an EIS, including the renewal of a license to operate a nuclear power reactor. For each plant-specific review, the NRC prepares a supplemental environmental impact statement (SEIS) to the LR GEIS.

The NRC's provisions at § 51.53(c) require an applicant for renewal of a

operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995. See 61 FR 28467.

nuclear power plant license to submit with its application a separate document entitled ''Applicant's Environmental Report—Operating License Renewal Stage'' that describes in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents, and any planned refurbishment activities. In addition, the report must address the environmental impacts of alternatives and any other matters described in § 51.45, which include the following: (1) the impact of the proposed action on the environment, (2) any adverse environmental impacts that cannot be avoided, (3) alternatives to the proposed action, (4) the relationship between local short-term uses of the environment and maintenance and enhancement of long-term productivity, and (5) any irreversible or irretrievable commitments of resources. Within its environmental report, the applicant is required to include analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in appendix B to subpart A of 10 CFR part 51. Additionally, the applicant is required to provide any new and significant information of which it is aware in its environmental report. If there is no new and significant information for a Category 1 issue, the applicant can rely on that Category 1 generic finding and analysis in the LR GEIS. The applicant's environmental report informs the NRC's independent evaluation.

Before making a decision on a license renewal application for a nuclear power plant, the NRC is required to prepare and distribute, for public comment, a draft SEIS. The draft SEIS assesses the potential environmental impacts that may result from continued nuclear power plant operation and any proposed refurbishment activities during the renewal term (initial license renewal (initial LR) or subsequent license renewal (SLR)). In preparing the draft SEIS, the NRC staff will rely on the findings in Table B–1 for Category 1 issues and analyze the potential environmental impacts of the proposed action (license renewal) on the affected environment and specific environmental resources (*e.g.,* groundwater) for Category 2 issues. Additionally, the NRC will consider any potentially new and significant information for Category 1 issues (such as any activity or aspect associated with the nuclear power plant operations that can act upon the environment in a manner or an intensity not previously recognized or quantified) and for uncategorized issues. An environmental issue may remain uncategorized where the impact level remains unknown or uncertain. Within each environmental resource area, the NRC staff will analyze issues that correspond to specific, potential environmental impacts at the specific site (*e.g.,* within the groundwater resource area, groundwater quality degradation resulting from water withdrawals). In the draft SEIS, the NRC staff also will evaluate alternatives to the proposed action.

After analyzing the potential environmental impacts for each issue, the NRC assigns one of the following three significance levels to describe its evaluation of those impacts on that issue in either the LR GEIS or a plant-specific SEIS:

SMALL—The environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered SMALL.

MODERATE—The environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—The environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

In assessing the significance of environmental impacts for some environmental resources (*e.g.,* federally protected ecological resources and historic properties that require interagency consultation with Federal agencies or Indian Tribes [2]), the NRC assigns the appropriate impact level (other than SMALL, MODERATE, or LARGE) in accordance with the terminology used in the relevant statutes and their implementing regulations. The NRC conducts consultations under specific statutes, as appropriate.[3]

The NRC will document its environmental review and analysis through the preparation of a draft SEIS that will be published for public comment in the **Federal Register**, with a minimum 45-day comment period, in accordance with § 51.73. Further, as provided in § 51.74, the NRC will distribute the draft SEIS to the U.S. Environmental Protection Agency (EPA), other Federal agencies that have a special expertise or jurisdiction with respect to any potential environmental impact that may be relevant to the proposed action, the applicant, and appropriate State, Tribal, and local agencies and clearinghouses.

Following the public comment period, the NRC will analyze any comments received, revise its environmental analyses as appropriate, and then prepare the final SEIS in accordance with the requirements of § 51.91. Under § 51.93, the NRC will distribute the final SEIS to many of the same entities as the draft SEIS and to each commenter. The NRC also will publish a notice of availability for the final SEIS in the **Federal Register**. As set forth in § 51.102 and following the preparation and distribution of the final SEIS, the NRC will prepare and issue the record of decision, which is a concise, publicly available statement that documents the agency's decision, as informed by the final SEIS and final safety evaluation report. The requirements for a record of decision are described in § 51.103, and include stating the NRC's decision (*e.g.,* the approval or disapproval of the license renewal application), identifying the alternatives (including the proposed action) considered by the agency, and a statement as to whether the NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected and if not, to explain why those measures were not adopted. Further, the record of the decision will include a determination by the NRC as to whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable, which is the purpose and need of license renewal.

B. Rulemaking History

In 1986, the NRC initiated a program to develop license renewal regulations and associated regulatory guidance in

[2] Per 36 CFR 800.2(c)(2)(ii), the agency official will consult with any Indian Tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The term ''Indian Tribes'' refers to Federally recognized Tribes as acknowledged by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

[3] Plant-specific license renewal reviews may include consultations under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), and National Historic Preservation Act (54 U.S.C. 300101 *et seq.*). See NRC Tribal Policy Statement (82 FR 2402).

anticipation of receiving applications for the renewal of nuclear power plant operating licenses. In 1996, the NRC published a final rule that amended the environmental protection regulations in 10 CFR part 51 to include provisions for applicants seeking to renew an operating license for up to an additional 20 years (61 FR 28467; June 5, 1996). The 1996 final rule was based upon the analyses and findings of a May 1996 NRC environmental impact statement, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' NUREG–1437 (the ''1996 LR GEIS'').

Based upon the findings of the 1996 LR GEIS, the 1996 final rule identified those license renewal environmental issues for which a generic analysis had been determined to be appropriate (Category 1 issues). Similarly, based upon the findings of the 1996 LR GEIS, the 1996 final rule identified those environmental impacts for which a site- or plant-specific analysis was required, both by the applicant in its environmental report and by the NRC in its SEIS (Category 2 issues). The 1996 final rule, among other amendments to 10 CFR part 51, added appendix B to subpart A of 10 CFR part 51, ''Environmental Effect of Renewing the Operating License of a Nuclear Power Plant.'' Appendix B included Table B–1 which summarized and codified the findings of the 1996 LR GEIS.

In preparing the 1996 LR GEIS, the Commission based its generic assessment on the following factors:

(1) License renewal will involve nuclear power plants for which the environmental impacts of operation are well understood as a result of lessons learned and knowledge gained from operating experience and completed license renewals.

(2) Activities associated with license renewal are expected to be within this range of operating experience; thus, environmental impacts can be reasonably predicted.

(3) Changes in the environment around nuclear power plants are gradual and predictable.

The 1996 LR GEIS improved the efficiency of the license renewal process in the following ways: (1) providing an evaluation of the types of environmental impacts that may occur from renewing commercial nuclear power plant operating licenses, (2) identifying and assessing impacts that are expected to be generic (*i.e.,* the same or similar) at all nuclear power plants or plants with specified plant or site characteristics, and (3) defining the number and scope of environmental impacts that need to be addressed in plant-specific SEISs to the 1996 LR GEIS.

As identified in the 1996 final rule, a Category 1 issue is an issue that meets the following criteria: (1) the environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic; (2) a single significance level (*i.e.,* small, moderate, or large) has been assigned to the impacts (except for certain issues discussed below in more detail); and (3) mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation. A Category 2 issue is defined as an issue where one or more of Category 1 criteria cannot be met, and therefore, additional plant-specific review is required.

As stated in the 1996 final rule, the NRC recognized that environmental issues might change over time and that additional issues may need to be considered. As further stated in the introductory text to Table B–1, the NRC indicated that it intended to review the material in Table B–1 on a 10-year basis.

On December 18, 1996 (61 FR 66537), the NRC amended the 1996 final rule to incorporate minor clarifying and conforming changes and to add language omitted from Table B–1.

In 1999, the NRC amended 10 CFR part 51, including Table B–1, to expand the generic findings pertaining to the environmental impacts resulting from transportation of fuel and waste to and from a single nuclear power plant (64 FR 48496; September 3, 1999). This final rule also incorporated rule text consistent with the 1996 LR GEIS to address local traffic impacts attributable to the continued operations of a nuclear power plant during the license renewal term.

In 2013, the NRC completed the first 10-year review and update of the 1996 LR GEIS and published a final rule (78 FR 37281; June 20, 2013) that amended Table B–1 by updating the Commission's 1996 findings on the environmental impacts related to the renewal of nuclear power plant operating licenses and other NRC environmental protection regulations (*e.g.,* 10 CFR 51.53, which sets forth the contents of the applicant's environmental report, 10 CFR 51.75, and 10 CFR 51.95). The 2013 final rule redefined the number and scope of the environmental issues that must be addressed by the NRC and applicants during license renewal environmental reviews. These changes were primarily based on lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996. Together with the final rule, the NRC issued NUREG–1437, Revision 1 (the ''2013 LR GEIS''), as well as Revision 1 of Regulatory Guide (RG) 4.2, Supplement 1, ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications,'' and Revision 1 to NUREG–1555, Supplement 1, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Operating License Renewal.''

On July 31, 2013 (78 FR 46255), the NRC issued a final rule to incorporate minor clarifying and conforming changes and revise the statutory authority that was cited in the authority citation for the final rule.

In 2014, the NRC published a final rule titled ''Continued Storage of Spent Nuclear Fuel'' that revised the generic determination regarding the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal (79 FR 56238; September 14, 2014). The continued storage final rule also made conforming amendments to the determinations of environmental effects of renewing the operating license of a nuclear power plant. These changes addressed issues related to the onsite storage of spent nuclear fuel, both for the license renewal term and for the period after the licensed life for reactor operations, and offsite radiological impacts of spent nuclear fuel and high-level waste disposal. Specifically, the continued storage final rule revised two environmental issues in Table B–1: (1) ''Onsite storage of spent fuel'' and (2) ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.''

In August 2020, the NRC issued a notice of intent to review and potentially update the 2013 LR GEIS [4] (*i.e.,* the scoping notice) in the **Federal Register** (85 FR 47252; August 4, 2020). The comment period began in August 2020 and ended in November 2020. The scoping notice provided the public with an opportunity to submit comments and participate in the environmental scoping process, as defined in § 51.26. Specifically, the NRC invited the public to review the results of the NRC staff's

[4] Unless stated otherwise, references to the 2013 LR GEIS include the changes made to two environmental issues in Table B–1 as a part of the 2014 Continued Storage of Spent Nuclear Fuel final rule. These changes are discussed in Section 1.7.2 of the revised LR GEIS.

preliminary review of the 2013 LR GEIS, including a proposal to address SLR, and asked the public to provide comments and suggestions for other areas that should be updated. The NRC conducted four webinars where the staff received comments from the public. All comments provided during the 2020 scoping period were considered in preparing the draft revised LR GEIS and are publicly available. The official transcripts and the scoping summary report are available as indicated in the ''Availability of Documents'' section of this final rule.

In July 2021, the staff submitted SECY–21–0066, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296),'' to request Commission approval to initiate a rulemaking to amend Table B–1 and update the 2013 LR GEIS and associated guidance. The rulemaking plan also proposed to remove the word ''initial'' from § 51.53(c)(3), which, as described above, governs license renewal applicant's environmental reports; this change would have included applicants for SLR in the section's scope. The plan would have also made corresponding changes to the 2013 LR GEIS and the associated guidance.

In February 2022, the Commission issued SRM–SECY–21–0066, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296).'' The Commission disapproved the staff's recommendation and directed the staff to develop a rulemaking plan that aligned with the Commission Order CLI–22–03, and recent decisions in Turkey Point, CLI–22–02, and Peach Bottom, CLI–22–04, regarding the NEPA analysis of SLR applications. These orders concluded that the staff did not conduct an adequate NEPA analysis for the SLR period and further stated that the staff cannot exclusively rely on the 2013 LR GEIS for Category 1 issues in SLR environmental reviews. The SRM also directed the staff to include in the rulemaking plan a proposal to remove the word ''initial'' from § 51.53(c)(3) and to revise the 2013 LR GEIS and Table B–1 and associated guidance to fully account for one term of SLR. The SRM also directed the staff to provide options for a future rulemaking effort regarding the 10-year regulatory update.

In March 2022, the staff submitted SECY–22–0024, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296),'' to request Commission approval to initiate a rulemaking that would align with the Commission Order CLI–22–03 and recent decisions in Orders CLI–22–02 and CLI–22–04 regarding the NEPA analysis of SLR applications, as well as to remove the word ''initial'' from § 51.53(c)(3) and to revise the 2013 LR GEIS and Table B–1 and associated guidance to fully account for one term of SLR. The staff also proposed to update the 2013 LR GEIS to consider new technical data from completed environmental reviews, changes to environmental laws and regulations, and other information.

In April 2022, the Commission issued SRM–SECY–22–0024, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296),'' approving the staff's recommendation to proceed with rulemaking.

In April 2022, the staff submitted SECY–22–0036, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC–2022–0087)'' that provided options for a future rulemaking effort to incorporate further changes to the LR GEIS as part of the 10-year regulatory update to amend Table B–1. Because the current rulemaking would address all necessary issues, the staff recommended that a future rulemaking for updating the LR GEIS and Table B–1 be deferred, to begin no sooner than FY 2031. The staff further recommended that the current update of the 2013 LR GEIS constitute the update for this review cycle.

In June 2022, the Commission issued SRM–SECY–22–0036 approving the staff's recommendation.

II. Discussion

A. Amendments

The amendments to 10 CFR part 51 in this final rule revise the existing requirements for environmental reviews of applications for license renewal of operating nuclear power plants. The NRC uses the phrase ''operating license'' to refer to an initial operating license as well as a renewed operating license. The term ''operating license'' in 10 CFR 51.53(c) and the terms ''operating license'' and ''combined license'' in 10 CFR 51.95(c) are intended to have this meaning, encompassing initial licenses as well as those that have been previously renewed. The amendments codify the updated generic conclusions of the LR GEIS, Revision 2 (revised LR GEIS), for those issues for which a generic conclusion regarding the potential environmental effects (impacts) of issuing an initial or subsequent renewed license for a nuclear power plant can be reached. These conclusions have been updated to specifically account for one term of SLR as well as initial LR and other new information since the last (2013) LR GEIS update. These issues are identified as Category 1 issues in the revised LR GEIS. The Category 1 issues identified and described in the revised LR GEIS may be applied to any application for initial LR or first SLR for operating nuclear power plants covered by the revised LR GEIS and have been determined to have a SMALL impact for all plants or a subset of plants. Table B–1 in appendix B to subpart A of 10 CFR part 51 summarizes and codifies the Commission's findings for all Category 1 issues. The revisions to Table B–1 account for one term of SLR; reflect lessons learned, knowledge gained, and experience from license renewal environmental reviews performed since development of the 2013 LR GEIS; consider changes to applicable laws and regulations; and factor in new scientific data and methodology with respect to the assessment of potential environmental impacts of nuclear power plant license renewal. In addition, the amendments include conforming changes to the provisions of § 51.53(c)(3) and § 51.95. These changes are intended to maintain the accuracy of the revised LR GEIS and ensure that future environmental reviews meet the ''hard look'' standard to fully account for the environmental impacts of initial LR and SLR, as documented in the revised LR GEIS.

B. The Fiscal Responsibility Act of 2023

The NRC has made targeted changes to the revised LR GEIS to address amendments to the NEPA statute in the Fiscal Responsibility Act of 2023 (Pub. L. 118–5, 137 Stat. 10) (FRA). Among other things, these amendments add to NEPA a new section 107(e), which establishes page limits for environmental impact statements, including 300 pages for environmental impact statements for agency actions of ''extraordinary complexity.'' The NRC finds that, to the extent that section 107(e) applies to the revised LR GEIS, a 300 page limit is appropriate because the revised LR GEIS addresses a proposed action of ''extraordinary complexity'' in light of the complicated systems, structures, and components deployed in operating nuclear power plants; the number of resource areas addressed; and the variety of environments in which nuclear power plants operate. Thus, changes to the revised LR GEIS include the relocation

of certain text and other materials from Chapters 2, 3, and 4, and Chapters 6, 7, and 8 in their entirety, to the appendices to revise the document to be less than 300 pages (not including appendices, citations, figures, tables, and other graphics).

The FRA also introduced a 2-year timeline for completing an EIS from when the agency identified a need for the EIS in section 107(g), although that timeline may be extended. As discussed in section I.B., the NRC concluded that the 2013 LR GEIS did not address SLR in February of 2022, when the Commission directed the staff to provide the rulemaking plan that led to the revised LR GEIS, which serves as the technical basis for this final rule. Therefore, to the extent that section 107(g) of NEPA may apply to this action, the NRC has extended the deadline for completing this EIS by 6 months to allow adequate time to prepare and publish the final revised LR GEIS.

C. Environmental Impacts Review

In the revised LR GEIS, the NRC evaluated the Category 1 generic findings from the 2013 LR GEIS and determined that many of the environmental impacts of continued nuclear power plant operations and refurbishment during the renewal term (initial LR or SLR) would be SMALL. However, license renewal applicants in their environmental reports and the NRC staff in the SEIS would still need to evaluate whether new and significant information exists that would require a plant-specific analysis for that issue.

In the revised LR GEIS, the NRC identified a total of 80 environmental issues that may be associated with operation and refurbishment during the renewal term. Chapter 4 of the revised LR GEIS describes the impact findings and impact significance level of SMALL, MODERATE, or LARGE, or a range where applicable, for each Category 1 and Category 2 issue. Of the 80 issues, the NRC identified 59 environmental issues as Category 1 issues. Applicants and the NRC staff are to rely on the generic finding for each Category 1 issue as supported by the analysis in the revised LR GEIS, as codified in Table B–1, provided no new and significant information exists that would require a plant-specific analysis for that issue.

The revised LR GEIS identifies 20 environmental issues as Category 2 issues. These issues cannot be evaluated generically and must be evaluated by the applicant, in its environmental report, and the NRC staff, in the draft SEIS, using plant-specific information. For example, for the issue ''Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river)'' the revised LR GEIS concludes that impacts could be of SMALL or MODERATE significance based on site-specific factors that exacerbate consumptive water use by a nuclear power plant. The factors include increased water demand due to population growth; changes in water demand by industrial, agricultural, or other users of the same water source; drought and river low-flow conditions; and reduced water availability over time due to climate change. Therefore, the potential for water use conflicts must be addressed on a plant-specific basis.

For one environmental issue, ''Electromagnetic fields (EMF),'' the revised LR GEIS identified the category as ''N/A'' (not applicable). Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible. If, in the future, the Commission finds that a general agreement has been reached by appropriate Federal health agencies that there are adverse health effects from EMFs, the Commission will then treat this issue in a manner similar to a Category 2 issue and require applicants to submit plant-specific reviews of these health effects in their environmental report. Until such time, applicants are not required to submit information on this issue.

D. Revised Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants

This revision evaluates the environmental issues and findings of the 2013 LR GEIS and updates the analysis and assumptions to fully account for both initial LR and SLR. Lessons learned, knowledge gained, and experience from license renewal environmental reviews performed by the NRC since development of the 2013 LR GEIS provided an important source of new information for this assessment. This review included an examination of previous site-specific considerations of potential new and significant information for Category 1 issues. In addition, changes in environmental regulations and impact methodology and other new information from scientific literature and nuclear power plant operations were considered in evaluating the significance of impacts associated with initial LR and SLR. Public comments on previous plant-specific license renewal environmental reviews were analyzed to assess the existing environmental issues and identify new ones. The purpose of this evaluation was to review the findings presented in the 2013 LR GEIS and to ensure that the analysis and assumptions support SLR environmental reviews. In doing so, the NRC considered the need to modify, add to, or delete any of the 78 environmental issues in the 2013 LR GEIS and codified in Table B–1. This evaluation identified 80 environmental issues for detailed consideration in LR GEIS, Revision 2. No environmental issues identified in Table B–1 and evaluated in the 2013 LR GEIS were eliminated, but certain issues were consolidated, and one issue was subdivided into three separate issues. Two new Category 2 issues and one new Category 1 issue were added.

In the revised LR GEIS, the environmental impacts of continued nuclear power plant operations during the license renewal term (initial LR or SLR) and associated refurbishment activities are organized by environmental resource area. This analysis provides the technical basis for the 80 identified environmental issues. Additionally, the NRC also considered a range of replacement energy alternatives to the proposed action (license renewal) as described in the revised LR GEIS. This discussion of potential alternatives will inform the plant-specific alternatives analyses in the SEISs. The revised LR GEIS considers and evaluates the 80 environmental issues within the context of the following environmental resource (*i.e.,* subject matter) areas: (1) land use and visual resources, (2) air quality and noise, (3) geologic environment, (4) water resources (surface water and groundwater resources), (5) ecological resources (terrestrial resources, aquatic resources, and federally protected ecological resources), (6) historic and cultural resources, (7) socioeconomics, (8) human health (radiological and nonradiological hazards and postulated accidents), (9) environmental justice, (10) waste management and pollution prevention (radioactive and nonradioactive waste and spent nuclear fuel), (11) greenhouse gas emissions and climate change, (12) cumulative effects, and (13) impacts common to all alternatives (uranium fuel cycle and termination of nuclear power plant operations and decommissioning). This final rule revises Table B–1 in appendix B to subpart A of 10 CFR part 51 to reflect the changes in the revised LR GEIS.

In the revised LR GEIS, the NRC used the following general analytical approach to evaluate potential environmental impacts: (1) describe the

nuclear power plant activity or aspect of plant operations or refurbishment that could affect a resource; (2) identify the resource that is affected; (3) evaluate past license renewal reviews and other available information, including information related to impacts during a SLR term; (4) assess the nature and magnitude of the potential environmental impact (effect) from initial LR or SLR on the affected resource; (5) characterize the significance of the effect; (6) determine whether the results of the analysis apply to all or a specific subset of nuclear power plants, that is, whether the environmental issue is Category 1 (generic) or Category 2 (requiring plant-specific analysis); and (7) consider additional mitigation measures for reducing adverse impacts. Identification of environmental issues was conducted in an iterative rather than a stepwise manner. For example, after information was collected and the level of significance was reviewed, the NRC reexamined environmental issues and their associated impacts to determine if any issues should be removed, added, consolidated, or divided.

The Commission would like to emphasize that in complying with the NRC's environmental regulations under § 51.53(c)(3)(iv) and NEPA, applicants are required to provide any new and significant information regarding the environmental impacts of license renewal of which the applicants are aware, including for Category 1 issues and for uncategorized issues. The amendments in this final rule do not change this requirement.

The revised LR GEIS retains the 2013 LR GEIS definitions for Category 1 and Category 2 issues. The revised LR GEIS discusses six major types of changes to the categorization of issues:

(1) *New Category 1 Issue:* This is a Category 1 issue not previously listed in the 2013 LR GEIS. The applicant will not need to assess this issue in its environmental report. Under § 51.53(c)(3)(iv), however, the applicant is responsible for disclosing in the environmental report any ''new and significant information'' of which the applicant is aware. The NRC has addressed the environmental impacts of all Category 1 issues generically for all plants or a specific subset of plants in the revised LR GEIS.

(2) *New Category 2 Issue:* This is a Category 2 issue not previously listed in the 2013 LR GEIS. For the new Category 2 issue, the applicant will have to conduct an analysis of the potential environmental impacts related to the issue and include it in the environmental report. The analysis must include a discussion of (i) the possible alternatives for reducing adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

(3) *Existing Issue Category Change from Category 2 to Category 1:* This is an issue that was considered as Category 2 in the 2013 LR GEIS and will now be considered as Category 1 in the revised LR GEIS. An applicant will no longer be required to conduct a plant-specific analysis on the environmental impacts associated with this issue. Consistent with the requirements of § 51.53(c)(3)(iv), an applicant will be required to describe in its environmental report any ''new and significant information'' of which it is aware.

(4) *Consolidation of an Existing Category 1 Issue into an Existing Category 2 Issue:* This is an Issue where an existing Category 1 issue in the 2013 LR GEIS has a similar scope as an existing Category 2 issue and has been consolidated into the Category 2 issue. Therefore, for the new, consolidated Category 2 issue, the applicant will have to conduct a plant-specific analysis of the potential environmental impacts related to that issue and include it in the environmental report. The analysis must include a discussion of (i) the possible alternatives for reducing adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

(5) *Consolidation of One or More Existing Category 1 Issues into an Existing Category 1 Issue:* This is an issue that was considered Category 1 in the 2013 LR GEIS and will remain so. The issue has been revised by consolidating similar aspects of one or more Category 1 issues, in whole or in part, into the existing Category 1 issue and which affect the same environmental resources. Consistent with the requirements of § 51.53(c)(3)(iv), an applicant will only be required to describe in its environmental report any ''new and significant information'' of which it is aware.

(6) *Subdividing an Existing Category 2 Issue into Multiple Category 2 Issues:* This is an existing Category 2 issue in the 2013 LR GEIS that has been divided into multiple, new Category 2 issues in order to more clearly address specific categories of environmental resource impacts. For the new, separate Category 2 issues, the applicant will have to conduct analyses of the potential environmental impacts related to each separate issue, as applicable, and include them in the environmental report. The analyses must include a discussion of (i) the possible alternatives for reducing adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

E. Actions and Basis for Changes to 10 CFR Part 51

Appendix B to Subpart A of 10 CFR Part 51

This final rule revises the introductory paragraph in appendix B to subpart A of 10 CFR part 51 to indicate the applicability to initial LR and one term of SLR and to update the findings on environmental issues with the data supported by the analyses in the revised LR GEIS.

This final rule modifies the language of the introductory paragraph to clarify that Table B–1 is applicable to nuclear power plant licensees that held an operating license, construction permit, or combined license as of June 30, 1995.

This final rule renames the title of Table B–1, ''Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants,'' as ''Summary of Findings on Environmental Issues for Initial and One Term of Subsequent License Renewal of Nuclear Power Plants,'' to reflect the applicability to initial LR and SLR environmental reviews.

The revised LR GEIS provides a summary change table comparing the 78 environmental issues in the 2013 LR GEIS with the 80 environmental issues in the revised LR GEIS. This final rule amends Table B–1 to reflect the changes made in the revised LR GEIS. As documented in the revised LR GEIS, for each of the 80 environmental issues, the scope has been expanded to fully account for the impacts of continued nuclear power plant operations and any refurbishment during the initial LR or SLR term. The changes to Table B–1 are described below:

(i) Land Use

(1) *Onsite Land Use,* (2) *Offsite Land Use,* and (3) *Offsite Land Use in Transmission Line Right-of-Ways (ROWs)*—''Onsite land use,'' ''Offsite land use,'' and ''Offsite land use in transmission line right-of-ways (ROWs)'' are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(ii) Visual Resources

(4) *Aesthetic Impacts*—''Aesthetic impacts'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(iii) Air Quality

(5) *Air Quality Impacts*—This final rule renames ''Air quality impacts (all plants)'' as ''Air quality impacts''; it is a Category 1 issue. The final rule makes minor clarifying changes and revisions to the order of the topics discussed in the finding column of Table B–1 for this issue.

(6) *Air Quality Effects of Transmission Lines*—''Air quality effects of transmission lines'' is a Category 1 issue. This final rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(iv) Noise

(7) *Noise Impacts*—''*Noise impacts*'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(v) Geologic Environment

(8) *Geology and Soils*—''*Geology and soils*'' is a Category 1 issue. This final rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(vi) Surface Water Resources

(9) *Surface Water Use and Quality (Non-Cooling System Impacts),* (10) *Altered Current Patterns at Intake and Discharge Structures,* (11) *Altered Salinity Gradients,* (12) *Altered Thermal Stratification of Lakes,* (13) *Scouring Caused by Discharged Cooling Water,* (14) *Discharge of Metals in Cooling System Effluent,* (15) *Discharge of Biocides, Sanitary Wastes, and Minor Chemical Spills,* and (16) *Surface Water Use Conflicts (Plants with Once-Through Cooling Systems)*—''Surface water use and quality (non-cooling system impacts),'' ''Altered current patterns at intake and discharge structures,'' ''Altered salinity gradients,'' ''Altered thermal stratification of lakes,'' ''Scouring caused by discharged cooling water,'' ''Discharge of metals in cooling system effluent,'' Discharge of biocides, sanitary wastes, and minor chemical spills,'' and ''Surface water use conflicts (plants with once-through cooling systems)'' are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(17) *Surface Water Use Conflicts (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)*—''Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river)'' is a Category 2 issue. There are no changes to the finding column of Table B–1 for this issue.

(18) *Effects of Dredging on Surface Water Quality*—''Effects of dredging on surface water quality'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(19) *Temperature Effects on Sediment Transport Capacity*—''Temperature effects on sediment transport capacity'' is a Category 1 issue. This final rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(vii) Groundwater Resources

(20) *Groundwater Contamination and Use (Non-Cooling System Impacts)*—''Groundwater contamination and use (non-cooling system impacts)'' is a Category 1 issue. This final rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(21) *Groundwater Use Conflicts (Plants That Withdraw Less than 100 Gallons per Minute [gpm])*—''Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm])'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(22) *Groundwater Use Conflicts (Plants That Withdraw More than 100 Gallons per Minute [gpm])* and (23) *Groundwater Use Conflicts (Plants with Closed-Cycle Cooling Systems That Withdraw Makeup Water from a River)*—''Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm])'' and ''Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river)'' are Category 2 issues. There are no changes to the finding column of Table B–1 for these issues.

(24) *Groundwater Quality Degradation Resulting from Water Withdrawals*—''Groundwater quality degradation resulting from water withdrawals'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(25) *Groundwater Quality Degradation (Plants with Cooling Ponds)*—This final rule combines a Category 1 issue, ''Groundwater quality degradation (plants with cooling ponds in salt marshes),'' and a Category 2 issue, ''Groundwater quality degradation (plants with cooling ponds at inland sites),'' and renames it ''Groundwater quality degradation (plants with cooling ponds).'' The combined issue is a Category 2 issue. The two issues are combined because both issues consider the possibility of groundwater quality and beneficial use becoming degraded as a result of the migration of contaminants discharged to cooling ponds. Also, for the first issue, ''Groundwater quality degradation (plants with cooling ponds in salt marshes),'' the NRC found that the issue was relevant to only two nuclear power plants. The combined issue reflects lessons learned and knowledge gained and new and significant information from the Turkey Point SLR review that showed that cooling ponds can impact groundwater and surface water in ways not previously considered. This combined issue also considers the environmental effects of saltwater intrusion and encroachment on adjacent surface water and groundwater quality.

As described in the revised LR GEIS, the NRC had previously determined that plants relying on cooling ponds in salt marsh settings were expected to have a small impact on groundwater quality. However, new information indicates that the impacts of groundwater quality degradation for plants using cooling ponds in either coastal (salt marsh) settings or at inland sites could be greater than SMALL (*i.e.,* SMALL or MODERATE), depending on site-specific differences in the cooling pond's construction and operation; water quality; site hydrogeologic conditions (including the interaction of surface water and groundwater); and the location, depth, and pump rate of any water supply wells contributing to or impacted by outflow or seepage from a cooling pond. Therefore, the combined issue is a Category 2 issue. This final rule revises the finding column of Table B–1 accordingly.

(26) *Radionuclides Released to Groundwater*—''Radionuclides released to groundwater'' is a Category 2 issue. There are no changes to the finding column of Table B–1 for this issue.

(viii) Terrestrial Resources

(27) *Non-Cooling System Impacts on Terrestrial Resources*—This final rule renames ''Effects on terrestrial resources (non-cooling system impacts)'' as ''Non-cooling system impacts on terrestrial resources.'' The issue is a Category 2 issue. This final rule makes clarifying changes to the finding column of Table B–1 for this issue to more precisely describe the scope of issues and resources considered and for consistency with other ecological resource (*e.g.,* aquatic and terrestrial) issues.

(28) *Exposure of Terrestrial Organisms to Radionuclides*—''Exposure of terrestrial organisms to radionuclides'' is a Category 1 issue. This final rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(29) *Cooling System Impacts on Terrestrial Resources (Plants with Once-Through Cooling Systems or Cooling*

Ponds)—''Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds)'' is a Category 1 issue. This issue concerns the potential impacts of once-through cooling systems and cooling ponds at nuclear power plants on terrestrial resources during the license renewal term (initial LR or SLR). Cooling system operation can alter the ecological environment in a manner that affects terrestrial resources. Such alterations may include thermal effluent additions to receiving water bodies; chemical effluent additions to surface water or groundwater; impingement of waterfowl; disturbance of terrestrial plants and wetlands associated with maintenance dredging; disposal of dredged material; and erosion of shoreline habitat.

The NRC determined that the effects of once-through cooling systems and cooling ponds on terrestrial resources would be minor and would neither destabilize nor noticeably alter any important attribute of populations of plants or animals during the license renewal term. This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(30) *Cooling Tower Impacts on Terrestrial Plants*—This final rule renames ''Cooling tower impacts on vegetation (plants with cooling towers)'' as ''Cooling tower impacts on terrestrial plants''; it is a Category 1 issue. This issue concerns the potential impacts of cooling tower operation on terrestrial plants during the license renewal term (initial LR or SLR). Terrestrial habitats near cooling towers can be exposed to particulates, such as salt, and can experience increased humidity, which can deposit water droplets or ice on vegetation; these effects can lead to structural damage and changes in plant communities.

The NRC determined that the effects of cooling towers on terrestrial plants would be minor and would neither destabilize nor noticeably alter any important attribute of plant populations during the license renewal term. This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(31) *Bird Collisions with Plant Structures and Transmission Lines*—''Bird collisions with plant structures and transmission lines'' is a Category 1 issue. This issue concerns the risk of birds colliding with plant structures and transmission lines during the license renewal term (initial LR or SLR). Tall structures on nuclear power plant sites, such as cooling towers, meteorological towers, and transmission lines, create collision hazards for birds that can result in injury or death.

The NRC determined that the risk of bird collisions with site structures would remain the same for a given nuclear power plant during the license renewal term. Because the number of associated bird mortalities is small for any species, it is unlikely that losses would threaten the stability of local or migratory bird populations or result in a noticeable impairment of the function of a species within the ecosystem. This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(32) *Water Use Conflicts with Terrestrial Resources (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)*—''Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river)'' is a Category 2 issue. This issue concerns water use conflicts that may arise at nuclear power plants with cooling ponds or cooling towers that withdraw makeup water from a river and how those conflicts could affect terrestrial resources during the license renewal term (initial LR or SLR).

Nuclear power plant cooling systems may compete with other users relying on surface water resources, including downstream municipal, agricultural, or industrial users. For plants using cooling towers, while the volume of surface water withdrawn is substantially less than once-through systems for a similarly sized nuclear power plant, the makeup water needed to replenish the consumptive loss of water to evaporation can be significant. Cooling ponds also require makeup water. Water use conflicts with terrestrial resources, especially riparian communities, could occur when water that supports these resources is diminished by a combination of anthropogenic uses.

The NRC identified water use conflicts with terrestrial resources at only one nuclear power plant. That nuclear power plant operator developed and implemented a water level management plan, which effectively mitigated the effects that downstream riparian communities might experience from the plant's cooling water withdrawals.

The NRC determined that water use conflicts during the license renewal term depend on numerous site-specific factors, including the ecological setting of the plant; the consumptive use of other municipal, agricultural, or industrial water users; and the plants and animals present in the area. Water use conflicts with terrestrial resources would be SMALL at most nuclear power plants with cooling ponds or cooling towers that withdraw makeup from a river but may be MODERATE at some plants.

This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(33) *Transmission Line Right-Of-Way (ROW) Management Impacts on Terrestrial Resources*—''Transmission line right-of-way (ROW) management impacts on terrestrial resources'' is a Category 1 issue. This issue concerns the effects of transmission line ROW management on terrestrial plants and animals during the license renewal term (initial LR or SLR).

Utilities maintain transmission line ROWs so that the ground cover is composed of low-growing herbaceous or shrubby vegetation and grasses. Noise and general human disturbance during ROW management can temporarily disturb wildlife and affect their behaviors. Most nuclear power plants maintain procedures to minimize or mitigate the potential impacts of ROW management. The scope of transmission lines relevant to license renewal include only the lines that connect the nuclear power plant to the first substation that feeds into the regional power distribution system. Typically, the first substation is located on the nuclear power plant property within the primary industrial-use area or other developed portion of the plant site. Therefore, effects on terrestrial plants and animals are generally negligible.

This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(34) *Electromagnetic Field Effects on Terrestrial Plants and Animals*—This final rule renames ''Electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock)'' as ''Electromagnetic field effects on terrestrial plants and animals'' for clarity; it is a Category 1 issue. This issue concerns the effects of electromagnetic fields (EMFs) generated by electric transmission lines at nuclear power plants on terrestrial plants and animals, including agricultural crops,

honeybees, wildlife, and livestock, during the license renewal term (initial LR or SLR). Studies investigating the effects of EMFs produced by operating transmission lines up to 1,100 kV have generally not detected any ecologically significant impact on terrestrial plants and animals. Plants and animals near transmission lines have been exposed to many years of transmission line operation and associated EMFs. The scope of transmission lines relevant to license renewal include only the lines that connect the nuclear power plant to the first substation that feeds into the regional power distribution system. Therefore, the effects of EMFs on terrestrial plants and animals are generally negligible.

This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(ix) Aquatic Resources

(35) *Impingement Mortality and Entrainment of Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds)*—This final rule combines a Category 2 issue, ''Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds)'' and the impingement component of a Category 1 issue, ''Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses,'' into one Category 2 issue, ''Impingement mortality and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).'' This issue pertains to impingement mortality and entrainment of finfish and shellfish at nuclear power plants with once-through cooling systems or cooling ponds during the license renewal term (initial LR or SLR). This includes plants with helper cooling towers that are seasonally operated to reduce thermal load to the receiving water body, reduce entrainment during peak spawning periods, or reduce consumptive water use during periods of low river flow.

In the revised LR GEIS, the NRC renamed the issue to include impingement mortality, rather than simply impingement. This change is consistent with the EPA's 2014 Clean Water Act (CWA) Section 316(b) regulations and the EPA's assessment that impingement reduction technology is available, feasible, and has been demonstrated to be effective. Additionally, the EPA's 2014 CWA Section 316(b) regulations establish best technology available (BTA) standards for impingement mortality based on the fact that survival is a more appropriate metric for determining environmental impact than simply looking at total impingement. Therefore, the revised LR GEIS also consolidates the impingement component of the issue ''Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses'' into this combined issue.

As a result of the 2014 CWA Section 316(b) regulations, nuclear power plants must submit detailed information about their cooling water intake systems as part of National Pollutant Discharge Elimination System (NPDES) permit renewal applications to inform the permitting authority's BTA determination. Some nuclear power plants have received final BTA determinations under the 2013 CWA Section 316(b) regulations. Many others have submitted the required information and are awaiting final determinations. The NRC expects that most operating nuclear power plants will have final BTA determinations within the next several years.

When available, the NRC relies on the expertise and authority of the NPDES permitting authority with respect to the impacts of impingement mortality and entrainment. Therefore, if the NPDES permitting authority has made BTA determinations for a nuclear power plant pursuant to CWA Section 316(b) and that plant has implemented any associated requirements or those requirements would be implemented before the license renewal period, then the NRC assumes that adverse impacts on the aquatic environment would be minimized. In such cases, the NRC concludes that the impacts of either impingement mortality, entrainment, or both would generally be SMALL over the course of the license renewal term. In cases where the NPDES permitting authority has not made BTA determinations, the NRC analyzes the potential impacts of impingement mortality, entrainment, or both using a weight-of-evidence approach and determines the level of impact (SMALL, MODERATE, or LARGE) that the aquatic environment is likely to experience over the course of the license renewal term.

The potential effects of impingement mortality and entrainment during the license renewal term depend on numerous plant-specific factors, including the ecological setting of the plant; the characteristics of the cooling system; and the characteristics of the fish, shellfish, and other aquatic organisms present in the area (*e.g.,* life history, distribution, population trends, management objectives, etc.). Additionally, whether the NPDES permitting authority has made BTA determinations pursuant to CWA Section 316(b) and whether the nuclear power plant operator has implemented any associated requirements is also a relevant factor.

(36) *Impingement Mortality and Entrainment of Aquatic Organisms (Plants with Cooling Towers)*—This final rule combines a Category 1 issue, ''Impingement and entrainment of aquatic organisms (plants with cooling towers),'' and the impingement component of a Category 1 issue, ''Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses,'' into one Category 1 issue, ''Impingement mortality and entrainment of aquatic organisms (plants with cooling towers).'' The issue pertains to impingement mortality and entrainment of finfish and shellfish at nuclear power plants with cooling towers that operate on a fully closed-cycle mode.

In the revised LR GEIS, the NRC changed the title of this issue to include impingement mortality, rather than simply impingement. This change is consistent with the EPA's 2014 CWA Section 316(b) regulations and because assessing survival of impinged organisms is a more appropriate metric for determining environmental impact than simply looking at total impingement. Therefore, the revised LR GEIS also consolidates into this issue the impingement component of the issue ''Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses.''

In the 2013 LR GEIS, the NRC found that that impingement and entrainment of finfish and shellfish at plants with cooling towers operated in a fully closed-cycle mode did not result in noticeable effects on finfish or shellfish populations within source water bodies, and this impact was not expected to be an issue during the license renewal term (initial LR or SLR). This finding is further supported by the EPA's 2014 CWA Section 316(b) regulations for existing facilities, which state that the operation of a closed-cycle recirculating system is an essentially preapproved technology for achieving impingement mortality BTA.

The 2013 LR GEIS considered that impingement may result in sublethal effects that could increase the susceptibility of fish or finfish to predation, disease, or parasitism. However, only once-through cooling systems were anticipated to be of concern for this issue as the lower volume of water required by nuclear power plants with cooling towers that

operate in a fully closed-cycle mode would minimize this potential effect. The NRC does not expect secondary effects of impingement to be of concern during the license renewal term at nuclear power plants with cooling towers, and sublethal effects of entrainment do not apply.

In considering the effects of impingement mortality and entrainment of closed-cycle cooling systems on aquatic ecology, the NRC evaluated the same issues that were evaluated for nuclear power plants with once-through cooling systems or cooling ponds. No significant impacts on aquatic populations have been reported at any existing nuclear power plants with cooling towers operating in a closed-cycle mode. As part of obtaining BTA determinations under CWA 316(b), permitting authorities may require some nuclear power plant licensees to implement additional plant-specific controls to reduce impingement mortality and entrainment. Implementation of such controls would further reduce or mitigate impingement mortality and entrainment during the license renewal term. The NRC determined that the impacts of impingement mortality and entrainment on aquatic organisms during the license renewal term would be SMALL for nuclear power plants with cooling towers operated in a fully closed-cycle mode. Therefore, the combined issue is a Category 1 issue. This final rule revises the finding column of Table B–1 accordingly.

(37) *Entrainment of Phytoplankton and Zooplankton*—This final rule renames ''Entrainment of phytoplankton and zooplankton (all plants)'' as ''Entrainment of phytoplankton and zooplankton''; it is a Category 1 issue. The NRC found that the effects of entrainment of phytoplankton and zooplankton would be minor and would neither destabilize nor noticeably alter any important attribute of populations of these organisms in source water bodies during the license renewal term (initial LR or SLR) of any nuclear power plants. As part of obtaining the BTA entrainment determinations under Section 316(b) of the CWA (33 U.S.C. 1251 *et seq.*), permitting authorities may require some nuclear power plants to implement additional site-specific controls to reduce entrainment. Implementation of such controls would further reduce or mitigate entrainment of phytoplankton and zooplankton.

This final rule revises the finding column of Table B–1 for this issue to clarify the scope of issues and resources considered and indicate that the entrainment of phytoplankton and zooplankton would be mitigated through adherence to NPDES permit conditions established pursuant to CWA Section 316(b).

(38) *Effects of Thermal Effluents on Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds)*—This final rule renames ''Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds)'' as ''Effects of thermal effluents on aquatic organisms (plants with once-through cooling systems or cooling ponds)'' for clarity and consistency with other ecological resource titles; it is a Category 2 issue.

This issue pertains to acute, sublethal, and community-level effects of thermal effluents on finfish and shellfish from operation of nuclear power plants with once-through cooling systems and cooling ponds during the license renewal term (initial LR or SLR). The NRC determined that the effects of thermal effluents on aquatic organisms would be SMALL at many nuclear power plants with once-through cooling systems or ponds, but that these impacts could be MODERATE or LARGE at some plants. The potential effects of thermal effluent discharges depend on numerous site-specific factors, including the ecological setting of the plant, the characteristics of the cooling system and effluent discharges, and the characteristics of the fish, shellfish, and other aquatic organisms present in the area. Additionally, whether the NPDES permitting authority has granted a CWA Section 316(a) variance is also a relevant factor.

This final rule revises the finding column of Table B–1 for this issue to clarify the scope of issues and resources considered and for consistency with other ecological resource issues.

(39) *Effects of Thermal Effluents on Aquatic Organisms (Plants with Cooling Towers)*—The final rule renames ''Thermal impacts on aquatic organisms (plants with cooling towers)'' as ''Effects of thermal effluents on aquatic organisms (plants with cooling towers)'' for clarity and consistency with other ecological resource issue titles; it is a Category 1 issue.

This issue pertains to acute, sublethal, and community-level effects of thermal effluents on finfish and shellfish from operation of nuclear power plants with cooling towers operated in a fully closed-cycle mode. The NRC found that the effects of thermal effluents on aquatic organisms at plants with cooling towers would be minor and would neither destabilize nor noticeably alter any important attributes of aquatic populations in receiving water bodies. As part of obtaining a variance under CWA Section 316(a), permitting authorities may impose conditions concerning thermal effluent discharges at some nuclear power plants. Implementation of such conditions would further reduce or mitigate thermal impacts during the license renewal term (initial LR or SLR).

This final rule revises the finding column of Table B–1 for this issue to clarify the scope of issues and resources considered and for consistency with other ecological resource issues.

(40) *Infrequently Reported Effects of Thermal Effluents*—This final rule combines two Category 1 issues, ''Infrequently reported thermal impacts (all plants)'' and ''Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication,'' with the thermal effluent component of a Category 1 issue, ''Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses,'' into one, renamed Category 1 issue, ''Infrequently reported effects of thermal effluents.'' This issue pertains to interrelated and infrequently reported effects of thermal effluents, to include cold shock, thermal migration barriers, accelerated maturation of aquatic insects, and proliferated growth of aquatic nuisance species, as well as the effects of thermal effluents on dissolved oxygen, gas supersaturation, and eutrophication. This issue also considers sublethal stresses associated with thermal effluents that can increase the susceptibility of exposed organisms to predation, parasitism, or disease.

As described in the revised LR GEIS, the NRC determined that the infrequently reported effects of thermal effluents would be minor and would neither destabilize nor noticeably alter any important attribute of aquatic populations in receiving water bodies of any nuclear power plants during the license renewal term (initial LR or SLR). As part of obtaining a variance under CWA Section 316(a), permitting authorities may impose conditions through the NPDES permit process concerning thermal effluent discharges at some nuclear power plants. Implementation of such conditions would further reduce or mitigate thermal impacts during the license renewal term. The NRC concluded that infrequently reported effects of thermal effluents during the license renewal term would be SMALL for all nuclear power plants. Therefore, the combined issue is a Category 1 issue. This final rule revises the finding column of Table B–1 accordingly.

(41) *Effects of Nonradiological Contaminants on Aquatic Organisms*—''Effects of nonradiological contaminants on aquatic organisms'' is a Category 1 issue. This issue concerns the potential effects of nonradiological contaminants on aquatic organisms that could occur as a result of nuclear power plant operations during the license renewal term (initial LR or SLR). This issue was originally of concern because some nuclear power plants used heavy metals in condenser tubing that could leach from the tubing and expose aquatic organisms to these contaminants. Heavy metals have not been found to be of concern other than a few instances of copper contamination, and in all cases, the nuclear power plants eliminated leaching by replacing the affected piping.

In addition to heavy metals, nuclear power plants often add biocides to cooling water to kill algae, bacteria, macroinvertebrates, and other organisms that could cause buildup in plant systems and structures. Nuclear power plants typically maintain site procedures that specify when and how to treat the cooling water system with such chemicals and best management practices to minimize impacts on the ecological environment. The NPDES permits mitigate potential effects of chemical effluents by limiting the allowable concentrations in effluent discharges to ensure the protection of the aquatic community within the receiving water body.

The NRC determined that the effects of nonradiological contaminants on aquatic organisms would be minor and would neither destabilize nor noticeably alter any important attribute of populations of organisms in source water bodies during the license renewal term (initial LR or SLR) of any nuclear power plants. Continued adherence of nuclear power plants to chemical effluent limitations established in NPDES permits would minimize the potential impacts of nonradiological contaminants on the aquatic environment. This final rule revises the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(42) *Exposure of Aquatic Organisms to Radionuclides*—''Exposure of aquatic organisms to radionuclides'' is a Category 1 issue. This final rule makes minor clarifying changes to the finding column of Table B–1 for this issue.

(43) *Effects of Dredging on Aquatic Resources*—This final rule renames ''Effects of dredging on aquatic organisms'' as ''Effects of dredging on aquatic resources''; it is a Category 1 issue. This issue concerns the effects of dredging on aquatic resources conducted to maintain the function or reliability of plant cooling systems as well as barge access during the license renewal term (initial LR or SLR).

Any dredging performed would be infrequent and would require the nuclear power plant operators to obtain permits from the U.S. Army Corps of Engineers under CWA Section 404. Best management practices and conditions associated with these permits would minimize impacts on the ecological environment.

The NRC determined that the effects of dredging on aquatic resources would be minor and would neither destabilize nor noticeably alter any important attribute of the aquatic environment during license renewal term at any nuclear power plant. The NRC assumes that nuclear power plant operators would continue to implement site environmental procedures and would obtain any necessary permits for dredging activities. Implementation of such controls would further reduce or mitigate potential effects. This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(44) *Water Use Conflicts with Aquatic Resources (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)*—''Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river)'' is a Category 2 issue. This issue concerns water use conflicts that may arise at nuclear power plants with cooling ponds or cooling towers that use makeup water from a river and how those conflicts could affect aquatic resources during the license renewal term (initial LR or SLR). This issue also applies to nuclear power plants with hybrid cooling systems.

Nuclear power plant cooling systems may compete with other users relying on surface water resources, including downstream municipal, agricultural, or industrial users. Water use conflicts with aquatic resources could occur when water that supports these resources is diminished by a combination of anthropogenic uses. To date, the NRC has identified water use conflicts with aquatic resources at only one nuclear power plant. The NRC concluded that water use conflicts would be SMALL to MODERATE for this nuclear power plant. The plant operator developed and implemented a water level management plan which successfully mitigated water use conflicts. The NRC has identified no concerns about water use conflicts with aquatic resources at any other nuclear power plant with cooling ponds or cooling towers. The NRC concluded that water use conflicts with aquatic resources would be SMALL at most nuclear power plants with cooling ponds or cooling towers that withdraw makeup water from a river but may be MODERATE at some plants.

Water use conflicts during the license renewal term would depend on numerous site-specific factors including the ecological setting of the nuclear power plant; the consumptive use of other municipal, agricultural, or industrial water users; and the aquatic resources present in the area. This final rule revises the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(45) *Non-Cooling System Impacts on Aquatic Resources*—This final rule renames ''Effects on aquatic resources (non-cooling system impacts)'' as ''Non-cooling system impacts on aquatic resources''; it is a Category 1 issue. This issue concerns the effects of nuclear power plant operations on aquatic resources that are unrelated to the operation of the cooling system. Such activities include landscape and grounds maintenance, stormwater management, and ground-disturbing activities that could directly disturb aquatic habitat or cause runoff or sedimentation.

The NRC determined that the effects of site activities unrelated to cooling system operation would be minor and would neither destabilize nor noticeably alter any important attribute of the aquatic environment during the license renewal term (initial LR or SLR) of any nuclear power plants. The NRC assumes that nuclear power plants would continue to implement site environmental procedures and would obtain any necessary permits for activities that could affect waterways or aquatic features. This final rule revises the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(46) *Impacts of Transmission Line Right-Of-Way (ROW) Management on Aquatic Resources*—''Impacts of transmission line right-of-way (ROW) management on aquatic resources'' is a Category 1 issue. This issue concerns the effects of transmission line ROW

management on aquatic plants and animals during the license renewal term (initial LR or SLR).

The transmission lines relevant to license renewal include only the lines that connect the nuclear power plant to the first substation that feeds into the regional power distribution system. Typically, the first substation is located on the nuclear power plant property within the primary industrial-use area and the in-scope transmission lines for license renewal tend to occupy only industrial-use or other developed portions of nuclear power plant sites. Therefore, effects on aquatic plants and animals are generally negligible.

Most nuclear power plants maintain procedures to minimize or mitigate the potential impacts of ROW management. The NRC determined that the transmission line ROW maintenance impacts on aquatic resources during the license renewal term would be SMALL for all nuclear power plants. This final rule revises the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(x) Federally Protected Ecological Resources

(47) *Endangered Species Act: Federally Listed Species and Critical Habitats Under U.S. Fish and Wildlife Service Jurisdiction*—This final rule divides a Category 2 issue, ''Threatened, endangered, and protected species and essential fish habitat,'' into three separate Category 2 issues, for clarity and consistency with the separate Federal statutes and interagency consultation requirements that the NRC must consider with respect to Federally protected ecological resources. When combined, the scope of the three issues is the same as the scope of the former ''Threatened, endangered, and protected species and essential fish habitat'' issue discussed in the 2013 LR GEIS.

The first of the three issues, ''Endangered Species Act: federally listed species and critical habitats under U.S. Fish and Wildlife Service jurisdiction,'' concerns the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term (initial LR or SLR) on federally listed species and critical habitats protected under the Endangered Species Act (ESA) and under the jurisdiction of the U.S. Fish and Wildlife Service (FWS).

Under the ESA, the FWS is responsible for listing and managing terrestrial and freshwater species and designating critical habitat for these species. Continued operation of a nuclear power plant during the license renewal term could affect these species and their habitat. Listed species are likely to occur near all operating nuclear power plants. However, the potential for a given species to occur in the action area of a specific nuclear power plant depends on the life history, habitat requirements, and distribution of the species and the ecological environment present on or near the plant site.

The NRC may be required to consult with FWS under ESA Section 7(a)(2); such consultations are required for license renewal actions that ''may affect'' federally listed species and critical habitats and to ensure that the actions do not jeopardize the continued existence of those species or destroy or adversely modify those habitats.

The potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term depends upon numerous site-specific factors, including the ecological setting of the plant; the listed species and critical habitats present in the action area; and the plant-specific factors related to operations, including water withdrawal, effluent discharges, and refurbishment and other ground-disturbing activities. Listing status is not static, and FWS frequently issues new rules to list or delist species and designate or remove critical habitats. Therefore, a generic determination of potential impacts on listed species and critical habitats under FWS jurisdiction during a nuclear power plant's license renewal term is not possible. The NRC will perform a plant-specific impact assessment for each license renewal environmental review to determine the potential effects on these resources and consult with the FWS, as appropriate. Consequently, this is a Category 2 issue.

(48) *Endangered Species Act: Federally Listed Species and Critical Habitats Under National Marine Fisheries Service Jurisdiction*—The second of the three issues from the prior Category 2 issue on federally protected species, ''Endangered Species Act: federally listed specifies and critical habitats under National Marine Fisheries Service jurisdiction,'' concerns the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term (initial LR or SLR) on federally listed species and critical habitats protected under the ESA and under the jurisdiction of the National Marine Fisheries Service (NMFS).

Under the ESA, NMFS is responsible for listing and managing marine and anadromous species and designating critical habitat of these species. Continued operation of a nuclear power plant and any refurbishment during the license renewal term could affect these species and their habitat. The potential for a given species to occur in the action area of a specific nuclear power plant depends on the life history, habitat requirements, and distribution of that species and the ecological environment present on or near the power plant site. In general, listed species and critical habitats under NMFS jurisdiction are only of concern at nuclear power plants that withdraw or discharge from estuarine or marine waters. However, anadromous listed species under NMFS jurisdiction may be seasonally present in the action area of plants located within freshwater reaches of rivers well upstream of the saltwater interface.

The potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term depend on numerous site-specific factors, including the ecological setting of the plant; the listed species and critical habitats present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and refurbishment and other ground-disturbing activities. Section 7(a)(2) of the ESA requires that Federal agencies consult with NMFS for actions that ''may affect'' federally listed species and critical habitats. Additionally, listing status is not static, and NMFS frequently issues new rules to list or delist species and designate or remove critical habitats. Therefore, a generic determination of potential impacts on listed species and critical habitats under NMFS jurisdiction during a nuclear power plant's license renewal term is not possible. The NRC will perform a plant-specific impact assessment for each license renewal environmental review to determine the potential effects on these resources and consult with NMFS, as appropriate. Consequently, this is a Category 2 issue.

(49) *Magnuson-Stevens Act: Essential Fish Habitat*—The last of the three issues from the prior Category 2 issue on federally protected species, ''Magnuson-Stevens Act: essential fish habitat,'' concerns the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term (initial LR or SLR) on essential fish habitat (EFH) protected under the Magnuson-Stevens Fishery Conservation and Management Act (*i.e.,* Magnuson-Stevens Act (MSA)).

Under the MSA, the Fishery Management Councils, in conjunction with NMFS, designate areas of EFH and manage marine resources within those areas. Within EFH, habitat areas of

particular concern (HAPCs) may be designated if the area meets certain additional criteria. Continued operation of a nuclear power plant and any refurbishment during the license renewal term could affect EFH, including HAPCs. The NRC may be required to consult with NMFS under MSA Section 305(b). In cases where adverse effects on EFH are possible, the NRC has engaged NMFS in EFH consultation as part of the plant-specific license renewal environmental review and obtained EFH conservation recommendations.

The potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term depends upon numerous site-specific factors, including the ecological setting of the plant; the EFH present in the affected area, including HAPCs; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and any other activities that may affect aquatic habitats during the license renewal term. Section 305(b) of the MSA requires that Federal agencies consult with NMFS for actions that may adversely affect EFH. Additionally, EFH status is not static. The NMFS and the Fishery Management Councils frequently update management plans for EFH species and issue new rules to designate or modify EFH and HAPCs. Therefore, a generic determination of potential impacts on EFH during a nuclear power plant's license renewal term is not possible. The NRC will perform a plant-specific impact assessment as part of each license renewal environmental review to determine the potential effects on these resources and consult with NMFS, as appropriate. Consequently, this is a Category 2 issue.

(50) *National Marine Sanctuaries Act: Sanctuary Resources*—This final rule adds this as a new Category 2 issue, ''National Marine Sanctuaries Act: sanctuary resources,'' to evaluate potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term (initial LR or SLR) on sanctuary resources protected under the National Marine Sanctuaries Act (NMSA).

Under the NMSA, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) designates and manages the National Marine Sanctuary System. Marine sanctuaries may occur near nuclear power plants located on or near marine waters as well as the Great Lakes. Currently, five operating nuclear power plants are located near designated or proposed national marine sanctuaries.

The potential impacts on marine sanctuaries are broad-ranging because such resources include any living or nonliving resource of a national marine sanctuary. With respect to ecological sanctuary resources, potential effects of particular concern include the following: (1) impingement (including entrapment) and entrainment, (2) thermal effects, (3) exposure to radionuclides and other contaminants, (4) reduction in available food resources due to impingement mortality and entrainment or thermal effects on prey species, and (5) effects associated with maintenance dredging. Additionally, the magnitude and significance of such impacts can be greater for sanctuary resources because—by virtue of being part of a national marine sanctuary—these resources are more sensitive to environmental stressors. Based on the foregoing, a generic determination of potential impacts on sanctuary resources during a nuclear power plant's license renewal term is not possible.

Depending on the NRC's effect determinations, the NRC may be required to consult with ONMS under NMSA Section 304(d). The NMSA consultation is required when a Federal agency determines that an action ''is likely to destroy, cause the loss of, or injure'' a sanctuary resource. Federal actions subject to consultation may be inside or outside the boundary of a national marine sanctuary.

In summary, the potential effects of continued nuclear power plant operation during the license renewal term depends upon numerous site-specific factors, including the ecological setting of the plant; the sanctuary resources present in the affected area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and any other activities that may affect sanctuary resources during the license renewal term. Section 304(d) of the NMSA requires that Federal agencies consult with the ONMS for actions that may injure sanctuary resources. Additionally, national marine sanctuary status is not static. The geographic extent of existing sanctuaries may change or expand in the future, and NOAA is likely to designate new sanctuaries as additional areas of conservation need are identified and assessed. Therefore, a generic determination of potential impacts on sanctuary resources during a nuclear power plant's license renewal term is not possible. The NRC will perform a plant-specific impact assessment as part of each license renewal environmental review to determine the potential effects on these resources and consult with NMFS, as appropriate. Consequently, this new issue is being established as a plant-specific, or Category 2, issue.

(xi) Historic and Cultural Resources

(51) *Historic and Cultural Resources*—''Historic and cultural resources'' is a Category 2 issue. This final rule revises the finding column of Table B–1 for this issue to make clarifying changes and include a discussion of impacts on cultural resources that are not eligible for or listed in the National Register of Historic Places that would also need to be considered during plant-specific license renewal environmental reviews.

(xii) Socioeconomics

(52) *Employment and Income, Recreation and Tourism*—''Employment and income, recreation and tourism'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(53) *Tax Revenue*—This final rule renames ''Tax revenues'' as ''Tax revenue''; it is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(54) *Community Services and Education,* (55) *Population and Housing,* and (56) *Transportation*—''Community services and education,'' ''Population and housing,'' and ''Transportation'' are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(xiii) Human Health

(57) *Radiation Exposures to Plant Workers* and (58) *Radiation Exposures to the Public*—''Radiation exposures to plant workers'' and ''Radiation exposures to the public'' are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(59) *Chemical Hazards*—This final rule renames ''Human health impact from chemicals'' as ''Chemical hazards'' for clarity and to reflect the fact that chemicals can have environmental effects beyond human health. Chemical hazards can have immediate human health effects as well as potential environmental impacts from nuclear power plant discharges and chemical spills. This issue is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(60) *Microbiological Hazards to Plant Workers*—''Microbiological hazards to plant workers'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(61) *Microbiological Hazards to the Public*—This final rule renames ''Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river)'' as ''Microbiological hazards to the public'' because this issue is a concern wherever receiving waters are accessible to the public and as changes in microbial populations and in the public use of water bodies might occur over time. Specifically, members of the public could be exposed to microorganisms in thermal effluents at nuclear power plants that use cooling ponds, lakes, canals, or that discharge to publicly accessible surface waters. This issue is a Category 2 issue. This final rule revises the finding column of Table B–1 for this issue for clarity and to indicate that thermophilic microorganisms are a concern wherever waters receiving thermal effluents are accessible to the public.

(62) *Electromagnetic Fields (EMFs)*—This final rule renames ''Chronic effects of electromagnetic fields (EMFs)'' as ''Electromagnetic fields (EMFs)'' for clarity because this issue considers effects beyond those that are chronic in nature. This issue is an uncategorized issue. There are no changes to the finding column of Table B–1 for this issue.

(63) *Physical Occupational Hazards*—''Physical occupational hazards'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(64) *Electric Shock Hazards*—''Electric shock hazards'' is a Category 2 issue. There are no changes to the finding column of Table B–1 for this issue.

(xiv) Postulated Accidents

(65) *Design-Basis Accidents*—''Design-basis accidents'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(66) *Severe Accidents*—This final rule reclassifies the Category 2 ''Severe accidents'' issue as a Category 1 issue. In the 2013 LR GEIS, the issue of severe accidents was classified as a Category 2 issue to the extent that only alternatives to mitigate severe accidents must be considered for all nuclear power plants where the licensee had not previously performed a severe accident mitigation alternatives (SAMA) analysis, or similar analysis, for the plant. In the revised LR GEIS, the NRC notes that this issue will be resolved generically for the vast majority, if not all, expected license renewal applicants because the applicants who will likely reference the revised LR GEIS have previously completed a SAMA analysis. The NRC provides a technical basis further supporting this conclusion in Appendix E of the revised LR GEIS. Although the NRC does not anticipate any license renewal applications for nuclear power plants for which a previous severe accident mitigation design alternative (SAMDA) or SAMA analysis has not been performed, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives, and consideration of mitigation alternatives would be the functional equivalent of a Category 2 issue requiring plant-specific analysis. Applicants are required to provide any new and significant information regarding severe accidents of which the applicant is aware.

In license renewal applications, both internal and external events were considered for impacts from reactor accidents at full power when assessing SAMAs. The impacts of all new information in the revised LR GEIS were found to not contribute sufficiently to the environmental impacts to warrant further SAMA analysis because the likelihood of finding cost-effective significant plant improvements is small. This further analysis confirms the Commission's expectation that further SAMA analysis would not be necessary for plants that have already completed one.

With regard to the severe accident impact finding, the NRC reviewed information from SEISs for both initial LR and SLR reviews completed since development of the 2013 LR GEIS and identified no new information or situations that would result in different impacts for this issue. The NRC's review of new information determined that the overall risk posed by severe accidents is less than originally stated in the 1996 LR GEIS by a significant margin. Therefore, the NRC concluded that the probability-weighted consequences of severe accidents during the initial LR or SLR terms are SMALL. This final rule revises the finding column in Table B–1 for this issue to reflect the fact that the probability-weighted consequences of severe accidents remain SMALL.

(xv) Environmental Justice

(67) *Impacts on Minority Populations, Low-Income Populations, and Indian Tribes*—This final rule renames ''Minority and low-income populations'' as ''Impacts on minority populations, low-income populations, and Indian Tribes'' [5] to reflect the scope of environmental justice concerns addressed in this issue. Continued reactor operations during the license renewal term (initial LR or SLR) and refurbishment activities at a nuclear power plant could affect land, air, water, and ecological resources, which could result in human health or environmental effects. Consequently, minority and low-income populations and Indian Tribes could be disproportionately affected. The environmental justice impact analysis determines whether human health or environmental effects from continued reactor operations and refurbishment activities at a nuclear power plant would disproportionately affect a minority population, low-income population, or Indian Tribe and whether these effects may be high and adverse.

The NRC determined that environmental justice impacts during the license renewal term are unique to each nuclear power plant. Therefore, the issue is a Category 2 issue. This final rule revises the finding column of Table B–1 for this issue to add Indian Tribes and subsistence consumption to the scope of the finding and to make other minor clarifications.

(xvi) Waste Management

(68) *Low-Level Waste Storage and Disposal,* (69) *Onsite Storage of Spent Nuclear Fuel,* (70) *Offsite Radiological Impacts of Spent Nuclear Fuel and High-Level Waste Disposal,* (71) *Mixed-Waste Storage and Disposal,* and (72) *Nonradioactive Waste Storage and Disposal*—''Low-level waste storage and disposal,'' ''Onsite storage of spent nuclear fuel,'' ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal,'' ''Mixed-waste storage and disposal,'' and ''Nonradioactive waste storage and disposal'' are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(xvii) Greenhouse Gas Emissions and Climate Change

(73) *Greenhouse Gas Impacts on Climate Change*—This final rule adds a new Category 1 issue, ''Greenhouse gas impacts on climate change,'' that evaluates the greenhouse gas (GHG) impacts on climate change associated with continued operation and refurbishment. The issue of GHG emissions on climate change was not

[5] The term ''Indian Tribes'' refers to Federally recognized Tribes as acknowledged by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a). Environmental justice communities can also include State-recognized Tribes, those that self-identify as Indian Tribes, and tribal members. Tribal members can be part of an environmental justice community that has different interests and concerns than a Tribal government.

considered in the 2013 LR GEIS and was not included in Table B–1. At the time of publication of the 2013 LR GEIS, insufficient data existed to support a classification of the contribution of nuclear power plant GHG emissions on climate change, either as a generic or plant-specific issue. The 2013 LR GEIS, however, included a discussion summarizing the life cycle impacts of nuclear power plant GHG emissions and climate change. Furthermore, following the issuance of Commission Order CLI–09–21, the NRC began to evaluate the direct and cumulative effects of GHG emissions and their contribution to climate change in environmental reviews for license renewal applications.

Nuclear power plants, by their very nature, do not combust fossil fuels to generate electricity and, therefore, have inherently low GHG emissions. However, nuclear power plant operations do have some GHG emission sources including diesel generators, pumps, diesel engines, boilers, refrigeration systems, electrical transmission and distribution systems, as well as mobile sources (*e.g.,* worker vehicles and delivery vehicles). Any refurbishment activities undertaken at the nuclear power plant site could also produce GHGs due to emissions from motorized equipment, construction vehicles, and worker vehicles. Collectively, these GHG emissions, when compared to different GHG emission inventories for other facilities, are minor.

The NRC concluded that the impacts of GHG emissions on climate change from continued operation during the license renewal term (initial LR or SLR) and any refurbishment activities would be SMALL for all nuclear power plants. Therefore, this is a new Category 1 issue.

(74) *Climate Change Impacts on Environmental Resources*—This final rule adds this new Category 2 issue, ''Climate change impacts on environmental resources,'' that evaluates the impacts of climate change on environmental resources that are affected by continued nuclear power plant operations and any refurbishment during the license renewal term (initial LR or SLR). Climate change is an environmental trend (*i.e.,* reflected in changes in climate indicators, such as precipitation, air and water temperature, sea level rise over time) that could result in changes in the affected environment, irrespective of license renewal. The issue of climate change impacts was not identified as either a generic or plant-specific issue in the 2013 LR GEIS. However, the 2013 LR GEIS briefly described the environmental impacts that could occur on resources areas (land use, air quality, water resources, etc.) that may also be affected by license renewal. In plant-specific initial LR and SLR SEISs prepared since development of the 2013 LR GEIS, the NRC considered climate change impacts for those resources that could be incrementally affected by license renewal as part of the cumulative impact analysis.

As part of a comprehensive environmental review to meet its obligations under NEPA, the NRC must consider the impacts of climate change on environmental resource conditions that could also be affected by continued nuclear power plant operation and any refurbishment as a result of the proposed action (license renewal). License renewal environmental reviews conducted by the NRC have found that climate change effects on affected resources (*e.g.,* water availability, sea level rise) can be equal to or greater than any direct effects associated with continued nuclear power plant operations during the license renewal term. Observed climate change has not been uniform across the United States. The accrued effects of climate change on environmental resource conditions can vary greatly based on site-specific conditions and thus are plant-specific rather than generic in nature. In support of plant operation and in conformance with environmental permitting requirements, nuclear power plant licensees maintain systems and collect meteorological, water temperature, and other data that can inform the NRC's environmental review with respect to the impacts of climate change on environmental resource conditions.

The impacts of climate change on environmental resources that are affected by continued nuclear power plant operations and refurbishment during the license renewal term are location-specific and cannot be evaluated generically. The effects of climate change can vary regionally and climate change information at the regional and local scale is necessary to assess the impacts on the human environment for a specific location. The NRC's climate change impacts analysis will focus on reasonably foreseeable climate change impacts and predicted (future) trends on the baseline affected environment (*i.e.,* the effects of climate change on environmental resource areas). The NRC will need to perform a plant-specific impact assessment as part of each license renewal environmental review. Therefore, this is a new Category 2 issue that cuts across multiple resource areas, similar to the cumulative effects issue, which is currently in Table B–1.

(xviii) Cumulative Effects

(75) *Cumulative Effects*—This final rule renames ''Cumulative impacts'' as ''Cumulative effects''; it is a Category 2 issue. This final rule makes minor editorial and clarification changes to the finding column of Table B–1 for this issue to be consistent with the definition of cumulative effects as provided in the Council on Environmental Quality's revised regulation at 40 CFR 1508.1(i)(3).

(xix) Uranium Fuel Cycle

(76) *Offsite Radiological Impacts—Individual Impacts from Other than the Disposal of Spent Fuel and High-Level Waste,* (77) *Offsite Radiological Impacts—Collective Impacts from Other than the Disposal of Spent Fuel and High-Level Waste,* (78) *Nonradiological Impacts of the Uranium Fuel Cycle,* and (79) *Transportation*—''Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste,'' ''Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste,'' ''Nonradiological impacts of the uranium fuel cycle,'' and ''Transportation'' are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(xx) Termination of Nuclear Power Plant Operations and Decommissioning

(80) *Termination of Plant Operations and Decommissioning*—''Termination of plant operations and decommissioning'' is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

This final rule revises the footnotes to Table B–1 as follows:

Footnote 1 is revised to reference the current revision of the LR GEIS.

Footnote 2 is revised to indicate that for the ''Offsite radiological impacts of spent nuclear fuel and high-level waste disposal'' issue, there is no single significance level to the impact.

Footnote 3 is revised to indicate that resource-specific effects or impact definitions from applicable environmental laws and executive orders, other than SMALL, MODERATE, and LARGE, apply and are used where appropriate.

Footnote 7 is added to indicate that for the ''Severe accidents'' issue, alternatives to mitigate severe accidents must be considered for all plants that have not already considered such alternatives and would be the functional equivalent of a Category 2 issue.

Section 51.53(c)(3), ''Postconstruction Environmental Reports''

This final rule revises the introductory paragraph of Section 51.53(c)(3) to replace the words ''an initial renewed license'' with the words ''a license renewal covered by Table B–1'' to reflect that the regulation governing postconstruction environmental reports for license renewal applies to applicants seeking either an initial or subsequent renewed license following this update of the LR GEIS. Additionally, this final rule revises the text ''and holding an operating license, construction permit, or combined license as of June 30, 1995'' to read ''for a nuclear power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995,'' in order to clarify that Watts Bar Nuclear Units 1 and 2, for which construction permits were issued by that date but are no longer held by the licensee, are within the scope of the revised LR GEIS and Table B–1. The revised language more clearly indicates that holders of renewed licenses for nuclear power plants within the scope of the revised LR GEIS and Table B–1 are within its scope during the license renewal term.

This final rule revises Section 51.53(c)(3)(ii)(B) for clarity and consistency with the methodology in CWA Sections 316(a) and (b), including the 2014 CWA Section 316(b) regulations which establish the BTA criteria based on impingement mortality, rather than total impingement.

This final rule revises Section 51.53(c)(3)(ii)(D) to delete the text ''is located at an inland site and,'' to reflect the consolidation of two issues from the 2013 LR GEIS: ''Groundwater quality degradation (plants with cooling ponds in salt marshes),'' a Category 1 issue, and ''Groundwater quality degradation (plants with cooling ponds at inland sites),'' a Category 2 issue. The consolidated Category 2 issue in the revised LR GEIS, ''Groundwater quality degradation (plants with cooling ponds)'' reflects new information that cooling ponds can impact water quality at both inland and at coastal sites as a result of the migration of contaminants discharged to cooling ponds.

This final rule revises Section 51.53(c)(3)(ii)(E) for clarity and consistency with the changes related to Federally protected ecological resources in Table B–1 and the revised LR GEIS. The changes in this paragraph correspond to the changes in Table B–1 where a Category 2 issue, ''Threatened, endangered, and protected species and essential fish habitat'' was divided into three issues, for clarity and consistency with the separate Federal statues and interagency consultation requirements that the NRC must consider with respect to Federally protected ecological resources. Also included is a change reflecting the addition of a new Category 2 issue, ''National Marine Sanctuaries Act: sanctuary resources,'' which addresses the NRC consultation requirements under the Act.

This final rule revises Section 51.53(c)(3)(ii)(G) for consistency with changes to the Category 2 issue, ''Microbiological hazards to the public.'' The updated finding for this issue states that public health is a concern wherever receiving waters associated with nuclear power plant thermal effluents are accessible to the public.

This final rule revises Section 51.53(c)(3)(ii)(K) for clarity and consistency with the specific requirements of Section 106 of the NHPA, including the reference to NEPA, to reflect the requirement that Federal agencies must consider the potential effects of their actions on the affected human environment, which includes aesthetic, historic, and cultural resources.

This final rule revises Section 51.53(c)(3)(ii)(N) for clarity and consistency with the changes in Table B–1 and the revised LR GEIS by adding consideration of Indian Tribes and revises the terminology to refine the scope of environmental justice concerns.

This final rule revises Section 51.53(c)(3)(ii)(O) by removing the word ''future,'' for consistency with the revised terminology for ''cumulative effects'' provided by the Council on Environmental Quality.

This final rule adds a new Section 51.53(c)(3)(ii)(Q) for consistency with the changes in Table B–1 and the revised LR GEIS which includes the addition of a new Category 2 issue, ''Climate change impacts on environmental resources.'' The addition requires the assessment of the effects of climate change on environmental resources that are affected by continued nuclear power plant operations and any refurbishment. The new issue was identified to improve the efficiency of reviews, address lessons learned from plant-specific reviews and information provided in public comments, and to reflect analyses already being performed by the NRC staff in environmental reviews, consistent with the Commission direction provided in CLI–09–21.

Section 51.95, ''Postconstruction Environmental Impact Statements''

The final rule revises Section 51.95(c), ''Operating license renewal stage,'' to remove the date of issuance of NUREG–1437. This change is made for clarity and to ensure that the regulation refers to the latest revision of the LR GEIS.

III. Opportunities for Public Participation

The proposed rule was published in the **Federal Register** on March 3, 2023, for a 60-day public comment period (88 FR 13329). The public comment period closed on May 2, 2023. A public meeting notice was published in the **Federal Register** on March 10, 2023 (88 FR 14958). During the comment period, the NRC conducted six hybrid (in-person with virtual attendance option) public meetings to promote a full understanding of the proposed rule, the draft revised LR GEIS, and associated draft guidance documents, and to receive public comments. The NRC also conducted a public meeting on November 8, 2023, on cumulative effects of regulation (CER) to discuss the effective and implementation dates for the final rule. See the ''Cumulative Effects of Regulation'' section of this document for additional information on stakeholder engagement. The meeting summaries and official transcripts are available as indicated in the ''Availability of Documents'' section of this document. The public comments informed the development of this final rule.

IV. Response and Public Comment Analysis

A. Overview

Appendix A, Section A.2, of Volume 2 of the revised LR GEIS (NUREG–1437, Revision 2), is the NRC's analysis of and response to public comments received on the proposed rule (see section XVI ''Availability of Documents''). The NRC received 1,889 comment submissions during the public comment period that ended on May 2, 2023 (1,839 individuals submitted form letters that counted as one unique comment). A comment submission is a communication or document submitted to the NRC by an individual or entity, with one or more individual comments addressing a subject or issue. A total of 44 unique comment submissions were received during the comment period and six public meetings.

The public comment submittals are available on the Federal rulemaking website under Docket ID NRC–2018–0296. NRC's response to the public comments, including a summary of how

NRC revised the proposed rule in response to public input, can be found in Appendix A.2 of the revised LR GEIS. The following sections summarize the major issues that resulted in substantive changes to this final rule and other issues raised for which no changes were made to this final rule.

B. Applicability of License Renewal Terms

As directed by the Commission in Staff Requirements SECY–22–0109, ''Proposed Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review,'' the proposed rule requested comment on whether the applicability of the revised LR GEIS should be expanded beyond two license renewal terms (*i.e.,* initial license renewal and one subsequent license renewal term). Several comments from industry supported expansion, citing an efficient use of resources, while a few members of the public opposed it, citing insufficient information on aging management.

This final rule and revised LR GEIS remain applicable to one term of license renewal and one term of subsequent license renewal. Based on the public feedback received and the NRC's analysis of public input, no reason was found to deviate from the Commission's initial direction, due in part to the lack of public support, no immediate industry need, and scheduling impacts. The next review of the revised LR GEIS is scheduled to begin in fiscal year 2031 in accordance with SRM–SECY–22–0036, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC–2022–0087),'' at which point there will be another opportunity to consider expanding the scope of the revised LR GEIS to encompass multiple terms of SLR.

C. Comments Resulting in Changes to the Proposed Rule

Two issues were raised during the public comment period that resulted in substantive changes to the proposed rule; these comments and NRC's changes are briefly discussed in the following paragraphs.

Greenhouse Gas Emissions and Climate Change: The NRC received a comment stating, in part, that the NRC's proposal in 10 CFR 51.53(c)(3)(ii)(Q) to consider mitigation measures for climate change impacts is unneeded and duplicative. One comment noted that the NRC already has guidance for the preparation of environmental reports that direct applicants to consider potential mitigation measures for issues such as drought, consumptive surface water use, and other issues affected by climate change. The comments also stated that there is no need for the proposed new Category 2 issue or § 51.53(c)(3)(ii)(Q) to consider the additive or incremental effects of climate change or mitigation measures for purposes of the NRC's license renewal NEPA evaluation.

NRC Response: The NRC disagrees that the new Category 2 issue and accompanying section 51.53(c)(3)(ii)(Q) on climate change are unnecessary. However, with respect to mitigation measures, the NRC agrees with the comment to the extent that the NRC's regulations in 10 CFR 51.53(c)(3)(iii) already require that environmental reports submitted by license renewal applicants contain a consideration of alternatives for reducing adverse impacts, as required by § 51.45(c), for all Category 2 license renewal issues in appendix B to subpart A of 10 CFR part 51. Therefore, the NRC has revised 10 CFR 51.53(c)(3)(ii)(Q) in this final rule to eliminate this duplicative requirement specific to mitigation measures for climate change impacts. The NRC also made conforming changes to Section 4.12 in Regulatory Guide 4.2, Supplement 1, Revision 2, and Section 4.12.5 in NUREG–1555, Supplement 1, Revision 2. No changes were required in the revised LR GEIS as a result of the comment. See also the NRC's responses to comments on this topic in the ''Summary of Other Public Comments'' section of this document.

Human Health (Microbiological Hazards): The NRC received a comment stating that the proposed addition to Section 3.9.2.2 of the revised LR GEIS regarding discharges to waters of the United States infers reference to the Clean Water Act, which has the potential to expand the scope of this issue if changes to the definition of ''waters of the United States'' ever occur in the future. In addition, the comment recommends limiting the scope to waters receiving discharges that are accessible to the public for recreational use.

NRC Response: The NRC agrees in part and disagrees in part with the comment. The NRC agrees that reference to the Clean Water Act should be removed. Members of the public should be protected from microbiological hazards resulting from plant discharges into water bodies and not just to plant discharges into ''waters of the United States.'' However, the NRC does not agree that the scope of the Category 2 issue, ''Microbiological hazards to the public,'' should be limited to waters receiving discharges that are accessible to the public for ''recreational use.'' The NRC has modified the text in Section 3.9.2.2 of the revised LR GEIS; Sections 3.9 and 4.9 of Regulatory Guide 4.2, Supplement 1, Revision 2; and Sections 3.9 and 4.9 in NUREG–1555, Supplement 1, Revision 2, to reflect that members of the public could be exposed to microbiological organisms in thermal effluents at nuclear plants that use cooling ponds, lakes, canals, or that discharge to publicly accessible surface waters. The NRC also has updated the text in Chapter 2 (*i.e.,* Table 2.1–1), Section 4.9.1.1.3 of the revised LR GEIS, and in Section 51.53(c)(3)(ii)(G) and Table B–1 of this final rule for consistency.

D. Summary of Other Public Comments

The NRC received comments on a variety of topics, including alternatives; meteorology, air quality, and noise; geologic environment; water resources (surface water and groundwater resources); ecological resources (terrestrial resources, aquatic resources, and federally protected ecological resources); historic and cultural resources; socioeconomics; human health (radiological and nonradiological hazards and postulated accidents); environmental justice; waste management and pollution prevention (radioactive and nonradioactive waste); greenhouse gas (GHG) emissions and climate change; cumulative effects; uranium fuel cycle; termination of nuclear power plant operations and decommissioning; general environmental concerns; NEPA process; license renewal process and rulemaking; public participation; general opposition or support of the revised LR GEIS, rulemaking, or license renewal; out of scope: energy cost or need for power; out of scope: emergency preparedness; out of scope: nuclear plant safety; out of scope: security and terrorism; and out of scope: nuclear plant-specific issues. Some comments received were editorial in nature, and many comments were considered outside of the scope of the license renewal environmental review process as well as this rulemaking.

Some of the more frequently mentioned issues and concerns in public comments, as well as the NRC's responses to those comments and any changes made in the final revised LR GEIS, are summarized in the following paragraphs. These summaries and responses are not intended to be comprehensive of detailed comments and responses contained in revised LR GEIS Volume 2, Appendix A, Section A.2.

Alternatives to the proposed action. A number of comments questioned the adequacy of and basis for the NRC's

consideration of energy (replacement power) alternatives in the revised LR GEIS.

The revised LR GEIS describes alternative energy sources that the NRC has identified as being potentially capable of meeting the purpose and need of the proposed action (license renewal). The NRC's analysis of replacement energy sources includes both baseload and non-baseload energy sources. The NRC further recognizes the ongoing changes in the nation's energy landscape, including continuing trends in the reduced use of many fossil fuels and the increased deployment of renewables and storage. The NRC revised Section 2.3 and Appendix D, Section D.3, of the revised LR GEIS to reflect the latest developments in these trends.

Categorization of environmental issues. A substantial number of comments questioned the NRC's findings with respect to many of the Category 1 issues (*i.e.,* in the areas of surface water resources, groundwater resources, terrestrial resources, and aquatic resources) evaluated in the revised LR GEIS and proposed rule (*i.e.,* Table B–1 in appendix B to subpart A of 10 CFR part 51). Many comments cited unique and site-specific information and examples from operating nuclear power plant sites to support the view that many Category 1 issues should instead be designated as Category 2, thus requiring a plant-specific environmental analysis.

As detailed in the NRC's responses to specific comments, the NRC provides its specific reasoning for categorizing environmental issues analyzed and designated in this final rule as either Category 1 or 2 in the revised LR GEIS, based on the methodology and criteria stated in Section 1.5 of the revised LR GEIS. The NRC designated issues as Category 1 with an impact of SMALL because the environmental impacts were found to be the same or similar at all plant sites. In part, while the NRC recognizes the need to consider unique issues and potential impacts at nuclear power plant sites as part of the NRC's license renewal environmental reviews, the NRC's categorization of environmental issues as either Category 1 or 2 and associated findings were informed by lessons learned and knowledge gained from conducting initial LR and SLR environmental reviews since development of the 2013 LR GEIS.

The designation of an issue as a Category 1 issue does not mean that potential environmental impacts are not considered. During preparation of plant-specific supplements to the revised LR GEIS, NRC staff considers changes in nuclear power plant operating parameters and new and potentially significant information provided by the applicant, identified through public comments, or resulting from the NRC's due diligence in reviewing relevant information. Data are reviewed in part for information that could change the conclusion in the revised LR GEIS with regard to an issue. Thus, even though an issue is a Category 1 issue, mechanisms are in place to conduct a full plant-specific review if new and significant information warrants such a review.

Radiological human health. A number of comments expressed concerns regarding the lack of human health studies (*e.g.,* cancer studies around nuclear power plants), citing in particular the NRC's cancellation of a proposed National Academy of Sciences's study to inform the NRC's Category 1 findings for human health issues.

With respect to specific concerns regarding human health studies and cancer risk, several studies have been performed to examine the health effects around nuclear power facilities. These studies are incorporated by reference in Section 3.9.1.4 of the revised LR GEIS. The NRC is not aware of any studies that are accepted by the scientific community that show a correlation between radiation dose from nuclear power facilities and cancer incidence in the general public. Further, as the NRC states in SECY–15–0104, ''Analysis of Cancer Risks in Populations Near Nuclear Facilities Study,'' studies conducted by Canada, France, Germany, Great Britain, Spain, and Switzerland since 2008 have generally found no association between nuclear facility operations and increased cancer risks to the public that are attributable to the releases or radiation exposure. Regarding comments on the proposed National Academy of Sciences's cancer study, ''Analysis of Cancer Risks in Populations Near Nuclear Facilities: Phase 2 Pilot Planning,'' the NRC declined to continue the study because it was unlikely to be able to answer the basic question about risk. The NRC's regulatory limits for radiological protection are set to protect workers and the public from harmful effects of radiation on humans. Radiation dose limits in 10 CFR part 20 ensure adequate protection of workers and members of the public.

Greenhouse gas (GHG) emissions and climate change. Several comments expressed general support for the NRC's consideration of GHGs and climate change in the revised LR GEIS and rule. A few comments, in part, indicated that the NRC's treatment of climate change should be expanded while other comments expressed concerns with the NRC's addition of the Category 2 issue, ''Climate change impacts on environmental resources.''

Climate change is a subject of national and international interest and has been and continues to be a topic of broad public interest with respect to reactor license renewal. The implications of climate change and the high level of public interest have made this topic one that the NRC believes requires a ''hard look'' as required by NEPA. The NRC has concluded that the effects of climate change can vary regionally and climate change information at the regional and local scale is necessary to assess trends and the impacts on the human environment for a specific location. The NRC has appropriately limited the boundaries of its inquiry of climate change impacts and the scope of the new Category 2 issue to matters germane to the NRC's proposed action. As further discussed in Section 4.12.2 of the revised LR GEIS, the Category 2 climate change impacts issue considers those reasonably foreseeable effects on environmental resources that may also be directly affected by continued operation and refurbishment of nuclear power plants during the license renewal term. The NRC will consider climate change impacts in proportion to their significance and the magnitude of the impacts anticipated. The NRC will also use the best available climate change information and consensus reports (*e.g.,* U.S. Global Climate Change Research Program) and will quantify climate change impacts to the extent possible.

Postulated accidents. A large number of comments were received that were critical of various aspects of the NRC's analysis of postulated accidents, focused on severe accidents, and concerned the NRC's proposal to reclassify ''Severe accidents'' from Category 2 to Category 1.

The NRC has reclassified the issue of ''Severe accidents'' as a Category 1 issue to more accurately reflect the procedural posture of the vast majority of license renewal applicants expected to reference the revised LR GEIS. Under the previous (2013) LR GEIS, the NRC resolved the impacts of severe accidents generically but required an analysis of severe accident mitigation for applicants that had not previously conducted such an analysis. For applicants that had, the issue was the ''functional equivalent'' of a Category 1 issue. At this time, the NRC expects most, if not all, facilities that are the subject of license renewal applications will have had a previous severe accident mitigation analysis

completed. Therefore, the issue is most accurately characterized as Category 1. Moreover, the analysis in Appendix E of the revised LR GEIS further confirms the technical basis for the agency's policy of requiring only one severe accident mitigation alternatives (SAMA) analysis.

However, designation of an issue as a Category 1 issue does not mean that potential impacts are not considered. Changes in nuclear power plant operating parameters and new and significant information provided by the applicant, identified through public comments, or resulting from the NRC's due diligence in reviewing relevant information are considered during preparation of plant-specific supplements to the revised LR GEIS. Data are reviewed in part for information that could change the conclusion in the revised LR GEIS with regard to an issue. Thus, even though an issue is considered to be a Category 1 issue, mechanisms are in place to conduct a full plant-specific review if new and significant information warrants such a review.

Historic and cultural resources. A few comments stated that the regulatory requirement to consult with Tribes under Section 106 of the National Historic Preservation Act does not adequately cover a Federal agency's responsibility to consult with Indian Tribes on any Federal action that might have an impact on a Tribe. Comments referenced requirements from Executive Order 13175 and stated that a Federal agency's responsibility to consult with Indian Tribes covers more than historic preservation issues. Additional comments stated that the NRC must recognize and abide by the unique trust obligations between the United States and federally recognized Indian Tribes, and that the Tribal Policy Statement (82 FR 2402) should be referenced in the final rule.

The NRC acknowledges the comments and agrees that Tribal consultation for environmental reviews covers more than historic preservation issues. As an independent regulatory agency that does not hold in trust Tribal lands or assets or provide services to Federally recognized Tribes, the NRC fulfills its Trust Responsibility through implementation of the principles of the Tribal Policy Statement, by providing protections under its implementing regulations, and through recognition of additional obligations consistent with other applicable treaties and statutory authorities. The Tribal Policy Statement established a set of principles to guide the agency's government-to-government interactions with Federally recognized Indian Tribes and Alaska Native Tribes, promote effective government-to-government interactions with Indian Tribes, and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction. The NRC's Tribal Policy Statement is consistent with the principles articulated in Executive Order 13175. The Policy Statement also underscores the NRC's commitments to conducting outreach to Tribes, engaging in timely consultation, and coordinating with other Federal agencies.

As a result of the comments, the NRC determined that the revised LR GEIS and staff guidance would benefit from a more detailed discussion of the NRC's Tribal Policy Statement. The NRC added a discussion (Section 1.8.7, Consultations) to Chapter 1 of the revised LR GEIS and a new section (Tribal Policy Statement) to the Executive Summary of NUREG–1555, Supplement 1, Revision 2.

NEPA process. Many comments expressed concern about the adequacy of the LR GEIS revision and update process. The concerns expressed included, but were not limited to, such matters as the lack of a ''hard look'' and rigorous analysis of environmental impacts of license renewal as required by NEPA.

The NRC recognizes that Federal agencies are required to take a ''hard look'' at the potential environmental impacts associated with the agency's proposed actions. As noted in the proposed rule, the changes in the revised LR GEIS as well as to the NRC's regulations in 10 CFR part 51 and the NRC's findings for environmental issues in Table B–1 in appendix B to subpart A of 10 CFR part 51 are designed to maintain the accuracy of the LR GEIS and ensure that future environmental reviews meet the ''hard look'' standard to fully account for the environmental impacts of initial LR and SLR. The revised LR GEIS provides a thorough assessment of the potential environmental impacts (effects) of renewing the operating licenses of commercial nuclear power plants for an additional 20 years beyond the current license term, plus the number of years remaining on the current license, in accordance with applicable regulations.

License renewal and rulemaking process. Numerous comments were received on the NRC's overall license renewal framework, as related to the process for revising the LR GEIS and this rulemaking. Comments specifically questioned why the NRC was considering SLR applications (allowing continued nuclear plant operations for up to 80 years). Comments also criticized the reasoning behind allowing license renewal applications to be submitted more than 10 years before an operating license expires.

With respect to the timing of license renewal applications, Section 54.17(c) of 10 CFR part 54 allows licensees to submit license renewal applications up to 20 years before the expiration of the licenses currently in effect. The Commission established this earliest date for submission of license renewal applications after soliciting and considering public comments (56 FR 64943).

Facilities seeking license renewal have operated for more than 20 years before the filing of their initial LR applications, and for more than 40 years before the filing of their SLR applications. Thus, the NRC and other affected stakeholders at all levels have had decades to gain a better understanding of the environmental equilibrium and impacts of plant operations. The NRC has determined that having at least 20 years of operating experience at each power reactor facility is sufficient for the NRC to assess the environmental issues and impacts at the site and make informed generic judgments on the impacts of many environmental issues.

Public participation. A number of comments expressed concerns and disappointment with NRC's management of the public participation process. Many commenters requested extension of the comment period or stated that the comment period length was inadequate.

The NRC will continue to look for ways to improve public notifications and opportunities to comment, including the NRC's virtual (webinar) and in-person public meetings. To facilitate public involvement, the staff hosted six hybrid public meetings with a 30-minute open house prior to the start of the meetings where members of the public could speak directly with and ask questions of NRC staff who authored the draft revised LR GEIS and proposed rule.

With regard to requests for extending the comment period on the draft revised LR GEIS and proposed rule, the 60-day comment period was appropriate for this rulemaking and consistent with NRC regulations (see 10 CFR 51.73). While the NRC believes that the provided 60-day comment period for the draft revised LR GEIS and proposed rule was appropriate, the NRC considered additional comments after the close of the comment period to the extent practicable.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes made by this final rule.

10 CFR 51.53, Postconstruction Environmental Reports

In § 51.53(c)(3), this final rule removes the text ''an initial renewed license'' and replaces it with ''a license renewal covered by Table B–1'', to indicate applicability to initial LR and SLR. Additionally, this final rule revises the phrase ''and holding an operating license, construction permit, or combined license as of June 30, 1995'' to read ''for a nuclear power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995,'' in order to clarify that Watts Bar Nuclear Units 1 and 2, for which construction permits were issued by that date but are no longer held by the licensee, are within the scope of the revised LR GEIS and Table B–1. The revised language more clearly indicates that holders of renewed licenses for nuclear power plants within the scope of the revised LR GEIS and Table B–1 are within its scope during the license renewal term (initial LR or SLR).

This final rule revises paragraph (c)(3)(ii)(B) for clarity and consistency with the methodology in Clean Water Act (CWA) Sections 316(a) and (b).

This final rule revises paragraph (c)(3)(ii)(D) to remove the text ''is located at an inland site and'', for consistency with consolidation of two issues related to groundwater quality degradation and corresponding updates in Table B–1.

This final rule revises paragraph (c)(3)(ii)(E) for clarity and consistency with proposed revisions to Table B–1.

This final rule revises paragraph (c)(3)(ii)(G) for consistency with revisions to Table B–1 related to the scope of the ''Microbiological hazards to the public'' issue. Paragraph (c)(3)(ii)(G) was revised in response to a public comment, for reasons discussed in Sections II.E and IV.C of this final rule.

This final rule revises paragraph (c)(3)(ii)(K) for clarity and consistency with the requirements of Section 106 of the National Historic Preservation Act and NEPA.

This final rule revises paragraph (c)(3)(ii)(N) for clarity and consistency with revisions to Table B–1 related to the scope of environmental justice concerns.

This final rule revises paragraph (c)(3)(ii)(O) by removing the word ''future,'' for consistency with the revised terminology for ''cumulative effects'' provided by the Council on Environmental Quality.

This final rule adds new paragraph (c)(3)(ii)(Q) to include an assessment of the effects of climate change in postconstruction environmental reports. Paragraph (c)(3)(ii)(Q) was revised in response to a public comment, for reasons discussed in Sections II.E and IV.C of this final rule.

Section 51.95, Postconstruction Environmental Impact Statements

This final rule revises paragraph (c) to remove the date ''(June 2013)'', to clarify the reference to the current revision of the LR GEIS (NUREG–1437, Revision 2).

Appendix B to Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

This final rule revises appendix B to subpart A of 10 CFR part 51, to indicate the applicability to initial LR and one term of SLR and to update the findings on environmental issues with the data supported by the analyses in the LR GEIS (NUREG–1437, Revision 2). Footnote 3 was revised to provide clarification on the range of impact findings in Table B–1.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects nuclear power plant licensees filing for license renewal applications. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available as indicated in the ''Availability of Documents'' section of this document.

VIII. Backfitting and Issue Finality

This final rule codifies in 10 CFR part 51 certain environmental issues identified in the revised LR GEIS. The final rule also revises § 51.53(c)(3) to remove the word ''initial.'' The NRC has determined that the backfitting rule in § 50.109 and the issue finality provisions in 10 CFR part 52 do not apply to this final rule because this amendment does not involve any provision that would either constitute backfitting as that term is defined in 10 CFR chapter I or affect the issue finality of any approval issued under 10 CFR part 52.

IX. Cumulative Effects of Regulation

The NRC is following its cumulative effects of regulation (CER) process by engaging with external stakeholders throughout the rulemaking and related regulatory activities. Public involvement has included (1) the publication of a notice announcing information gathering through the public scoping process to support the review to determine whether to update the LR GEIS on August 4, 2020 (85 FR 47252); (2) four public meetings conducted on August 19, 2020, and August 27, 2020 (two meetings on each day), to receive comments on the scope of the LR GEIS; (3) publication of the proposed rule on March 3, 2023 (88 FR 13329) for comment; (4) six hybrid public meetings conducted between March 16, 2023, and April 6, 2023, to receive comments on the proposed rule, the revised LR GEIS, and associated guidance documents (88 FR 14958); and (5) a public meeting conducted on November 8, 2023, on CER to discuss the effective date and implementation date for this final rule.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

XI. National Environmental Policy Act

In support of the revisions to 10 CFR part 51 concerning initial LR and SLRs, the NRC prepared Revision 2 to NUREG–1437. With regard to the corresponding changes in requirements for applications for initial LR or SLR, the NRC has determined that this is the type of action described in § 51.22(c)(3), an NRC categorical exclusion. Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for this final rule, as it is procedural in nature and pertains to the type of environmental information to be reviewed.

XII. Paperwork Reduction Act Statement

This final rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The burden to the public for the information collections is estimated to average 8,562 hours per response, including the time

for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The collections of information were approved by the Office of Management and Budget, approval number 3150–0021.

The information collection is being conducted to fulfill the requirements of a future applicant that submits an initial LR or SLR license application. This information will be used by the NRC to fulfill its responsibilities in the licensing review of nuclear power plants. Responses to this collection of information are mandatory. Confidential and proprietary information submitted to the NRC is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

You may submit comments on any aspect of the information collections, including suggestions for reducing the burden, by the following methods:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* search for Docket ID NRC–2018–0296.
- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0021), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503.

Public Protection Notification

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

XIII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XIV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC revises various provisions of 10 CFR part 51. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XV. Availability of Guidance

To support implementation of this final rule, the NRC is issuing the following guidance: (1) Regulatory Guide (RG) 4.2, ''Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications,'', Revision 2, and (2) NUREG–1555, Supplement 1, Revision 2, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal.'' The guidance documents are available as indicated in the ''Availability of Documents'' section of this document. You may access information and comment submissions related to the guidance by searching on *https://www.regulations.gov* under Docket ID NRC–2018–0296.

For more information, see the response to public comments (available as indicated in the ''Response and Public Comment Analysis'' section of this document).

XVI. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./ **Federal Register** citation
Final Rule Documents	
SECY–24–0017, ''Final Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC–2018–0296)''	ML23202A150
Regulatory Analysis for the 10 CFR Part 51, Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants	ML24152A224
Supporting Statement for Information Collections Contained in the Renewing Nuclear Power Plant Operating Licenses—Environmental Review Proposed Rule	ML23205A028
Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants (LR GEIS)	
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 1, Revision 2, August 2024	ML24086A526
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 2, Revision 2, August 2024	ML24086A527
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 3, Revision 2, August 2024	ML24086A528
Guidance Documents	
NUREG–1555, Supplement 1, Revision 2, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal,'' August 2024	ML23201A227
Regulatory Guide 4.2, ''Supplement 1, Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications,'' August 2024	ML23201A144
Proposed Rule Documents	
Renewing Nuclear Power Plant Operating Licenses—Environmental Review, Proposed Rule, March 3, 2023	88 FR 13329
SECY–22–0109, ''Proposed Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC–2018–0296),'' December 6, 2022	ML22165A004
Draft Regulatory Analysis for the 10 CFR Part 51, Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, December 6, 2022	ML23010A074

Document	ADAMS accession No./ **Federal Register** citation
Draft Supporting Statement for Information Collections Contained in the Renewing Nuclear Power Plant Operating Licenses—Environmental Review Proposed Rule, March 3, 2023	ML22208A002
Public Meetings	
Renewing Nuclear Power Plant Operating Licenses—Environmental Review, Proposed Rule Public Meetings, March 10, 2023	88 FR 14958
03/16/2023 Meetings Summary: Rockville, MD, Public Meetings on Proposed Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review	ML23100A211
03/28/2023 Meeting Summary: Naperville, IL, Public Meeting on Proposed Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review	ML23100A213
03/30/2023 Meeting Summary: Westlake, TX, Public Meeting on Proposed Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review	ML23100A203
04/04/2023 Meeting Summary: King of Prussia, PA, Public Meeting on Proposed Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review	ML23100A207
04/06/2023 Meeting Summary: Decatur, GA, Public Meeting on Proposed Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review	ML23100A208
11/08/2023 Meeting Summary: Cumulative Effects of Regulations Public Meeting: Draft Final Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review	ML23331A004
Official Transcript of March 16, 2023: Rockville, MD, Public Comments-Gathering Meeting on PR–51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (Afternoon Session) (corrected)	ML23082A151
Official Transcript of March 16, 2023: Rockville, MD, Public Comments-Gathering Meeting on PR–51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (Evening Session) (corrected)	ML23082A152
Official Transcript of March 28, 2023: Naperville, IL, Public Comments-Gathering Meeting on PR–51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (corrected)	ML23107A242
Official Transcript of March 30, 2023: Westlake, TX, Public Comments-Gathering Meeting on PR–51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (corrected)	ML23107A243
Official Transcript of April 4, 2023: King of Prussia, PA, Public Comments-Gathering Meeting on PR–51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (corrected)	ML23107A244
Official Transcript of April 6, 2023, Decatur, GA, Public Comments-Gathering Meeting on PR–51—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (corrected)	ML23107A245
Official Transcript of November 8, 2023, Public Meeting on Cumulative Effects of Regulations: Draft Final Rule Renewing Nuclear Power Plant Operating Licenses—Environmental Review (corrected)	ML23331A005
Related Documents	
National Research Council, ''Analysis of Cancer Risks in Populations Near Nuclear Facilities: Phase 1,'' 2012	ML15035A132
National Research Council, ''Analysis of Cancer Risks in Populations Near Nuclear Facilities: Phase 2 Pilot Planning,'' 2014	ML15035A135
Continued Storage of Spent Nuclear Fuel, Final Rule, September 29, 2014	79 FR 56238
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' August 27, 2020, 1:30 p.m.	ML20296A270
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' August 27, 2020, 6:30 p.m.	ML20296A271
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' August 19, 2020, 1:30 p.m.	ML20296A272
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' August 19, 2020, 6:30 p.m.	ML20296A273
Environmental Impact Statement Scoping Process Summary Report, Review and Update of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG–1437), June 2021	ML21039A576
Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule, December 18, 1996	61 FR 66537
Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' November 6, 2000	ML040070159
Nuclear Power Plant License Renewal, Final Rule, December 13, 1991	56 FR 64943
Notice of Intent to Review and Update the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, August 4, 2020	85 FR 47252
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 1, May 1996	ML040690705
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 2, May 1996	ML040690738
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 1, Revision 1, June 2013	ML13106A241
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 2, Revision 1, June 2013	ML13106A242
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' Volume 3, Revision 1, June 2013	ML13106A244
NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Second Renewal, Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4,'' Supplement 5, October 2019	ML19290H346
Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule, June 20, 2013	78 FR 37281
Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Correction, Final Rule, Correcting Amendment, July 31, 2013	78 FR 46255

Document	ADAMS accession No./ **Federal Register** citation
SECY–15–0104, ''Analysis of Cancer Risks in Populations Near Nuclear Facilities Study,'' August 21, 2015	ML15141A404
SECY–21–0066, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32, NRC–2018–0296),'' July 22, 2021	ML20364A008
SECY–22–0024, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32, NRC–2018–0296),'' March 25, 2022	ML22062B643
SECY–22–0036, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC–2022–0087),'' April 25, 2022	ML22083A149
SRM–SECY–21–0066, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32, NRC–2018–0296),'' February 24, 2022	ML22053A308
SRM–SECY–22–0024, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32, NRC–2018–0296),'' April 5, 2022	ML22096A035
SRM–SECY–22–0036, ''Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC–2022–0087),'' June 17, 2022	ML22168A130
U.S. Nuclear Regulatory Commission Memorandum and Order CLI–09–21, November 3, 2009	ML093070690
U.S. Nuclear Regulatory Commission Memorandum and Order CLI–22–02, February 24, 2022	ML22055A496
U.S. Nuclear Regulatory Commission Memorandum and Order CLI–22–03, February 24, 2022	ML22055A521 ML22055A526 ML22055A527 ML22055A533 ML22055A554
U.S. Nuclear Regulatory Commission Memorandum and Order CLI–22–04, February 24, 2022	ML22055A557
U.S. Nuclear Regulatory Commission Tribal Policy Statement	82 FR 2402

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List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is amending 10 CFR part 51 as follows:

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 2. Amend § 51.53 by:
■ a. Removing in paragraph (c)(3) introductory text, the words ''an initial renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995'' and adding in their place the words ''a license renewal covered by Table B–1 for a nuclear power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995'';
■ b. Revising paragraph (c)(3)(ii)(B);
■ c. Removing in paragraph (c)(3)(ii)(D), the words ''is located at an inland site and'';
■ d. Revising paragraphs (c)(3)(ii)(E), (G), (K), and (N);
■ e. Removing in paragraph (c)(3)(ii)(O) the word ''future''; and
■ f. Adding paragraph (c)(3)(ii)(Q).

The revisions and additions read as follows:

§ 51.53 Postconstruction environmental reports.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) If the applicant's plant utilizes once-through cooling or cooling pond water intake and discharge systems, the applicant shall provide a copy of current Clean Water Act 316(b) Best Technology Available determinations and, if applicable, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant cannot provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from impingement mortality and entrainment and thermal discharges.

* * * * *

(E) All license renewal applicants shall assess the impact of refurbishment, continued operations, and other license renewal-related construction activities on important plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on federally protected ecological resources in accordance with Federal laws protecting such resources, including but not limited to, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the National Marine Sanctuaries Act.

* * * * *

(G) If the applicant's plant uses a cooling pond, lake, canal, or discharges to publicly accessible surface waters, an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

* * * * *

(K) All applicants shall identify any potentially affected historic and cultural resources and historic properties and

assess whether continued operations and any planned refurbishment activities would affect these resources in accordance with the Section 106 of the National Historic Preservation Act and in the context of the National Environmental Policy Act.

* * * * *

(N) Applicants shall provide information on the general demographic composition of minority and low-income populations and communities (by race and ethnicity) and Indian Tribes in the vicinity of the nuclear power plant that could be disproportionately affected by license renewal, including continued reactor operations and refurbishment activities.

* * * * *

(Q) Applicants shall include an assessment of the effects of any observed and projected changes in climate on environmental resource areas that are affected by license renewal.

* * * * *

§ 51.95 [Amended]

■ 3. In § 51.95, in paragraph (c) introductory text, remove the words ''(June 2013)''.

■ 4. Revise appendix B to subpart A of 10 CFR part 51 to read as follows:

Appendix B to Subpart A of 10 CFR Part 51—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

The Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995. This assessment applies to applications for initial or a first (*i.e.,* one term) subsequent license renewal. Table B–1 summarizes the Commission's findings on the scope and magnitude of environmental impacts of renewing the operating license for a nuclear power plant as required by section 102(2) of the National Environmental Policy Act of 1969, as amended. Table B–1, subject to an evaluation of those issues identified in Category 2 as requiring further analysis and possible significant new information, represents the analysis of the environmental impacts associated with renewal of any operating license and is to be used in accordance with § 51.95(c). On a 10-year cycle, the Commission intends to review the material in this appendix and update it if necessary. A scoping notice must be published in the **Federal Register** indicating the results of the NRC's review and inviting public comments and proposals for other areas that should be updated.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]

Issue	Category [2]	Finding [3]
Land Use		
Onsite land use	1	SMALL. Changes in onsite land use from continued operations and refurbishment associated with license renewal would be a small fraction of the nuclear power plant site and would involve only land that is controlled by the licensee.
Offsite land use	1	SMALL. Offsite land use would not be affected by continued operations and refurbishment associated with license renewal.
Offsite land use in transmission line right-of-ways (ROWs) [4].	1	SMALL. Use of transmission line ROWs from continued operations and refurbishment associated with license renewal would continue with no change in land use restrictions.
Visual Resources		
Aesthetic impacts	1	SMALL. No important changes to the visual appearance of plant structures or transmission lines are expected from continued operations and refurbishment associated with license renewal.
Air Quality		
Air quality impacts	1	SMALL. Air quality impacts from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Emissions from emergency diesel generators and fire pumps and routine operations of boilers used for space heating are minor. Impacts from cooling tower particulate emissions have been small. Emissions resulting from refurbishment activities at locations in or near air quality nonattainment or maintenance areas would be short-lived and would cease after these activities are completed. Operating experience has shown that the scale of refurbishment activities has not resulted in exceedance of the *de minimis* thresholds for criteria pollutants, and best management practices, including fugitive dust controls and the imposition of permit conditions in State and local air emissions permits, would ensure conformance with applicable State or Tribal implementation plans.
Air quality effects of transmission lines [4]	1	SMALL. Production of ozone and oxides of nitrogen from transmission lines is insignificant and does not contribute measurably to ambient levels of these gases.
Noise		
Noise impacts	1	SMALL. Noise levels would remain below regulatory guidelines for offsite receptors during continued operations and refurbishment associated with license renewal.
Geologic Environment		
Geology and soils	1	SMALL. The impact of continued operations and refurbishment activities on geology and soils would be small for all nuclear power plants and would not change appreciably during the license renewal term.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Surface Water Resources		
Surface water use and quality (non-cooling system impacts).	1	SMALL. Impacts are expected to be small if best management practices are employed to control soil erosion and spills. Surface water use associated with continued operations and refurbishment associated with license renewal would not increase significantly or would be reduced if refurbishment occurs during a plant outage.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered salinity gradients	1	SMALL. Effects on salinity gradients would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered thermal stratification of lakes	1	SMALL. Effects on thermal stratification would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Scouring caused by discharged cooling water.	1	SMALL. Scouring effects would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Discharge of metals in cooling system effluent.	1	SMALL. Discharges of metals have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. Discharges are monitored and controlled as part of the National Pollutant Discharge Elimination System (NPDES) permit process.
Discharge of biocides, sanitary wastes, and minor chemical spills.	1	SMALL. The effects of these discharges are regulated by Federal and State environmental agencies. Discharges are monitored and controlled as part of the NPDES permit process. These impacts have been small at operating nuclear power plants.
Surface water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts could be of small or moderate significance, depending on makeup water requirements, water availability, and competing water demands.
Effects of dredging on surface water quality.	1	SMALL. Dredging to remove accumulated sediments in the vicinity of intake and discharge structures and to maintain barge shipping has not been found to be a problem for surface water quality. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Groundwater Resources		
Groundwater contamination and use (non-cooling system impacts).	1	SMALL. Extensive dewatering is not anticipated from continued operations and refurbishment associated with license renewal. Industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals, and/or the use of wastewater ponds or lagoons have the potential to contaminate site groundwater, soil, and subsoil. Contamination is subject to State or U.S. Environmental Protection Agency (EPA) regulated cleanup and monitoring programs. The application of best management practices for handling any materials produced or used during these activities would reduce impacts.
Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm]).	1	SMALL. Plants that withdraw less than 100 gpm are not expected to cause any groundwater use conflicts.
Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm]).	2	SMALL, MODERATE, or LARGE. Plants that withdraw more than 100 gpm could cause groundwater use conflicts with nearby groundwater users.
Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).	2	SMALL, MODERATE, or LARGE. Water use conflicts could result from water withdrawals from rivers during low-flow conditions, which may affect aquifer recharge. The significance of impacts would depend on makeup water requirements, water availability, and competing water demands.
Groundwater quality degradation resulting from water withdrawals.	1	SMALL. Groundwater withdrawals at operating nuclear power plants would not contribute significantly to groundwater quality degradation.
Groundwater quality degradation (plants with cooling ponds).	2	SMALL or MODERATE. Sites with cooling ponds could degrade groundwater quality. The significance of the impact would depend on site-specific conditions including cooling pond water quality, site hydrogeologic conditions (including the interaction of surface water and groundwater), and the location, depth, and pump rate of water wells.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Radionuclides released to groundwater	2	SMALL or MODERATE. Leaks of radioactive liquids from plant components and pipes have occurred at numerous plants. Groundwater protection programs have been established at all operating nuclear power plants to minimize the potential impact from any inadvertent releases. The magnitude of impacts would depend on site-specific characteristics.
Terrestrial Resources		
Non-cooling system impacts on terrestrial resources.	2	SMALL, MODERATE, or LARGE. The magnitude of effects of continued nuclear power plant operation and refurbishment, unrelated to operation of the cooling system, would depend on numerous site-specific factors, including ecological setting, planned activities during the license renewal term, and characteristics of the plants and animals present in the area. Application of best management practices and other conservation initiatives would reduce the potential for impacts.
Exposure of terrestrial organisms to radionuclides.	1	SMALL. Doses to terrestrial organisms from continued nuclear power plant operation and refurbishment during the license renewal term would be expected to remain well below U.S. Department of Energy exposure guidelines developed to protect these organisms.
Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).	1	SMALL. Continued operation of nuclear power plant cooling systems during license renewal could cause thermal effluent additions to receiving waterbodies, chemical effluent additions to surface water or groundwater, impingement of waterfowl, disturbance of terrestrial plants and wetlands from maintenance dredging, and erosion of shoreline habitat. However, plants where these impacts have occurred successfully mitigated the impact, and it is no longer of concern. These impacts are not expected to be significant issues during the license renewal term.
Cooling tower impacts on terrestrial plants	1	SMALL. Continued operation of nuclear power plant cooling towers could deposit particulates and water droplets or ice on vegetation and lead to structural damage or changes in terrestrial plant communities. However, nuclear power plants where these impacts occurred have successfully mitigated the impact. These impacts are not expected to be significant issues during the license renewal term.
Bird collisions with plant structures and transmission lines [4].	1	SMALL. Bird mortalities from collisions with nuclear power plant structures and in-scope transmission lines would be negligible for any species and are unlikely to threaten the stability of local or migratory bird populations or result in noticeable impairment of the function of a species within the ecosystem. These impacts are not expected to be significant issues during the license renewal term.
Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Nuclear power plants could consume water at rates that cause occasional or intermittent water use conflicts with nearby and downstream terrestrial and riparian communities. Such impacts could noticeably affect riparian or wetland species or alter characteristics of the ecological environment during the license renewal term. The one plant where impacts have occurred successfully mitigated the impact. Impacts are expected to be small at most nuclear power plants but could be moderate at some.
Transmission line right-of-way (ROW) management impacts on terrestrial resources [4].	1	SMALL. In-scope transmission lines tend to occupy only industrial-use or other developed portions of nuclear power plant sites and, therefore, effects of ROW maintenance on terrestrial plants and animals during the license renewal term would be negligible. Application of best management practices would reduce the potential for impacts.
Electromagnetic field effects on terrestrial plants and animals [4].	1	SMALL. In-scope transmission lines tend to occupy only industrial-use or other developed portions of nuclear power plant sites and, therefore, effects of electromagnetic fields on terrestrial plants and animals during the license renewal term would be negligible.
Aquatic Resources		
Impingement mortality and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. The impacts of impingement mortality and entrainment would generally be small at nuclear power plants with once-through cooling systems or cooling ponds that have implemented best technology requirements for existing facilities under Clean Water Act (CWA) Section 316(b). For all other plants, impacts could be small, moderate, or large depending on characteristics of the cooling water intake system, results of impingement and entrainment studies performed at the plant, trends in local fish and shellfish populations, and implementation of mitigation measures.
Impingement mortality and entrainment of aquatic organisms (plants with cooling towers).	1	SMALL. No significant impacts on aquatic populations associated with impingement mortality and entrainment at nuclear power plants with cooling towers have been reported, including effects on fish and shellfish from direct mortality, injury, or other sublethal effects. Impacts during the license renewal term would be similar and small. Further, effects of these cooling water intake systems would be mitigated through adherence to NPDES permit conditions established pursuant to CWA Section 316(b).

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Entrainment of phytoplankton and zooplankton.	1	SMALL. Entrainment has not resulted in noticeable impacts on phytoplankton or zooplankton populations near operating nuclear power plants. Impacts during the license renewal term would be similar and small. Further, effects would be mitigated through adherence to NPDES permit conditions established pursuant to CWA Section 316(b).
Effects of thermal effluents on aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. Acute, sublethal, and community-level effects of thermal effluents on aquatic organisms would generally be small at nuclear power plants with once-through cooling systems or cooling ponds that adhere to State water quality criteria or that have and maintain a valid CWA Section 316(a) variance. For all other plants, impacts could be small, moderate, or large depending on site-specific factors, including ecological setting of the plant; characteristics of the cooling system and effluent discharges; and characteristics of the fish, shellfish, and other aquatic organisms present in the area.
Effects of thermal effluents on aquatic organisms (plants with cooling towers).	1	SMALL. Acute, sublethal, and community-level effects of thermal effluents have not resulted in noticeable impacts on aquatic communities at nuclear power plants with cooling towers. Impacts during the license renewal term would be similar and small. Further, effects would be mitigated through adherence to State water quality criteria or CWA Section 316(a) variances.
Infrequently reported effects of thermal effluents.	1	SMALL. Continued operation of nuclear power plant cooling systems could result in certain infrequently reported thermal impacts, including cold shock, thermal migration barriers, accelerated maturation of aquatic insects, proliferation of aquatic nuisance organisms, depletion of dissolved oxygen, gas supersaturation, eutrophication, and increased susceptibility of exposed fish and shellfish to predation, parasitism, and disease. Most of these effects have not been reported at operating nuclear power plants. Plants that have experienced these impacts successfully mitigated the impact, and it is no longer of concern. Infrequently reported thermal impacts are not expected to be significant issues during the license renewal term.
Effects of nonradiological contaminants on aquatic organisms.	1	SMALL. Heavy metal leaching from condenser tubes was an issue at several operating nuclear power plants. These plants successfully mitigated the issue, and it is no longer of concern. Cooling system effluents would be the primary source of nonradiological contaminants during the license renewal term. Implementation of best management practices and adherence to NPDES permit limitations would minimize the effects of these contaminants on the aquatic environment.
Exposure of aquatic organisms to radionuclides.	1	SMALL. Doses to aquatic organisms from continued nuclear power plant operation and refurbishment during the license renewal term would be expected to remain well below U.S. Department of Energy exposure guidelines developed to protect these organisms.
Effects of dredging on aquatic resources ...	1	SMALL. Dredging at nuclear power plants is expected to occur infrequently, would be of relatively short duration, and would affect relatively small areas. Continued operation of many plants may not require any dredging. Adherence to best management practices and CWA Section 404 permit conditions would mitigate potential impacts at plants where dredging is necessary to maintain function or reliability of cooling systems. Dredging is not expected to be a significant issue during the license renewal term.
Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Nuclear power plants could consume water at rates that cause occasional or intermittent water use conflicts with nearby and downstream aquatic communities. Such impacts could noticeably affect aquatic plants or animals or alter characteristics of the ecological environment during the license renewal term. The one plant where impacts have occurred successfully mitigated the impact. Impacts are expected to be small at most nuclear power plants but could be moderate at some.
Non-cooling system impacts on aquatic resources.	1	SMALL. No significant impacts on aquatic resources associated with landscape and grounds maintenance, stormwater management, or ground-disturbing activities at operating nuclear power plants have been reported. Impacts from continued operation and refurbishment during the license renewal term would be similar and small. Application of best management practices and other conservation initiatives would reduce the potential for impacts.
Impacts of transmission line right-of-way (ROW) management on aquatic resources [4].	1	SMALL. In-scope transmission lines tend to occupy only industrial-use or other developed portions of nuclear power plant sites and, therefore, the effects of ROW maintenance on aquatic plants and animals during the license renewal term would be negligible. Application of best management practices would reduce the potential for impacts.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Federally Protected Ecological Resources		
Endangered Species Act: Federally listed species and critical habitats under U.S. Fish and Wildlife Service jurisdiction.	2	The potential effects of continued nuclear power plant operation and refurbishment on federally listed species and critical habitats would depend on numerous site-specific factors, including the ecological setting; listed species and critical habitats present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other ground-disturbing activities. Consultation with the U.S. Fish and Wildlife Service under Endangered Species Act Section 7(a)(2) would be required if license renewal may affect listed species or critical habitats under this agency's jurisdiction.
Endangered Species Act: federally listed species and critical habitats under National Marine Fisheries Service jurisdiction.	2	The potential effects of continued nuclear power plant operation and refurbishment on federally listed species and critical habitats would depend on numerous site-specific factors, including the ecological setting; listed species and critical habitats present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other ground-disturbing activities. Consultation with the National Marine Fisheries Service under Endangered Species Act Section 7(a)(2) would be required if license renewal may affect listed species or critical habitats under this agency's jurisdiction.
Magnuson-Stevens Act: essential fish habitat.	2	The potential effects of continued nuclear power plant operation and refurbishment on essential fish habitat would depend on numerous site-specific factors, including the ecological setting; essential fish habitat present in the area, including habitats of particular concern; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other activities that may affect aquatic habitats. Consultation with the National Marine Fisheries Service under Magnuson-Stevens Act Section 305(b) would be required if license renewal could result in adverse effects to essential fish habitat.
National Marine Sanctuaries Act: sanctuary resources.	2	The potential effects of continued nuclear power plant operation and refurbishment on sanctuary resources would depend on numerous site-specific factors, including the ecological setting; national marine sanctuaries present in the area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other activities that may affect aquatic habitats. Consultation with the Office of National Marine Sanctuaries under National Marine Sanctuaries Act Section 304(d) would be required if license renewal could destroy, cause the loss of, or injure sanctuary resources.
Historic and Cultural Resources		
Historic and cultural resources [4]	2	Impacts from continued operations and refurbishment on historic and cultural resources located onsite and in the transmission line ROW are analyzed on a plant-specific basis. The NRC will perform a National Historic Preservation Act (NHPA) Section 106 review, in accordance with 36 CFR part 800 which includes consultation with the State and Tribal Historic Preservation Officers, Indian Tribes, and other interested parties.
Socioeconomics		
Employment and income, recreation and tourism.	1	SMALL. Although most nuclear plants have large numbers of employees with higher than average wages and salaries, employment, income, recreation, and tourism impacts from continued operations and refurbishment associated with license renewal are expected to be small.
Tax revenue	1	SMALL. Nuclear plants provide tax revenue to local jurisdictions in the form of property tax payments, payments in lieu of tax (PILOT), or tax payments on energy production. The amount of tax revenue paid during the license renewal term as a result of continued operations and refurbishment associated with license renewal is not expected to change.
Community services and education	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to local community and educational services would be small. With little or no change in employment at the licensee's plant, value of the power plant, payments on energy production, and PILOT payments expected during the license renewal term, community and educational services would not be affected by continued power plant operations.
Population and housing	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to regional population and housing availability and value would be small. With little or no change in employment at the licensee's plant expected during the license renewal term, population and housing availability and values would not be affected by continued power plant operations.
Transportation	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to traffic volumes would be small.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Human Health		
Radiation exposures to plant workers	1	SMALL. Occupational doses from continued operations and refurbishment associated with license renewal are expected to be within the range of doses experienced during the current license term and would continue to be well below regulatory limits.
Radiation exposures to the public	1	SMALL. Radiation doses to the public from continued operations and refurbishment associated with license renewal are expected to continue at current levels and would be well below regulatory limits.
Chemical hazards	1	SMALL. Chemical hazards to plant workers resulting from continued operations and refurbishment associated with license renewal are expected to be minimized by the licensee implementing good industrial hygiene practices as required by permits and Federal and State regulations. Chemical releases to the environment and the potential for impacts to the public are expected to be minimized by adherence to discharge limitations of NPDES and other permits.
Microbiological hazards to plant workers	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures as required by permits and Federal and State regulations.
Microbiological hazards to the public	2	SMALL, MODERATE, or LARGE. These microorganisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, canals, or that discharge to publicly accessible surface waters. Impacts would depend on site-specific characteristics.
Electromagnetic fields (EMFs) [4] [6]	N/A [5]	Uncertain impact. Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. EMFs are unlike other agents that have a toxic effect (*e.g.,* toxic chemicals and ionizing radiation) in that dramatic acute effects cannot be forced and longer-term effects, if real, are subtle. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.
Physical occupational hazards	1	SMALL. Occupational safety and health hazards are generic to all types of electrical generating stations, including nuclear power plants, and are of small significance if the workers adhere to safety standards and use protective equipment as required by Federal and State regulations.
Electric shock hazards [4]	2	SMALL, MODERATE, or LARGE. Electrical shock potential is of small significance for transmission lines that are operated in adherence with the National Electrical Safety Code (NESC). Without a review of conformance with NESC criteria of each nuclear power plant's in-scope transmission lines, it is not possible to determine the significance of the electrical shock potential.
Postulated Accidents		
Design-basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design-basis accidents are of small significance for all plants.
Severe accidents [7]	1	SMALL. The probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants. Severe accident mitigation alternatives do not warrant further plant-specific analysis because the demonstrated reductions in population dose risk and continued severe accident regulatory improvements substantially reduce the likelihood of finding cost-effective significant plant improvements.
Environmental Justice		
Impacts on minority populations, low-income populations, and Indian Tribes.	2	Impacts on minority populations, low-income populations, Indian Tribes, and subsistence consumption resulting from continued operations and refurbishment associated with license renewal will be addressed in nuclear plant-specific reviews.
Waste Management		
Low-level waste storage and disposal	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts on the environment would remain small during the license renewal term.
Onsite storage of spent nuclear fuel	1	During the license renewal term, SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite during the license renewal term with small environmental impacts through dry or pool storage at all plants. For the period after the licensed life for reactor operations, the impacts of onsite storage of spent nuclear fuel during the continued storage period are discussed in NUREG–2157 and as stated in § 51.23(b), shall be deemed incorporated into this issue.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.	1	For the high-level waste and spent-fuel disposal component of the fuel cycle, the EPA established a dose limit of 0.15 mSv (15 millirem) per year for the first 10,000 years and 1.0 mSv (100 millirem) per year between 10,000 years and 1 million years for offsite releases of radionuclides at the proposed repository at Yucca Mountain, Nevada. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high-level waste disposal, this issue is considered Category 1.
Mixed-waste storage and disposal	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal would not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small.
Nonradioactive waste storage and disposal	1	SMALL. No changes to systems that generate nonradioactive waste are anticipated during the license renewal term. Facilities and procedures are in place to ensure continued proper handling, storage, and disposal, as well as negligible exposure to toxic materials for the public and the environment at all plants.
Greenhouse Gas Emissions and Climate Change		
Greenhouse gas impacts on climate change.	1	SMALL. Greenhouse gas impacts on climate change from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Greenhouse gas emissions from routine operations of nuclear power plants are typically very minor, because such plants, by their very nature, do not normally combust fossil fuels to generate electricity. Greenhouse gas emissions from construction vehicles and other motorized equipment for refurbishment activities would be intermittent and temporary, restricted to the refurbishment period. Worker vehicle greenhouse gas emissions for refurbishment would be similar to worker vehicle emissions from normal nuclear power plant operations.
Climate change impacts on environmental resources.	2	Climate change can have additive effects on environmental resource conditions that may also be directly impacted by continued operations and refurbishment during the license renewal term. The effects of climate change can vary regionally and climate change information at the regional and local scale is necessary to assess trends and the impacts on the human environment for a specific location. The impacts of climate change on environmental resources during the license renewal term are location-specific and cannot be evaluated generically.
Cumulative Effects		
Cumulative effects	2	Cumulative effects or impacts of continued operations and refurbishment associated with license renewal must be considered on a plant-specific basis. The effects depend on regional resource characteristics, the incremental resource-specific effects of license renewal, and the cumulative significance of other factors affecting the environmental resource.
Uranium Fuel Cycle		
Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste.	1	SMALL. The impacts to the public from radiological exposures have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts to individuals from radioactive gaseous and liquid releases, including radon-222 and technetium-99, would remain at or below the NRC's regulatory limits.
Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste.	1	There are no regulatory limits applicable to collective doses to the general public from fuel-cycle facilities. The practice of estimating health effects on the basis of collective doses may not be meaningful. All fuel-cycle facilities are designed and operated to meet the applicable regulatory limits and standards. The Commission concludes that the collective impacts are acceptable. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective impacts of the uranium fuel cycle, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle.	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant would be small.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Transportation	1	SMALL. The impacts of transporting materials to and from uranium-fuel-cycle facilities on workers, the public, and the environment are expected to be small.
Termination of Nuclear Power Plant Operations and Decommissioning		
Termination of plant operations and decommissioning.	1	SMALL. License renewal is expected to have a negligible effect on the impacts of terminating operations and decommissioning on all resources.

[1] Data supporting this table are contained in NUREG–1437, Revision 2, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' August 2024.

[1] The numerical entries in this column are based on the following category definitions:

Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (*i.e.,* SMALL, MODERATE, or LARGE) has been assigned to the impacts (except for offsite radiological impacts of spent nuclear fuel and high-level waste disposal and offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review.

Category 2: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required.

[3] The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of ''SMALL,'' may be negligible. The definitions of significance follow:

SMALL—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered SMALL as the term is used in this table.

MODERATE—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

These levels are used for describing the environmental impacts of the proposed action (license renewal), as well as for the impacts of a range of reasonable alternatives to the proposed action. Resource-specific effects or impact definitions from applicable environmental laws and executive orders, other than SMALL, MODERATE, and LARGE, are used where appropriate.

For issues where probability is a key consideration (*i.e.,* accident consequences), probability was a factor in determining significance.

[4] This issue applies only to the in-scope portion of electric power transmission lines, which are defined as transmission lines that connect the nuclear power plant to the substation where electricity is fed into the regional power distribution system and transmission lines that supply power to the nuclear plant from the grid.

[5] NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

[6] If, in the future, the Commission finds that, contrary to current indications, a consensus has been reached by appropriate Federal health agencies that there are adverse health effects from electromagnetic fields, the Commission will require applicants to submit plant-specific reviews of these health effects as part of their license renewal applications. Until such time, applicants for license renewal are not required to submit information on this issue.

[7] Although the NRC does not anticipate any license renewal applications for nuclear power plants for which a previous severe accident mitigation design alternative (SAMDA) or severe accident mitigation alternative (SAMA) analysis has not been performed, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives and would be the functional equivalent of a Category 2 issue requiring plant-specific analysis.

Dated: July 24, 2024.

For the Nuclear Regulatory Commission.

Carrie Safford,

Secretary of the Commission.

NOTE: The following will not appear in the Code of Federal Regulations:

Separate Views of Commissioner Caputo on Renewing Nuclear Power Plant Operating Licenses—Environmental Review

The purpose of the first license renewal generic environmental impact statement (LR GEIS) in 1996 was to improve regulatory efficiency in environmental reviews for license renewals ''. . . by drawing on the considerable experience of operating nuclear power reactors to generically assess many of the environmental impacts that are likely to be associated with license renewal'' resulting lower costs for both license renewal applicants and the agency.[6] The use of the LR GEIS was expected to result in improved focus on significant case specific concerns a more effective NEPA review for each license renewal.

Today the Commission finalizes the rulemaking ''Renewing Nuclear Power Plant Operating Licenses—Environmental Review'' with all Commissioners agreeing that Revision 2 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' appropriately considers the environmental impacts of license renewal of nuclear power plants licensed as of June 30, 1995. Because of this, licensees of such plants may rely on the LR GEIS in the preparation of their environmental reports under § 51.53(c) in connection with their applications for license renewal and subsequent license renewal. In addition, the NRC must prepare a supplement to the LR GEIS as a part of the environmental review of those applications.

This rulemaking was necessary because of the Commission's reversal in its adjudicative role of its prior holistic view of Part 51 in favor of a plain language reading of the wording of a single paragraph in the regulations.[7] This action disrupted two renewed licenses that had been issued.[8] The

[6] Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rule, 61 FR 28467, June 5, 1996.

[7] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 1 and 2), CLI–22–2, 95 NRC 26, 31–2 (2022) (ADAMS Accession No. ML22055A496) (holding the 2013 LR GEIS does not cover subsequent license renewal, stating section 51.53(c) narrows the scope only to those applicants seeking an *initial* renewed license, and acknowledging that there is language in the regulatory analysis for the 2013 revisions to Part 51 that would support a contrary interpretation).

[8] *See Florida Power & Light Co.,* CLI–22–2, 95 NRC at 36 (stating that the licensee could ''maintain its current subsequently renewed licenses, but with shortened terms to match the end dates of the previous licenses (*i.e.,* July 19, 2032, and April 10, 2033, for Units 3 and 4, respectively) until completion of the NEPA analysis.''); *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI–22–4, 95 NRC 44, 46 (2022) (modifying the expiration date of the licenses for Units 2 and 3 to 2033 and 2034, respectively).

Commission then initiated a rulemaking to remove the word ''initial'' to clarify the applicability of the LR GEIS for subsequent license renewals, dramatically increasing the staff's environmental review workload with the additional work of the LR GEIS revision.

This action also precluded any subsequent license renewal applicants from using the LR GEIS in their applications while under revision, injecting considerable uncertainty into the nuclear planning process. As applicants wrestled with this protracted uncertainty, some potential applicants delayed filing their applications pending completion of the revision in order to rely on it. Others initially chose to delay and then apparently reconsidered, choosing instead to revise their applications to include a complete environmental report without the benefit of the LR GEIS. As business decisions were revised to address continuing uncertainty, the staff's workload management was complicated further. As a result, the Commission has unjustifiably undermined the reliability of license renewal reviews and, thus, the stability of the nuclear operational and planning processes as noted in correspondence from Senators Capito and Ricketts:

The Commission's misguided 2022 reversal of previously issued SLRs [subsequent license renewals] resulted in a cascading delay that impedes the ability for nuclear utilities to make long-term planning decisions and support those decisions with necessary investments.[9]

Unfortunately, the decision enshrined in this final LR GEIS fails to learn from this mistake and misses the opportunity to establish the stability of environmental reviews for a future, third round of license renewals.

In CLI–20–3, the Commission chose a holistic interpretation of the 2013 LR GEIS upholding its applicability for subsequent license renewal and, indeed, *any* license renewal.[10] [11] The 2013 LR GEIS had long been expected to apply to subsequent license renewal since applications were anticipated in the near future. Indeed, the agency began receiving notices from the industry of the intent to file applications in 2015 [12] with the first application filed in 2018.[13] As noted above, one of the regulatory purposes in the initial codification of the LR GEIS was ''to promote efficiency in the environmental review process for license renewal applications.'' [14] The reversal of CLI–20–03 strays from that regulatory purpose.

In SECY–22–0109, the staff had analyzed, recommended, and drafted the LR GEIS proposed rule to apply to *any* license renewal term (*i.e.,* initial, first SLR, or a term beyond the first SLR), excepting issues related to the Continued Storage Rule.[15] Contrary to this and despite the omission of a regulatory analysis regarding the impact of limiting LR GEIS applicability to a single subsequent license renewal term, my colleagues chose to limit the applicability of the LR GEIS to a single term of subsequent license renewal. In his response to the staff's recommendation, Chair Hanson stated the following:

The NRC's regulatory framework for renewal anticipates that the LR GEIS will be reviewed and updated every ten years to account for new information and lessons learned. It is at this ten-year review that it is most appropriate to consider whether the scope of the LR GEIS should be expanded to cover additional terms of license renewal beyond the first SLR.

It benefits the agency and the public it serves to use the ten-year review cycle of the LR GEIS as designed—to evaluate and incorporate new information gleaned from experience to generically address known impacts of continued operation.[16]

While this statement is true, the Commission had previously deferred the anticipated revision that should be underway in favor of addressing the consequences flowing from the Commission's reversal of CLI–20–3.[17]

A concern has been raised that there is inherent uncertainty in estimating environmental impacts from continued contributions to onsite waste storage beyond the first term of subsequent license renewal. While this might be considered a potential inconsistency between the LR GEIS and the Continued Storage GEIS (NUREG–2157), I note that the staff's recommendation specifically excepted issues related to the Continued Storage Rule.[18]

Thereafter, in SRM–SECY–22–0109, the Commission directed the staff to ''modify the proposed rule and draft License Renewal GEIS to explicitly state that the scope of the GEIS is initial license renewal and one term of subsequent license renewal. . . but include in the **Federal Register** notice, a specific question asking whether the proposed rule should be expanded beyond two license renewal terms.'' [19]

In response to the Commission's direction in SRM–SECY–22–0109, the staff provided the draft final LR GEIS in SECY 24–0017, and described the significant work done to support this final version:

Lessons learned, knowledge gained, and experience from license renewal environmental reviews performed by the NRC staff since development of the 2013 LR GEIS provided an important source of new information for this assessment. In addition, new scientific research, changes in environmental regulations and impact methodology, and other new information were considered in evaluating the significance of impacts associated with initial LR and SLR. Public comments on previous plant-specific license renewal environmental reviews also were analyzed to assess the existing environmental issues and identify new ones. The purpose of this evaluation was to determine if the findings presented in the 2013 LR GEIS remain valid for initial LR and to update the analysis and assumptions to support one SLR term. In doing so, the staff considered the need to modify, add to, or delete any of the 78 environmental issues presented in the 2013 LR GEIS and codified in Table B–1. As a result of the detailed evaluation, the staff identified 80 environmental issues, which are considered in detail in the LR GEIS revision.

And:

In the revised LR GEIS, the staff used the following general analytical approach to evaluate potential environmental issues and the impacts associated with continued operations and any refurbishment: (1) describe the nuclear power plant activity or aspect of plant operations or refurbishment that could affect the resource; (2) identify the resource that is affected; (3) evaluate past license renewal reviews and other available information, including information related to impacts during an SLR term; (4) assess the nature and magnitude of the potential environmental effect (impact) on the affected resource; (5) characterize the significance of the effect; (6) determine whether the results of the analysis apply to all or a specific subset of nuclear power plants, *i.e.,* whether the issue is Category 1 (generic) or Category 2 (plant-specific); and (7) consider additional mitigation measures for reducing adverse impacts.[20]

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[9] Letter from Hon. Shelley Moore Capito, Ranking Member, Committee on Environment and Public Works and Hon. Pete Ricketts, Ranking Member, Subcommittee on Clean Air, Climate, and Nuclear Safety, Committee on Environment and Public Works, to Chairman Christopher T. Hanson (Nov. 1, 2023), available at *https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018b-8b9a-da71-a98f-abff5d500000.*

[10] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI–20–3, 91 NRC 133, 141 (2020) (agreeing with the Board's determination that the regulatory language in section 51.53(c) is ambiguous and concurring that a holistic reading of Part 51 supports the conclusion that section 51.53(c) applies to all applicants for license renewal).

[11] The Commission's decision in CLI–20–3 notes that ''the Board was guided by the Supreme Court's approach in *Fed. Express Corp.* v. *Holowecki,* 552 U.S. 389 (2008)[.]'' *Florida Power & Light Co.,* CLI–20–3, 91 NRC at 140.

[12] *See, e.g.,* Letter from Mark Sartain, Virginia Electric and Power Company, to NRC Document Control Desk (Nov. 5, 2015) (ML15314A078) (providing notification of intent to submit a second renewed operating license application for Surry Power Station Units 1 and 2 in the first quarter of 2019).

[13] *See* Letter from Mano K. Nazar, Florida Power & Light Co. to NRC Document Control Desk, ''Turkey Point Units 3 and 4 Subsequent License Renewal Application'' (Jan. 30, 2018) (ML18037A824).

[14] Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rule, 61 FR 28467, 28468 June 5, 1996.

[15] ''Proposed Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296),'' Commission Paper SECY–22–0109 (Dec. 6, 2022), at 6 (ML22165A003 (package)) (SECY–22–0109).

[16] Commission Voting Record, ''SECY–22–0109: Proposed Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review, (Dec. 20, 2022), at 1 (ML23023A231) (Chair Hanson's Notation Vote).

[17] Staff Requirements—SECY–22–0036—Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC–2022–0087) (June 17, 2022) (ML2216A130).

[18] SECY–22–0109 at 6.

[19] Staff Requirements—SECY–22–0109—Proposed Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150–AK32; NRC–2018–0296) (Jan. 23, 2023) (ML23023A200 (package)).

[20] ''Final Rule—Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN

This is a nearly identical recitation of the description provided in SECY 22–0109 of the staff's effort which supported their recommendation that ''. . . the LR GEIS apply to any license renewal term.'' [21] Hence, the work was nonetheless completed and supported the applicability to *any* license renewal, laying bare any concerns that addressing a third round of renewals in this revision wasn't practical given the urgent need to complete it. Clearly, the benefits of accepting the staff's sound technical judgement as expressed in SECY–22–0109 would have outweighed the costs of establishing the applicability of this LR GEIS to all SLR terms.

The Nuclear Energy Institute, representing industry stakeholders, agreed that this revision should apply to any license renewal term and cited the proposed LR GEIS statement that ''[t]here are no specific limitations in the Atomic Energy Act [AEA] or the NRC's regulations restricting the number of times a license may be renewed.'' [22] NEI also stated:

We believe that the LR GEIS provides a reasonable analysis of the environmental impacts of 20 years of reactor operation, irrespective of the prior number of years of reactor operation. Every license renewal review, regardless of term, requires a site-specific supplement to the LR GEIS (*i.e.,* SEIS), in which the NRC evaluates any issues not resolved generically by the GEIS. The NRC also evaluates any new and significant information. In addition, the NRC updates the GEIS roughly every 10 years to incorporate material new information and lessons learned. This review cycle is reasonable given that ''changes in the environment around nuclear plants are gradual and predictable.'' There for, limiting the applicability of the proposed rule and GEIS to one SLR term is not necessary as a technical or legal matter, and contravenes the NRC's Principles of Good Regulation.[23]

In response to questions on the potential costs of limiting the applicability of the LR GEIS to one SLR, the staff identified 26 licensees that would be eligible to apply for a second SLR prior to their projected completion of the next revision to the LR GEIS. While licensees are allowed to apply for a license renewal up to 20 years in advance of the current license's expiration, the staff's projected completion date of the next LR GEIS revision in fiscal year 2034 would shorten the window for filing an application to as little as 10 years.[24] In contrast, the first SLR application was filed in 2018, 14 years prior to license expiration and applying the LR GEIS finalized 5 years earlier. Given the uncertainty plaguing the 2013 LR GEIS that is finally being resolved 11 years later in this revision and the cascade of delays undermining the stability of nuclear operational and planning processes, a projected completion date for the next revision does not inspire confidence and any delay in completing the revision would drive a bow wave of applications awaiting completion of the LR GEIS.

In its regulatory analysis of the rule, the staff estimated that it would need to review 44 applications for license renewal over the next 10 years. We have already seen delays in environmental reviews due to limited staff resources.[25] In order to assist the agency in this area, Congress has worked to grant direct hiring authority in this area.[26] My colleagues propose that having the staff monitor interest in further license renewals and proposing to the Commission the short-cycling of revision of the LR GEIS would meet the needs to address their arbitrary decision. In my opinion, the net result of this would be a costly revisiting of the staff's hard look that was already completed to support the recommendation in SECY–22–0109. Further, this is wholly unnecessary given the fact that ''environmental impacts of license renewal are expected to be bounded by data from operating experience given that license renewal is twenty years of continued operation, and our understanding that changes in the environment around nuclear plants are gradual and predictable.'' [27] This is not good stewardship of staff resources that are already overextended and may be exacerbated if the agency begins receiving more applications for new plants.

Licensee concerns with regulatory stability in this area are clearly demonstrated in the comments provided on this rulemaking. Duke Energy noted the status of the NRC's ongoing review of the SLR application for Oconee Nuclear Station, for which the current schedule includes finalization of the Supplemental EIS after the projected issuance of this final rule.[28] In particular, Duke Energy expressed concerns that this could be construed as requiring further environmental reviews.[29]

I recognize concerns regarding aging management and that research into the safety of operating from 80–100 years continues. However, this is an area the staff must address in the safety review rather than the environmental review process and will have no effect on the environmental issues resolved as Category 1 in this final LR GEIS. The environmental review pertains to the plant's impact on the environment as distinct from the environment's impact on the plant which pertains to the safety review. There has been no sound argument presented that would link aging management to any of the LR GEIS issues. In addition, decades of operating experience since the first LR GEIS has demonstrated that experience has been consistent with the assumptions underlying license renewal.[30]

Conclusion

Our Reliability Principle of Good Regulation states:

Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.

In the wake of the Commission decision to reverse its prior decision, there have been a series of ramifications that have undermined reliability, created uncertainty for all stakeholders, and resulted in a significant increase in workload for the staff. The Commission, though constituted differently than the one that issued the reversal in 2022, must own accountability for the consequences of that decision and should take all the steps necessary to ensure that the rule it issues here cannot be subject to a similar treatment in the future. It is my view that this final rule should be modified to encompass any license renewal period, as the staff recommended,[31] and that the revised final rule be provided to the Commission at least 10 business days prior to publication in the **Federal Register**.

[FR Doc. 2024–16643 Filed 8–5–24; 8:45 am]

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3150–AK32; NRC–2018–0296,'' Commission Paper SECY 24–0017 (Feb. 21, 2024) at 3 (ML23202A179 (package)).

[21] SECY 22–0109 at 4.

[22] Letter from Jennifer Uhle, Nuclear Energy Institute, to Secretary of the Commission, NRC (May 2, 2023), at 3–4 (ML23123A407).

[23] *Id.* at 4 (internal citations omitted).

[24] R.E. Ginna, Nine Mile Point, Unit 1, and Dresden, Unit 2, all operate under licenses that expire in 2029. The lack of an applicable LR GEIS in the first five years of their eligibility to apply for renewal and the timely renewal provision in § 2.109(b) requiring application 5 years prior to license expiration result in this severe reduction of the window to apply.

[25] *See, e.g.,* Letter to Daniel Stoddard ''Revision of Schedule for the Environmental Review of the North Anna Power Station, Units 1 and 2, Subsequent License Renewal Application (EPID Number: L–2020–SLE–0000) (Docket Numbers: 50–338 AND 50–339)'' (Oct. 16, 2023), at 1 (ML23278A064).

[26] *See* H.R. 6544, Atomic Energy Advancement Act, § 103, ''Strengthening the NRC workforce,'' as referred to the Senate on February 29, 2024.

[27] Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rule, 61 FR 28467, *et seq.,* June 5, 1996.

[28] *See* Letter from Thomas Ray, Duke Energy, to Secretary of the Commission, NRC (May 2, 2023), at (ML23122A311).

[29] *Id.* at 2.

[30] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI–20–3, 91 NRC 133, 152 (2020).

[31] *See* SECY–22–0109 at 6.

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Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; FY 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1810–F]

RIN 0938–AV29

Medicare Program; FY 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule updates the hospice wage index, payment rates, and aggregate cap amount for Fiscal Year (FY) 2025. This rule also adopts the most recent Office of Management and Budget statistical area delineations, which will impact the hospice wage index. This rule clarifies current policy related to the ''election statement'' and the ''notice of election'', as well as adds clarifying language regarding hospice certification and includes a technical regulation text change to the Conditions of Participation (CoPs). This rule finalizes changes to the Hospice Quality Reporting Program. Finally, this rule summarizes comments received regarding potential implementation of a separate payment mechanism to account for high intensity palliative care services.

DATES: These regulations are effective on October 1, 2024.

FOR FURTHER INFORMATION CONTACT:

For general questions about hospice payment policy, send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

For questions regarding the CAHPS® Hospice Survey, contact Lauren Fuentes at (410) 786–2290.

For questions regarding the hospice conditions of participation (CoPs), contact Mary Rossi-Coajou at (410) 786–6051.

For questions regarding the hospice quality reporting program, contact Jermama Keys at (410) 786–7778.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

This final rule updates the hospice wage index, payment rates, and cap amount for Fiscal Year (FY) 2025 as required under section 1814(i) of the Social Security Act (the Act). This rule also finalizes the adoption of the most recent Office of Management and Budget (OMB) statistical area delineations based on data collected during the 2020 Decennial Census, which will result in changes to the hospice wage index. In addition, this rule finalizes the reorganization of the regulations to clarify current policy related to the ''election statement'' and the ''notice of election (NOE),'' and adds clarifying language regarding who can certify terminal illness and admit patients to hospice. This rule also summarizes comments solicited regarding a potential policy to account for the increased hospice costs of providing high intensity palliative care services.

Additionally, this rule finalizes the Hospice Quality Reporting Program (HQRP) measures collected through a new collection instrument, the Hospice Outcomes and Patient Evaluation (HOPE); finalizes two HOPE-based measures and lays out the planned trajectory for further development of this instrument; and provides updates on Health Equity, future quality measures (QMs), and public reporting requirements. We also acknowledge responses on the request for information on potential social determinants of health (SDOH) elements. Finally, this rule also finalizes changes to the Hospice Consumer Assessment of Healthcare Providers and Systems (Hospice CAHPS) Survey.

B. Summary of the Major Provisions

Section III.A.1 of this final rule updates the hospice wage index and makes the application of the updated wage data budget neutral for all four levels of hospice care.

Section III.A.2 of this final rule adopts the new OMB labor market delineations from the July 21, 2023, OMB Bulletin No. 23–01 based on data collected from the 2020 Decennial Census.

Section III.A.3 of this final rule includes the final FY 2025 hospice payment update percentage of 2.9 percent.

Section III.A.4 of this final rule includes updates to hospice payment rates.

Section III.A.5 of this final rule includes an update to the hospice cap amount for FY 2025 by the hospice payment update percentage of 2.9 percent.

In section III.B of this final rule, we make clarifying changes to the hospice Conditions of Participation (CoPs) and adopt clarifying regulations text, with no change to current policy. This includes reorganizing the regulations to clearly identify the distinction between the ''election statement'' and the ''notice of election,'' as well as including clarifying text changes that align payment regulations and CoPs regarding who may certify terminal illness and determine admission to hospice care. This section also finalizes technical regulations text changes in the Medical Director CoP at § 418.102. In addition, we are making a technical correction in the personnel requirements at § 418.114(b)(9), where we inadvertently used the term ''marriage and family counselor'' when the correct term is ''marriage and family therapist.''

In section III.C of this final rule, we include a summary of comments received on a potential policy to account for higher hospice costs involved in the provision of high intensity palliative care treatments.

Finally, in section III.D of this final rule, we finalize HOPE-based process measures; finalize the HOPE instrument; discuss updates to potential future quality measures; and finalize changes to the CAHPS® Hospice Survey.

C. Summary of Impacts

The overall economic impact of this final rule is estimated to be $790 million in increased payments to hospices in FY 2025.

II. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. Medicare regulations define ''palliative care'' as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically

and emotionally comfortable as possible. Hospice is compassionate beneficiary and family/caregiver-centered care for those who are terminally ill.

As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual has a medical prognosis that the individual's life expectancy is 6 months or less if the illness runs its normal course. The regulations at § 418.22(b)(2) require that clinical information and other documentation that support the medical prognosis accompany the certification and be filed in the medical record with it. The regulations at § 418.22(b)(3) require that the certification and recertification forms, or an addendum to the certification and recertification forms, include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

Under the Medicare hospice benefit, the election of hospice care is a patient choice and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group is essential in the seamless provision of primarily home-based services. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about changes in their condition. The beneficiary's care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

If, in the judgment of the hospice interdisciplinary group (as specified at § 418.56(a)(1)), which includes the hospice physician, the patient's symptoms cannot be effectively managed at home, then the patient is eligible for general inpatient care (GIP), a more medically intense level of care. GIP must be provided in a Medicare-certified hospice freestanding facility, skilled nursing facility, or hospital. GIP is provided to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return home for hospice care (routine home care) (RHC). Limited, short-term, intermittent, inpatient respite care (IRC) is also available because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive continuous home care (CHC) during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. CHC may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with the regulations at § 418.204. A minimum of 8 hours of nursing care or nursing and aide care must be furnished on a particular day to qualify for the CHC rate (§ 418.302(e)(4)).

Hospices covered by this rule must comply with applicable civil rights laws, including, section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, which require covered programs to take appropriate steps to ensure effective communication with individuals with disabilities and companions with disabilities, including the provisions of auxiliary aids and services when necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, companions and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity of a recipient or public entity.[1] Further information may be found at: *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html.*

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in federally assisted programs or activities. The Office for Civil Rights (OCR) interprets this to require that recipients of Federal financial assistance take reasonable steps to provide meaningful access to their programs or activities to individuals with limited English proficiency (LEP).[2] Similarly, section 1557's of the Affordable Care Act implementing regulation requires covered entities to take reasonable steps to provide meaningful access to LEP individuals in federally funded health programs and activities (45 CFR 92.201(a)). Meaningful access may require the provision of interpreter services and translated materials (45 CFR 92.201(c)).[3]

B. Services Covered by the Medicare Hospice Benefit

Coverage under the Medicare hospice benefit requires that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biological products); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary, to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary, who is a hospice patient, be established before care is provided by, or under arrangements made by, the hospice program; and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act).

Upon the implementation of the hospice benefit, Congress also expected hospices to continue to use volunteer services, although Medicare does not pay for these volunteer services (section 1861(dd)(2)(E) of the Act). As stated in the Health Care Financing Administration's (now Centers for

[1] Hospices receiving Medicare Part A funds or other federal financial assistance from the Department are also subject to additional federal civil rights laws, including the Age Discrimination Act, and are subject to conscience and religious freedom laws where applicable.

[2] HHS OCR, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* 68 Fed. Reg 47311 (Aug. 8, 2003), *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-vi/index.html.*

[3] The Section 1557 final rule has been challenged in several courts and is not currently in effect in Texas and Montana. Additional information about the rule is available here: *Section 1557 of the Patient Protection and Affordable Care Act | HHS.gov.*

Medicare & Medicaid Services (CMS)) proposed rule ''Medicare Program; Hospice Care (48 FR 38149), the hospice must have an interdisciplinary group composed of paid hospice employees as well as hospice volunteers, and that ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices.'' This expectation supports the hospice philosophy of community based, holistic, comprehensive, and compassionate end of life care.

C. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and the regulations in 42 CFR part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment based on one of four prospectively determined rate categories of hospice care (RHC, CHC, IRC, and GIP), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected the benefit). This per diem payment is meant to cover all hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

While payment made to hospices is to cover all items, services, and drugs for the palliation and management of the terminal illness and related conditions, federal funds cannot be used for prohibited activities, even in the context of a per diem payment. For example, hospices are prohibited from playing a role in medical aid in dying (MAID) where such practices have been legalized in certain States. The Assisted Suicide Funding Restriction Act of 1997 (Pub. L. 105–12, April 30, 1997) prohibits the use of federal funds to provide or pay for any health care item or service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual including ''mercy killing, euthanasia, or assisted suicide.'' However, the prohibition does not pertain to the provision of an item or service for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as the item or service is not furnished for the specific purpose of causing or accelerating death.

The Medicare hospice benefit has been revised and refined since its implementation after various Acts of Congress and Medicare rules. For a historical list of changes and regulatory actions, we refer readers to the background section of previous Hospice Wage Index and Payment Rate Update rules.[4]

III. Provisions of the Final Rule

A. Final FY 2025 Hospice Wage Index and Rate Update

1. Final FY 2025 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospices under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by the Office of Management and Budget (OMB) to Metropolitan Statistical Area (MSA) definitions.

In general, 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. On September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018, OMB Bulletin No. 18–03. OMB Bulletin No. 18–04 made revisions to the delineations of MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas (CSA), and guidance on uses of the delineations in these areas. This bulletin provided the delineations of all MSAs, Metropolitan Divisions, Micropolitan Statistical Areas, CSAs, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252), and Census Bureau data. A copy of the September 14, 2018, bulletin is available online at: *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.* In the FY 2021 Hospice Wage Index final rule (85 FR 47080), we finalized our proposal to adopt the revised OMB delineations from the September 14, 2018, OMB Bulletin 18–04 with a 5-percent cap on wage index decreases, where the estimated reduction in a geographic area's wage index would be capped at 5-percent in FY 2021 and no cap would be applied to wage index decreases for the second year (FY 2022). On March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the update to statistical areas since September 14, 2018, and were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2017, and July 1, 2018. (For a copy of this bulletin, we refer readers to the following website: *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). In OMB Bulletin No. 20–01, OMB announced one new Micropolitan Statistical Area, one new component of an existing CSA, and changes to New England City and Town Area (NECTA) delineations. In the FY 2021 Hospice Wage Index final rule (85 FR 47070), we stated that if appropriate, we would propose any updates from OMB Bulletin No. 20–01 in future rulemaking. After reviewing OMB Bulletin No. 20–01, we determined that the changes in Bulletin 20–01 encompassed delineation changes that would not affect the Medicare wage index for FY 2022. Specifically, the updates consisted of changes to NECTA delineations and the redesignation of a single rural county into a newly created Micropolitan Statistical Area. The Medicare wage index does not utilize NECTA definitions, and, as most recently discussed in the FY 2021 Hospice Wage Index final rule (85 FR 47070), we include hospitals located in Micropolitan Statistical Areas in each State's rural wage index.

As described in the August 8, 1997, Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. As previously discussed, the pre-floor, pre-reclassified hospital wage index values below 0.8000 will be further adjusted by a 15 percent increase subject to a maximum wage index value of 0.8000. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8000, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15, which equals 0.8556. Because 0.8556 is greater than 0.8000,

[4] Hospice Regulations and Notices. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Regulations-and-Notices.*

County B's hospice wage index would be 0.8000.

In the FY 2023 Hospice Wage Index final rule (87 FR 45673), we finalized for FY 2023 and subsequent years, the application of a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline, so that a geographic area's wage index would not be less than 95 percent of its wage index calculated in the prior FY. When calculating the 5-percent cap on wage index decreases we start with the current fiscal year's pre-floor, pre-reclassification hospital wage index value for a core-based statistical area (CBSA) or statewide rural area and if that wage index value is below 0.8000, we apply the hospice floor as discussed here. Next, we compare the current fiscal year's wage index value after the application of the hospice floor to the final wage index value from the previous fiscal year. If the current fiscal year's wage index value is less than 95 percent of the previous year's wage index value, the 5-percent cap on wage index decreases would be applied and the final wage index value would be set equal to 95 percent of the previous fiscal year's wage index value. If the 5-percent cap is applied in one fiscal year, then in the subsequent fiscal year, that year's pre-floor, pre-reclassification hospital wage index would be used as the starting wage index value and adjusted by the hospice floor. The hospice floor adjusted wage index value would be compared to the previous fiscal year's wage index which had the 5-percent cap applied. If the hospice floor adjusted wage index value for that fiscal year is less than 95 percent of the capped wage index from the previous year, then the 5-percent cap would be applied again, and the final wage index value would be 95 percent of the capped wage index from the previous fiscal year. Using the example previously stated, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. If County A had a wage index value of 0.6200 in the previous fiscal year, then we would compare 0.4593 to the previous fiscal year's wage index value. Since 0.4593 is less than 95 percent of 0.6200, then County A's hospice wage index would be 0.5890, which is equal to 95-percent of the previous fiscal year's wage index value of 0.6200. In the next fiscal year, the updated wage index value would be compared to the wage index value of 0.5890.

Previously, this methodology was applied to all the counties that make up the CBSA or rural area. However, as discussed in section III.A.2.f of this final rule, because we are adopting the revised OMB delineations this methodology will also be applied to individual counties.

In the FY 2020 Hospice Wage Index final rule (84 FR 38484), we finalized the proposal to use the current FY's hospital wage index data to calculate the hospice wage index values. For FY 2025, we proposed that the hospice wage index would be based on the FY 2025 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2020 and before October 1, 2021 (FY 2021 cost report data). We also stated that the proposed FY 2025 hospice wage index would not consider any geographic reclassification of hospitals, including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The regulations that govern hospice payment do not provide a mechanism for allowing hospices to seek geographic reclassification or to utilize the rural floor provisions that exist for Inpatient Prospective Payment System (IPPS) hospitals. The reclassification provision found in section 1886(d)(10) of the Act is specific to hospitals. Section 4410(a) of the Balanced Budget Act of 1997 (Pub. L. 105–33) provides that the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. This rural floor provision is also specific to hospitals. Because the reclassification and the hospital rural floor policies apply to hospitals only, and not to hospices, we continue to believe the use of the pre-floor and pre-reclassified hospital wage index results is the most appropriate adjustment to the labor portion of the hospice payment rates. This position is longstanding and consistent with other Medicare payment systems, for example, the skilled nursing facility prospective payment system (SNF PPS), the inpatient rehabilitation facility prospective payment system (IRF PPS), and the home health prospective payment system (HH PPS). However, the hospice wage index does include the hospice floor, which is applicable to all CBSAs, both rural and urban. The hospice floor adjusts pre-floor, pre-reclassified hospital wage index values below 0.8000 by a 15 percent increase subject to a maximum wage index value of 0.8000. We proposed that the FY 2025 hospice wage index would also include the 5-percent cap on wage index decreases. The appropriate wage index value would be applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC.

We received 28 comments on the proposed FY 2025 hospice wage index from various stakeholders including hospices, national industry associations, and the Medicare Payment Advisory Commission (MedPAC). A summary of these comments and our responses appear below:

Comment: One commenter expressed concern with the wage index assigned to Montgomery County, Maryland (MD). This commenter stated that Montgomery County, MD has a similar cost of living compared to Washington, DC and shares the same labor market when competing for labor; therefore, hospices in Montgomery County should be reimbursed at the same level as hospices in Washington, DC This commenter stated that hospices in Montgomery County are at a long-term competitive disadvantage due to a Medicare hospice federal payment inequity involving CBSAs and recommended that CMS assign the hospice wage index valuation for the Washington, DC CBSA to the Montgomery/Frederick County CBSA for a time-limited period, such as 5 years, in order to evaluate the impact on Montgomery County hospices.

Response: We thank the commenter for the recommendation. However, we continue to believe that the OMB's geographic area delineations represent a useful proxy for differentiating between labor markets and that the geographic area delineations are appropriate for use in determining Medicare hospice payments. The general concept of the CBSAs is that of an area containing a recognized population nucleus and adjacent communities that have a high degree of integration with that nucleus. The purpose of the 2020 standards for delineating Core Based Statistical Areas is to provide nationally consistent definitions for collecting, tabulating, and publishing federal statistics for a set of geographic areas. CBSAs include adjacent counties that have a minimum of 25 percent commuting to the central counties of the area. Based on the OMB's current delineations, Montgomery County belongs in a separate CBSA from the areas defined in the Washington, DC CBSA (CBSA 47764). Unlike IPPS hospitals, IRFs, and SNFs, where each provider uses a single wage index value, hospice agencies may serve multiple CBSAs and be

reimbursed based on more than one wage index value. Payments are based upon the location of the beneficiary for routine and continuous home care or the location of the facility for respite and general inpatient care. Hospices in Montgomery County, Maryland may provide RHC and CHC to patients in the Washington, DC CBSA, as well as to patients in other surrounding CBSAs. We have used CBSAs for determining hospice payments since FY 2006 and continue to believe that using the most current OMB delineations provides an accurate representation of geographic variation in wage levels and do not believe it would be appropriate to allow hospices to opt for, or be assigned, a CBSA designation with a higher wage index value. However, if a future OMB Bulletin updates the designation for Montgomery County, Maryland, we would propose this change through our normal rulemaking process.

Comment: A few commenters opposed the use of the IPPS wage index as the basis for the hospice wage index. In general, these commenters stated that the use of hospital wage data is inappropriate and recommended that CMS utilize more appropriate wage information for the hospice wage index. These commenters expressed concern that the hospital wage index is derived from cost report wage data submitted by hospitals which explicitly excludes hospice wage costs. Commenters suggested that the exclusion of hospice costs undermines the accuracy of wage adjustments for hospice providers and has the potential to lead to inadequate services for terminally ill beneficiaries. Additionally, two commenters also expressed concern with the lag in the hospital cost report data used as the basis for the hospice wage index. One commenter stated that the lag in the wage index data used in the proposed rule likely means that any increase in reimbursement rates will be quickly, and possibly completely, subsumed by recent and anticipated inflation rates.

Response: We appreciate the commenters concerns; however, these comments are outside the scope of the proposed rule, as we did not propose changes to our hospice wage index methodology. Changes to the hospice wage index methodology, including changes to the underlying data used to create the hospice wage index, would have to go through notice and comment rulemaking. Furthermore, we continue to believe the use of the pre-floor and pre-reclassified hospital wage index results is the most appropriate adjustment to the labor portion of the hospice payment rates. This position is longstanding and consistent with other Medicare payment systems; however, we will consider these comments in the future if CMS does consider changes to this methodology.

Comment: A few commenters recommended more far-reaching revisions to the hospice wage index methodology. Some commenters, including MedPAC, recommended an overhaul of the entire hospice wage index methodology. One commenter stated that the time is long overdue for CMS to develop and implement a wage index model that is consistent across all provider types so that all providers have a level playing field from which to compete for personnel. MedPAC recommended that existing Medicare wage index policies be repealed, including current exceptions, and to phase in a new Medicare wage index system for hospitals and other types of providers that uses all-employer, occupation-level wage data with different occupation weights for the wage index of each provider type; reflects local area level differences in wages between and within metropolitan statistical areas and statewide rural areas; and smooths wage index differences across adjacent local areas. In addition, many commenters recommended allowing hospices to take advantage of wage index protections afforded to hospitals such as geographic redesignation and the rural floor. One commenter suggested that CMS investigate how MedPAC's wage index proposal would impact hospices and work with stakeholders, including Congress, to determine how to implement a fairer system that also takes into account increased labor costs.

Response: We appreciate the commenters' recommendations; however, these comments are outside the scope of the proposed rule, as we did not propose changes to our hospice wage index methodology. Any changes regarding the adjustment of the hospice payments to account for geographic wage differences, beyond the wage index proposals discussed in the FY 2025 Hospice Wage Index and Rate Update proposed rule, would require notice and comment rulemaking.

Comment: Several commenters also expressed concern that hospices are not given the opportunity for geographic reclassification like hospitals. These commenters recommended that hospices be allowed to reclassify to a different CBSA to receive a higher wage index in order to compete with hospitals and other health systems for the same labor pool. One commenter stated that the inability to reclassify a hospice's wage index means the hospice wage index often fails to reflect true labor costs accurately, placing the hospice at a competitive and financial disadvantage. Another commenter recommended that reclassification be allowed for provider-based home health and hospice providers who are a part of a hospital and/or health system. Many commenters also recommended that CMS reinstitute the rural floor policy so that no hospice serving patients in urban areas is paid below the rural wage index value of the State. These commenters stated that hospices are at a competitive disadvantage because they are unable to take advantage of geographic reclassification and the rural floor provisions that are allowed for hospitals.

Response: We remind stakeholders that the statutory provisions that govern hospice payment do not provide a mechanism for allowing hospices to seek geographic reclassification or to utilize the rural floor provisions that exist for IPPS hospitals. The reclassification provision found in section 1886(d)(10) of the Act is specific to hospitals. Section 4410(a) of the Balanced Budget Act of 1997 (Pub. L. 105–33) provides that the area wage index applicable to any hospital that is in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. This rural floor provision is also specific to hospitals. Because the reclassification provision and the hospital rural floor apply only to hospitals, and not to hospices (even those hospices that are affiliated with a hospital or other health care system), we continue to believe the use of the pre-floor and pre-reclassified hospital wage index results is the most appropriate adjustment to the labor portion of the hospice payment rates. However, we note that hospices do receive the hospice floor which adjusts the pre-floor, pre-reclassified hospital wage index values below 0.8000 by a 15 percent increase subject to a maximum wage index value of 0.8000 and the 5-percent cap on wage index decreases.

Comment: Two commenters encouraged CMS to add details and transparency to the wage index section of the rule. These commenters requested that CMS describe in detail how the wage index is calculated, the basis in the hospital cost report, and the role of the wage index standardization factor. Commenters requested this information so that hospices receive more information on how and why year to year wage index variation occurs.

Response: We thank the commenters for their recommendations. In reference to the commenters' recommendation for more details describing how the pre-

floor pre-reclassified wage index is calculated, we refer readers to the FY 2025 IPPS proposed rule (89 FR 36139 through 36159) for additional information on the cost report worksheets used to calculate the wage index, information on how those worksheets are validated, the process for hospitals to request corrections, and the method for calculating the proposed unadjusted wage index. Once we receive the pre-floor, pre-reclassified wage index values as discussed, those values are then adjusted by the hospice floor so that all wage index values lower than 0.8000 are increased by 15 percent up to 0.8000. The hospice floor adjusted wage index values are subsequently updated by the permanent 5-percent cap on wage index decreases so that the wage index for the current fiscal year is not less than 95 percent of the wage index value the previous fiscal year. Regarding the wage index standardization factors, we finalized in the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52156), a policy of applying wage index standardization factors for each level of care to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. In order to calculate the wage index standardization factor, we simulate total payments using FY 2023 hospice utilization claims data with the FY 2024 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, old OMB delineations, and the 5-percent cap on wage index decreases) and FY 2024 payment rates and compare that total to our simulation of total payments using FY 2023 utilization claims data, the final FY 2025 hospice wage index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the revised OMB delineations, with the 5-percent cap on wage index decreases) and FY 2024 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2024 wage index and FY 2024 payment rates for each level of care by the FY 2025 wage index and FY 2024 payment rates, we obtain a wage index standardization factor for each level of care. The wage index standardization factors for each level of care are then applied to the national payment amounts for that level of care to calculate the final FY 2025 payment amounts.

Final Decision: We are finalizing our proposal to use the FY 2025 pre-floor, pre-reclassified hospital wage index data as the basis for the FY 2025 hospice wage index. The wage index applicable for FY 2025 is available on our website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index*. The hospice wage index for FY 2025 is effective October 1, 2024, through September 30, 2025.

There exist some geographic areas where there are no hospitals, and thus, no hospital wage data on which to base the calculation of the hospice wage index. In the FY 2006 Hospice Wage Index final rule (70 FR 45135), we adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all the CBSAs within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2025, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville-Fort Stewart, Georgia. The FY 2025 final wage index value for Hinesville-Fort Stewart, Georgia is 0.8872.

In the FY 2008 Hospice Wage Index final rule (72 FR 50217 through 50218), we implemented a methodology to update the hospice wage index for rural areas without hospital wage data. In cases where there was a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs, to represent a reasonable proxy for the rural area. The term ''contiguous'' means sharing a border (72 FR 50217). For FY 2025, as part of our proposal to adopt the revised OMB delineations discussed further in section III.A.2 of this final rule, we proposed that rural North Dakota would now become a rural area without a hospital from which hospital wage data can be derived. Therefore, to calculate the wage index for rural area 99935, North Dakota, we proposed to use as a proxy, the average pre-floor, pre-reclassified hospital wage data (updated by the hospice floor) from the contiguous CBSAs: CBSA 13900-Bismark, ND, CBSA 22020-Fargo, ND-MN, CBSA 24220-Grand Forks, ND-MN and CBSA 33500, Minot, ND, which resulted in a proposed FY 2025 hospice wage index of 0.8446 for rural North Dakota.

While no commenters expressly opposed or supported this proposal, we did receive one comment acknowledging the proposal to shift rural North Dakota to a rural area without a hospital from which hospital data can be formulated. We are finalizing our proposal to use as a proxy the average pre-floor, pre-reclassified hospital wage data (updated by the hospice floor) from the contiguous CBSAs: CBSA 13900-Bismark, ND, CBSA 22020-Fargo, ND-MN, CBSA 24220-Grand Forks, ND-MN and CBSA 33500, Minot, ND. For this final rule, using updated data, the final FY 2025 hospice wage index for rural North Dakota is 0.8545.

TABLE 1: Wage Index For Rural North Dakota.

CBSA Code	CBSA Name	Hospice Wage Index
13900	Bismarck, ND	0.8982
22020	Fargo, ND-MN	0.8726
24220	Grand Forks, ND-MN	0.8000
33500	Minot, ND	0.8470
	Final FY 2025 Hospice Wage Index	**0.8545**

Note: CBSA 24220 Grand Forks, ND-MN is adjusted by the hospice floor and CBSA 33500 Minot, ND is adjusted by the 5-percent cap.

Previously, the only rural area without a hospital from which hospital wage data could be derived was in Puerto Rico. However, for rural Puerto Rico, we did not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity of almost all of Puerto Rico's various urban areas to 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 used the most recent wage index previously available for that area which was 0.4047, subsequently adjusted by the hospice floor for an adjusted wage index value of 0.4654. For FY 2025, we noted that as part of our proposal to adopt the revised OMB delineations discussed further in section III.A.2.c of this final rule, there would now be a hospital in rural Puerto Rico from which hospital wage data can be derived. Therefore, we proposed that the wage index for rural Puerto Rico would now be based on the hospital wage data for the area instead of the previously available pre-hospice floor wage index of 0.4047, which equaled an adjusted wage index value of 0.4654. The FY 2025 proposed pre-hospice floor unadjusted wage index for rural Puerto Rico would be 0.2520, and is subsequently adjusted by the hospice floor to equal 0.2898. Because 0.2898 is more than a 5-percent decline in the FY 2024 wage index, the adjusted FY 2025 wage index with the 5-percent cap applied would equal 0.95 multiplied by 0.4654 (that is, the FY 2024 wage index with floor), which resulted in a proposed wage index of 0.4421.

We did not receive any comments on our proposal to use hospital wage data to calculate the wage index of rural Puerto Rico instead of the previously available hospice floor adjusted wage index of 0.4654. We are finalizing this policy as proposed. For FY 2025 the final hospice wage index for rural Puerto Rico is 0.2510, subsequently adjusted by the hospice floor which equals 0.2887. Because 0.2887 is more than a 5-percent decline in the FY 2024 wage index, the adjusted FY 2025 wage index with the 5-percent cap applied will equal 0.95 multiplied by 0.4654 (that is, the FY 2024 wage index with floor), which results in a final wage index of 0.4421.

Finally, due to the proposed adoption of the revised OMB delineations discussed in section III.A.2.c of this final rule, we noted that Delaware, which was previously an all-urban State, would now have one rural area with a hospital from which hospital wage data can be derived. As such, the proposed FY 2025 wage index for rural area 99908 Delaware was 1.0429. We did not receive any comments on our proposal to use hospital wage data to calculate the wage index of rural Delaware. We are finalizing our proposal and the FY 2025 final hospice wage index for rural Delaware is 1.0385.

2. Implementation of New Labor Market Delineations

As discussed, on July 21, 2023, OMB issued Bulletin No. 23–01, which updates and supersedes OMB Bulletin No. 20–01, issued on March 6, 2020. OMB Bulletin No. 23–01 establishes revised delineations for the MSAs, Micropolitan Statistical Areas, CSAs, and Metropolitan Divisions, collectively referred to as Core Based Statistical Areas (CBSAs). According to OMB, the delineations reflect the 2020 Standards for Delineating Core Based Statistical Areas (the ''2020 Standards''), which appeared in the **Federal Register** (86 FR 37770 through 37778) on July 16, 2021, and application of those standards to Census Bureau population and journey-to-work data (for example, 2020 Decennial Census, American Community Survey, and Census Population Estimates Program data). A copy of OMB Bulletin No. 23–01 is available online at: *https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf.*

The July 21, 2023, OMB Bulletin No. 23–01 contains a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. We believe it is important for the hospice wage index to use the latest OMB delineations available in order to maintain the most accurate and up-to-date payment system, reflecting the reality of population shifts and labor market conditions. We further believe that using the most current OMB delineations would increase the integrity of the hospice wage index by creating a more accurate representation of geographic variation in wage levels. We proposed to implement the new OMB delineations as described in the July 21, 2023, OMB Bulletin No. 23–01 for the hospice wage index effective beginning in FY 2025. A summary of comments and our responses on this overall proposal, and on the more specific changes discussed in sections III.A.2.c through III.A.2.f of this final rule that occur as a result of this final policy, are discussed further in this document.

a. Micropolitan Statistical Areas

As discussed in the FY 2006 Hospice Wage Index and Payment Rate Update proposed rule (70 FR 22397) and final rule (70 FR 45132), we considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. Previously, OMB defined 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), 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 Hospice rural wage index (70 FR 22397 and 70 FR 45132). Thus, the hospice statewide rural wage index has been determined using IPPS hospital data from hospitals located in non-MSAs. In the FY 2021 Hospice final rule (85 FR 47074, 47080), we finalized a policy to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of each State's rural wage index.

The OMB ''2020 Standards'' continues to define a ''Micropolitan Statistical Area'' as a CBSA with at least one Urban Area that has a population of at least 10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county, or counties as measured through commuting. (86 FR 37778). Overall, there are the same number of Micropolitan Areas (542) under the new OMB delineations based on the 2020 Census as there were using the 2010 Census. We note, however, that a number of urban counties have switched status and have joined or become Micropolitan Areas, and some counties that once were part of a Micropolitan Area, and thus were treated as rural, have become urban based on the 2020 Decennial Census data. We believe that the best course of action would be to continue our established policy and include Micropolitan Areas in each State's rural wage index as these areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in FY 2025, and consistent with the treatment of Micropolitan Areas under

the IPPS, we also proposed to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of each State's rural wage index.

Final Decision: We did not receive any comments on our proposal to continue to treat Micropolitan Areas as rural and to include those areas in the calculation of each State's rural wage index. We are finalizing this policy as proposed.

b. Change to County-Equivalents in the State of Connecticut

In a June 6, 2022, Notice (87 FR 34235—34240), the Census Bureau announced that it was implementing the State of Connecticut's request to replace the eight counties in the State with nine new ''Planning Regions''. Planning regions are included in OMB Bulletin No. 23–01 and now serve as county-equivalents within the CBSA system. We evaluated the change and proposed to adopt the planning regions as county equivalents for wage index purposes. We believe it is necessary to adopt this migration from counties to planning region county-equivalents in order to maintain consistency with our established policy of adopting the most recent OMB updates.

Final Decision: We did not receive any comments on our proposal to adopt the Connecticut planning regions as county equivalents for wage index purposes. We are finalizing this policy as proposed. We are providing the following crosswalk in Table 2 for counties located in Connecticut with the current and final FIPS county and county-equivalent codes and CBSA assignments.

TABLE 2: Crosswalk of Connecticut County Equivalents

FIPS County Code	County	Old CBSA or non-urban area	New FIPS County Code	FY 2025 Planning Region	New CBSA or non-urban area
09001	FAIRFIELD	14860	09190	WESTERN CONNECTICUT	14860
09001	FAIRFIELD	14860	09120	GREATER BRIDGEPORT	14860
09003	HARTFORD	25540	09110	CAPITOL	25540
09005	LITCHFIELD	99907	09160	NORTHWEST HILLS	99907
09007	MIDDLESEX	25540	09130	LOWER CONNECTICUT RIVER VALLEY	25540
09009	NEW HAVEN	35300	09140	NAUGATUCK VALLEY	47930
09009	NEW HAVEN	35300	09170	SOUTH CENTRAL CONNECTICUT	35300
09011	NEW LONDON	35980	09180	SOUTHEASTERN CONNECTICUT	35980
09013	TOLLAND	25540	09110	CAPITOL	25540
09015	WINDHAM	49340	09150	NORTHEASTERN CONNECTICUT	99907

c. Urban Counties That Would Become Rural

Under the revised OMB statistical area delineations (based upon OMB Bulletin No. 23–01), a total of 53 counties (and county equivalents) that are currently considered urban would be considered rural beginning in FY 2025. Table 3 lists the 53 counties that will become rural when we implement the revised OMB delineations.

TABLE 3: Urban Counties That Would Change to Rural Status

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name
01129	WASHINGTON	AL	33660	Mobile, AL
05025	CLEVELAND	AR	38220	Pine Bluff, AR
05047	FRANKLIN	AR	22900	Fort Smith, AR-OK
05069	JEFFERSON	AR	38220	Pine Bluff, AR
05079	LINCOLN	AR	38220	Pine Bluff, AR
10005	SUSSEX	DE	41540	Salisbury, MD-DE
13171	LAMAR	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
16077	POWER	ID	38540	Pocatello, ID
17057	FULTON	IL	37900	Peoria, IL
17077	JACKSON	IL	16060	Carbondale-Marion, IL
17087	JOHNSON	IL	16060	Carbondale-Marion, IL
17183	VERMILION	IL	19180	Danville, IL
17199	WILLIAMSON	IL	16060	Carbondale-Marion, IL
18121	PARKE	IN	45460	Terre Haute, IN
18133	PUTNAM	IN	26900	Indianapolis-Carmel-Anderson, IN
18161	UNION	IN	17140	Cincinnati, OH-KY-IN
21091	HANCOCK	KY	36980	Owensboro, KY
21101	HENDERSON	KY	21780	Evansville, IN-KY
22045	IBERIA	LA	29180	Lafayette, LA
24001	ALLEGANY	MD	19060	Cumberland, MD-WV
24047	WORCESTER	MD	41540	Salisbury, MD-DE
25011	FRANKLIN	MA	44140	Springfield, MA
26155	SHIAWASSEE	MI	29620	Lansing-East Lansing, MI
27075	LAKE	MN	20260	Duluth, MN-WI
28031	COVINGTON	MS	25620	Hattiesburg, MS
31051	DIXON	NE	43580	Sioux City, IA-NE-SD
36123	YATES	NY	40380	Rochester, NY
37049	CRAVEN	NC	35100	New Bern, NC
37077	GRANVILLE	NC	20500	Durham-Chapel Hill, NC
37085	HARNETT	NC	22180	Fayetteville, NC
37087	HAYWOOD	NC	11700	Asheville, NC
37103	JONES	NC	35100	New Bern, NC
37137	PAMLICO	NC	35100	New Bern, NC
42037	COLUMBIA	PA	14100	Bloomsburg-Berwick, PA
42085	MERCER	PA	49660	Youngstown-Warren-Boardman, OH-PA
42089	MONROE	PA	20700	East Stroudsburg, PA
42093	MONTOUR	PA	14100	Bloomsburg-Berwick, PA
42103	PIKE	PA	35084	Newark, NJ-PA
45027	CLARENDON	SC	44940	Sumter, SC

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name
48431	STERLING	TX	41660	San Angelo, TX
49003	BOX ELDER	UT	36260	Ogden-Clearfield, UT
51113	MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	JACKSON	WV	16620	Charleston, WV
54043	LINCOLN	WV	16620	Charleston, WV
54057	MINERAL	WV	19060	Cumberland, MD-WV
55069	LINCOLN	WI	48140	Wausau-Weston, WI
72001	ADJUNTAS	PR	38660	Ponce, PR
72055	GUANICA	PR	49500	Yauco, PR
72081	LARES	PR	10380	Aguadilla-Isabela, PR
72083	LAS MARIAS	PR	32420	Mayagüez, PR
72141	UTUADO	PR	10380	Aguadilla-Isabela, PR

d. Rural Counties That Would Become Urban

Under the revised OMB statistical area delineations (based upon OMB Bulletin No. 23–01), a total of 54 counties (and county equivalents) that are currently located in rural areas will be considered located in urban areas under the revised OMB delineations beginning in FY 2025. Table 4 lists the 54 counties that will be urban if we implement the revised OMB delineations beginning in FY 2025.

TABLE 4: Rural Counties That Would Change to Urban Status

FIPS County Code	County Name	State	Final FY 2025 CBSA	Final FY 2025 CBSA Name
01087	MACON	AL	12220	Auburn-Opelika, AL
01127	WALKER	AL	13820	Birmingham, AL
12133	WASHINGTON	FL	37460	Panama City-Panama City Beach, FL
13187	LUMPKIN	GA	12054	Atlanta-Sandy Springs-Roswell, GA
15005	KALAWAO	HI	27980	Kahului-Wailuku, HI
17053	FORD	IL	16580	Champaign-Urbana, IL
17127	MASSAC	IL	37140	Paducah, KY-IL
18159	TIPTON	IN	26900	Indianapolis-Carmel-Greenwood, IN
18179	WELLS	IN	23060	Fort Wayne, IN
20021	CHEROKEE	KS	27900	Joplin, MO-KS
21007	BALLARD	KY	37140	Paducah, KY-IL
21039	CARLISLE	KY	37140	Paducah, KY-IL
21127	LAWRENCE	KY	26580	Huntington-Ashland, WV-KY-OH
21139	LIVINGSTON	KY	37140	Paducah, KY-IL
21145	MC CRACKEN	KY	37140	Paducah, KY-IL
21179	NELSON	KY	31140	Louisville/Jefferson County, KY-IN
22053	JEFFRSON DAVIS	LA	29340	Lake Charles, LA
22083	RICHLAND	LA	33740	Monroe, LA
26015	BARRY	MI	24340	Grand Rapids-Wyoming-Kentwood, MI
26019	BENZIE	MI	45900	Traverse City, MI
26055	GRAND TRAVERSE	MI	45900	Traverse City, MI
26079	KALKASKA	MI	45900	Traverse City, MI
26089	LEELANAU	MI	45900	Traverse City, MI
27133	ROCK	MN	43620	Sioux Falls, SD-MN
28009	BENTON	MS	32820	Memphis, TN-MS-AR
28123	SCOTT	MS	27140	Jackson, MS
30007	BROADWATER	MT	25740	Helena, MT
30031	GALLATIN	MT	14580	Bozeman, MT
30043	JEFFERSON	MT	25740	Helena, MT
30049	LEWIS AND CLARK	MT	25740	Helena, MT
30061	MINERAL	MT	33540	Missoula, MT
32019	LYON	NV	39900	Reno, NV
37125	MOORE	NC	38240	Pinehurst-Southern Pines, NC
38049	MCHENRY	ND	33500	Minot, ND
38075	RENVILLE	ND	33500	Minot, ND
38101	WARD	ND	33500	Minot, ND

FIPS County Code	County Name	State	Final FY 2025 CBSA	Final FY 2025 CBSA Name
39007	ASHTABULA	OH	17410	Cleveland, OH
39043	ERIE	OH	41780	Sandusky, OH
41013	CROOK	OR	13460	Bend, OR
41031	JEFFERSON	OR	13460	Bend, OR
42073	LAWRENCE	PA	38300	Pittsburgh, PA
45087	UNION	SC	43900	Spartanburg, SC
46033	CUSTER	SD	39660	Rapid City, SD
47081	HICKMAN	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	ARANSAS	TX	18580	Corpus Christi, TX
48035	BOSQUE	TX	47380	Waco, TX
48079	COCHRAN	TX	31180	Lubbock, TX
48169	GARZA	TX	31180	Lubbock, TX
48219	HOCKLEY	TX	31180	Lubbock, TX
48323	MAVERICK	TX	20580	Eagle Pass, TX
48407	SAN JACINTO	TX	26420	Houston-Pasadena-The Woodlands, TX
51063	FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA
51181	SURRY	VA	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
55123	VERNON	WI	29100	La Crosse-Onalaska, WI-MN

e. Urban Counties That Would Move to a Different Urban CBSA Under the Revised OMB Delineations

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to a new or existing urban CBSA under our proposal to adopt the revised OMB delineations. In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA would continue to encompass the same constituent counties. For example, CBSA 35154 (New Brunswick-Lakewood, NJ) would experience both a change to its number and its name, and become CBSA 29484 (Lakewood-New Brunswick, NJ), while all three of its constituent counties would remain the same. In other cases, only the name of the CBSA would be modified. Table 5 lists CBSAs that would change in name and/or CBSA number only, but the constituent counties would not change (except in instances where an urban county became rural, or a rural county became urban, as discussed in the previous sections).

TABLE 5: Urban Areas With CBSA Name And/or Number Change

Current CBSA Code	Current CBSA Name	Final FY 2025 CBSA Code	Final FY 2025 CBSA Name
10380	Aguadilla-Isabela, PR	10380	Aguadilla, PR
10540	Albany-Lebanon, OR	10540	Albany, OR
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock-San Marcos, TX
12540	Bakersfield, CA	12540	Bakersfield-Delano, CA
13820	Birmingham-Hoover, AL	13820	Birmingham, AL
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
15260	Brunswick, GA	15260	Brunswick-St. Simons, GA
15680	California-Lexington Park, MD	30500	Lexington Park, MD
16540	Chambersburg-Waynesboro, PA	16540	Chambersburg, PA
16984	Chicago-Naperville-Evanston, IL	16984	Chicago-Naperville-Schaumburg, IL
17460	Cleveland-Elyria, OH	17410	Cleveland, OH
19430	Dayton-Kettering, OH	19430	Dayton-Kettering-Beavercreek, OH
19740	Denver-Aurora-Lakewood, CO	19740	Denver-Aurora-Centennial, CO
21060	Elizabethtown-Fort Knox, KY	21060	Elizabethtown, KY
21780	Evansville, IN-KY	21780	Evansville, IN
21820	Fairbanks, AK	21820	Fairbanks-College, AK
22660	Fort Collins, CO	22660	Fort Collins-Loveland, CO
23224	Frederick-Gaithersburg-Rockville, MD	23224	Frederick-Gaithersburg-Bethesda, MD
23844	Gary, IN	29414	Lake County-Porter County-Jasper County, IN
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming-Kentwood, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Greer, SC
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Port Royal, SC
26380	Houma-Thibodaux, LA	26380	Houma-Bayou Cane-Thibodaux, LA
26420	Houston-The Woodlands-Sugar Land, TX	26420	Houston-Pasadena-The Woodlands, TX
26900	Indianapolis-Carmel-Anderson, IN	26900	Indianapolis-Carmel-Greenwood, IN
27900	Joplin, MO	27900	Joplin, MO-KS
27980	Kahului-Wailuku-Lahaina, HI	27980	Kahului-Wailuku, HI
29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL
29820	Las Vegas-Henderson-Paradise, NV	29820	Las Vegas-Henderson-North Las Vegas, NV
31020	Longview, WA	31020	Longview-Kelso, WA
34740	Muskegon, MI	34740	Muskegon-Norton Shores, MI
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC
35084	Newark, NJ-PA	35084	Newark, NJ
35154	New Brunswick-Lakewood, NJ	29484	Lakewood-New Brunswick, NJ
35840	North Port-Sarasota-Bradenton, FL	35840	North Port-Bradenton-Sarasota, FL
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Fremont-Berkeley, CA
36260	Ogden-Clearfield, UT	36260	Ogden, UT

Current CBSA Code	Current CBSA Name	Final FY 2025 CBSA Code	Final FY 2025 CBSA Name
36540	Omaha-Council Bluffs, NE-IA	36540	Omaha, NE-IA
37460	Panama City, FL	37460	Panama City-Panama City Beach, FL
39100	Poughkeepsie-Newburgh-Middletown, NY	28880	Kiryas Joel-Poughkeepsie-Newburgh, NY
39340	Provo-Orem, UT	39340	Provo-Orem-Lehi, UT
39540	Racine, WI	39540	Racine-Mount Pleasant, WI
41540	Salisbury, MD-DE	41540	Salisbury, MD
41620	Salt Lake City, UT	41620	Salt Lake City-Murray, UT
42680	Sebastian-Vero Beach, FL	42680	Sebastian-Vero Beach-West Vero Corridor, FL
42700	Sebring-Avon Park, FL	42700	Sebring, FL
43620	Sioux Falls, SD	43620	Sioux Falls, SD-MN
44420	Staunton, VA	44420	Staunton-Stuarts Draft, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45540	The Villages, FL	48680	Wildwood-The Villages, FL
47220	Vineland-Bridgeton, NJ	47220	Vineland, NJ
47260	Virginia Beach-Norfolk-Newport News, VA-NC	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
48140	Wausau-Weston, WI	48140	Wausau, WI
48300	Wenatchee, WA	48300	Wenatchee-East Wenatchee, WA
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL
49340	Worcester, MA-CT	49340	Worcester, MA
49660	Youngstown-Warren-Boardman, OH-PA	49660	Youngstown-Warren, OH

In some cases, all the urban counties from a FY 2024 CBSA would be moved and subsumed by another CBSA in FY 2025. Table 6 lists the CBSAs that, under our proposal to adopt the revised OMB statistical area delineations, would be subsumed by another CBSA.

TABLE 6: Urban Areas Being Subsumed By Another CBSA

Current CBSA Code	Current CBSA Name	Final FY 2025 CBSA Code	Final FY 2025 CBSA Name
31460	Madera, CA	23420	Fresno, CA
36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ
41900	San Germán, PR	32420	Mayagüez, PR

In other cases, if we adopt the new OMB delineations, some counties will shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. In another type of change, some CBSAs have counties that would split off to become part of or to form entirely new labor market areas. For example, the District of Columbia, DC, Charles County, MD and Prince Georges County, MD would move from CBSA 47894 (Washington-Arlington-Alexandria, DC-VA-MD-WV) into CBSA 47764 (Washington, DC-MD). Calvert County, MD would move from CBSA 47894 (Washington-Arlington-Alexandria, DC-VA-MD-WV) into CBSA 30500 (Lexington Park, MD). The remaining counties that currently make up 47894 (Washington-Arlington-Alexandria, DC-VA-MD-WV) would move into CBSA 11694 (Arlington-Alexandria-Reston, VA-WV). Finally, in some cases, a CBSA will lose counties to another existing

CBSA if we adopt the new OMB delineations. For example, Grainger County, TN would move from CBSA 34100 (Morristown, TN) into CBSA 28940 (Knoxville, TN). Table 7 lists the 73 urban counties that would move from one urban CBSA to a new or modified urban CBSA if we adopt the revised OMB delineations.

TABLE 7: Counties That Would Change to a Different Urban CBSA

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Final FY 2025 CBSA	Final FY 2025 CBSA Name
13013	BARROW	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13035	BUTTS	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13045	CARROLL	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13063	CLAYTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13077	COWETA	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13085	DAWSON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13089	DE KALB	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13097	DOUGLAS	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13113	FAYETTE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13117	FORSYTH	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13121	FULTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13135	GWINNETT	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13149	HEARD	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Final FY 2025 CBSA	Final FY 2025 CBSA Name
13151	HENRY	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13159	JASPER	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13199	MERIWETHER	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13211	MORGAN	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13217	NEWTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13227	PICKENS	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13231	PIKE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13247	ROCKDALE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13255	SPALDING	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13297	WALTON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
13015	BARTOW	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13057	CHEROKEE	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13067	COBB	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13143	HARALSON	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
13223	PAULDING	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
21163	MEADE	KY	21060	Elizabethtown-Fort Knox, KY	31140	Louisville/Jefferson County, KY-IN
17097	LAKE	IL	29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Final FY 2025 CBSA	Final FY 2025 CBSA Name
55059	KENOSHA	WI	29404	Lake County-Kenosha County, IL-WI	28450	Kenosha, WI
06039	MADERA	CA	31460	Madera, CA	23420	Fresno, CA
47057	GRAINGER	TN	34100	Morristown, TN	28940	Knoxville, TN
37019	BRUNSWICK	NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	48900	Wilmington, NC
22103	ST. TAMMANY	LA	35380	New Orleans-Metairie, LA	43640	Slidell-Mandeville-Covington, LA
34009	CAPE MAY	NJ	36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ
72023	CABO ROJO	PR	41900	San Germán, PR	32420	Mayagüez, PR
72079	LAJAS	PR	41900	San Germán, PR	32420	Mayagüez, PR
72121	SABANA GRANDE	PR	41900	San Germán, PR	32420	Mayagüez, PR
72125	SAN GERMAN	PR	41900	San Germán, PR	32420	Mayagüez, PR
53061	SNOHOMISH	WA	42644	Seattle-Bellevue-Kent, WA	21794	Everett, WA
25015	HAMPSHIRE	MA	44140	Springfield, MA	11200	Amherst Town-Northampton, MA
12103	PINELLAS	FL	45300	Tampa-St. Petersburg-Clearwater, FL	41304	St. Petersburg-Clearwater-Largo, FL
12053	HERNANDO	FL	45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
12057	HILLSBOROUGH	FL	45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
12101	PASCO	FL	45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
39123	OTTAWA	OH	45780	Toledo, OH	41780	Sandusky, OH
51013	ARLINGTON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51043	CLARKE	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51047	CULPEPER	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51059	FAIRFAX	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Final FY 2025 CBSA	Final FY 2025 CBSA Name
51061	FAUQUIER	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51107	LOUDOUN	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51153	PRINCE WILLIAM	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51157	RAPPAHANNOCK	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51177	SPOTSYLVANIA	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51179	STAFFORD	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51187	WARREN	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51510	ALEXANDRIA CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51600	FAIRFAX CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51610	FALLS CHURCH CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51630	FREDERICKSBURG CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51683	MANASSAS CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
51685	MANASSAS PARK CITY	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Final FY 2025 CBSA	Final FY 2025 CBSA Name
54037	JEFFERSON	WV	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
11001	THE DISTRICT	DC	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
24017	CHARLES	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
24033	PRINCE GEORGES	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
24009	CALVERT	MD	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD
24037	ST. MARYS	MD	15680	California-Lexington Park, MD	30500	Lexington Park, MD
72059	GUAYANILLA	PR	49500	Yauco, PR	38660	Ponce, PR
72111	PENUELAS	PR	49500	Yauco, PR	38660	Ponce, PR
72153	YAUCO	PR	49500	Yauco, PR	38660	Ponce, PR

f. Transition Period

In the past we have provided for transition periods when adopting changes that have significant payment implications, particularly large negative impacts, in order to mitigate the potential impacts of proposed policies on hospices. For example, we have proposed and finalized budget-neutral transition policies to help mitigate negative impacts on hospices following the adoption of the new CBSA delineations based on the 2010 Decennial Census data in the FY 2016 hospice final rule (80 FR 47142). Specifically, we applied a blended wage index for one year (FY 2016) for all geographic areas that consisted of a 50/50 blend of the wage index values using OMB's old area delineations and the wage index values using OMB's new area delineations. That is, for each county, a blended wage index was calculated equal to 50 percent of the FY 2016 wage index using the old labor market area delineation and 50 percent of the FY 2016 wage index using the new labor market area delineations, which resulted in an average of the two values. Additionally, in the FY 2021 hospice final rule (85 FR 47079 through 47080), we proposed and finalized a transition policy to apply a 5-percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior FY. This transition allowed the effects of our adoption of the revised CBSA delineations from OMB Bulletin 18–04 to be phased in over 2 years, where the estimated reduction in a geographic area's wage index was capped at five percent in FY 2021 (that is, no cap was applied to the reduction in the wage index for the second year (FY 2022)). We explained that we believed a 5-percent cap on the overall decrease in a geographic area's wage index value would be appropriate for FY 2021, as it provided predictability in payment levels from FY 2020 to FY 2021 and additional transparency because it was administratively simpler than our prior one-year 50/50 blended wage index approach.

As discussed previously, in the FY 2023 hospice final rule, we adopted a permanent 5-percent cap on wage index decreases beginning in FY 2023 and each subsequent year (87 FR 45677). The policy applies a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline, so that a geographic area's wage index would not be less than 95 percent of its wage index calculated in the prior FY.

For FY 2025, we believe that the permanent 5-percent cap on wage index decreases would be sufficient to mitigate any potential negative impact for hospices serving beneficiaries in areas that are impacted by the proposal to adopt the revised OMB delineations and that no further transition is necessary. Previously, the 5-percent cap had been applied at the CBSA or statewide rural area level, meaning that all the counties that make up the CBSA or rural area received the 5-percent cap. However, for FY 2025, to mitigate any

potential negative impact caused by our proposed adoption of the revised delineations, we proposed that in addition to the 5-percent cap being calculated for an entire CBSA or statewide rural area the cap would also be calculated at the county level, so that individual counties moving to a new delineation would not experience more than a 5 percent decrease in wage index from the previous fiscal year. Specifically, we proposed for FY 2025, that the 5-percent cap would also be applied to counties that move from a CBSA or statewide rural area with a higher wage index value into a new CBSA or rural area with a lower wage index value, so that the county's FY 2025 wage index would not be less than 95 percent of the county's FY 2024 wage index value under the old delineation despite moving into a new delineation with a lower wage index.

Due to the way that we proposed to calculate the 5-percent cap for counties that experience an OMB designation change, some CBSAs and statewide rural areas could have more than one wage index value because of the potential for their constituent counties to have different wage index values as a result of application of the 5-percent cap. Specifically, some counties that change OMB designations would have a wage index value that is different than the wage index value assigned to the other constituent counties that make up the CBSA or statewide rural area that they are moving into because of the application of the 5-percent cap. However, for hospice claims processing, each CBSA or statewide rural area can have only one wage index value assigned to that CBSA or statewide rural area.

Therefore, hospices that serve beneficiaries in a county that would receive the cap would need to use a number other than the CBSA or statewide rural area number to identify the county's appropriate wage index value for hospice claims in FY 2025. We proposed that beginning in FY 2025, counties that have a different wage index value than the CBSA or rural area into which they are designated due to the application of the 5-percent cap would use a wage index transition code. These special codes are five digits in length and begin with ''50.'' The 50XXX wage index transition codes would be used only in specific counties; counties located in CBSAs and rural areas that do not correspond to a different transition wage index value will still use the CBSA number. For example, FIPS county 13171 Lamar County, GA is currently part of CBSA 12060 Atlanta-Sandy Springs-Alpharetta. However, for FY 2025 we proposed that Lamar County would be redesignated into the Rural Georgia Code 99911. Because the wage index value of rural Georgia is more than a 5-percent decrease from the wage index value that Lamar County previously received under CBSA 12060, the FY 2025 wage index for Lamar County would be capped at 95 percent of the FY 2024 wage index value for CBSA 12060. Additionally, because rural Georgia can only have one wage index value assigned to code 99911, in order for Lamar County to receive the capped wage index for FY 2025, transition code 50002 would be used instead of rural Georgia code 99911.

Table 8 includes a list of counties that have changed designation and must use a transition code beginning in FY 2025. This list is comprised of counties that are redesignated into a new CBSA or rural area and will receive the 5-percent cap on wage index decreases. These counties must use a transition code because the wage index for that county is higher than all other constituent counties that make up the CBSA or rural area (like the example above for Lamar County, GA.) Additionally, the list also includes counties that move into a new CBSA or rural area and have a different wage index value because the constituent counties that make up the CBSA or rural receive the 5-percent cap for FY 2025 while the county that moves into the CBSA or rural area does not. For example, rural area 99922 rural Massachusetts is comprised of FIPS code 25007 Dukes County, FIPS code 25019 Nantucket County and the redesignated FIPS code 25011 Franklin County. Dukes County and Nantucket County were part of rural area 99922 Massachusetts for FY 2024 and will receive the 5-percent cap because the FY 2025 wage index for rural area 99922 is more than a 5-percent decrease from the FY 2024 wage index for rural area 99922. However, Franklin County was included in CBSA 44140 Springfield, MA in FY 2024 and the uncapped FY 2025 wage index for rural area 99922 is higher than the FY 2024 wage index for CBSA 44140. In this example, Franklin County, MA would receive the uncapped wage index for rural Area 99922 while Dukes and Nantucket counties receive the 5-percent capped wage index. Therefore, hospices that serve beneficiaries in Franklin County, MA must use the transition code 50010 on hospice claims.

Additionally, we proposed that the 5-percent cap would apply to a county that corresponds to a different wage index value than the wage index value in the CBSA or rural area in which they are designated due to a delineation change until the county's new wage index is more than 95 percent of the wage index from the previous fiscal year. We also proposed that in order to capture the correct wage index value, the county would continue to use the assigned 50XXX transition code until the county's wage index value calculated for that fiscal year using the new OMB delineations is not less than 95 percent of the county's capped wage index from the previous fiscal year. Thus, in the example mentioned previously, Lamar County would continue to use transition code 50002 until the wage index in its revised designation of Rural Georgia is equal to or more than 95 percent of its wage index value from the previous fiscal year. The counties that will require a transition code in FY 2025 and the corresponding 50XXX codes are shown in Table 8 and will also be shown in the last column of the FY 2025 hospice wage index file.

TABLE 8: Counties That Will Use a Wage Index Transition Code

FIPS Code	County Name	FY 2024 CBSA	FY 2024 CBSA Name	FY 2025 CBSA	FY 2025 CBSA NAME	Transition Code
01129	WASHINGTON	33660	Mobile, AL	99901	ALABAMA	50001
13171	LAMAR	12060	Atlanta-Sandy Springs-Alpharetta, GA	99911	GEORGIA	50002
15005	KALAWAO	99912	HAWAII	27980	Kahului-Wailuku, HI	50003
16077	POWER	38540	Pocatello, ID	99913	IDAHO	50004
17183	VERMILION	19180	Danville, IL	99914	ILLINOIS	50005
18133	PUTNAM	26900	Indianapolis-Carmel-Anderson, IN	99915	INDIANA	50006
21101	HENDERSON	21780	Evansville, IN-KY	99918	KENTUCKY	50007
24009	CALVERT	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD	50008
24047	WORCESTER	41540	Salisbury, MD-DE	99921	MARYLAND	50009
25011	FRANKLIN	44140	Springfield, MA	99922	MASSACHUSETTS	50010
26155	SHIAWASSEE	29620	Lansing-East Lansing, MI	99923	MICHIGAN	50011
27075	LAKE	20260	Duluth, MN-WI	99924	MINNESOTA	50012
27133	ROCK	99924	MINNESOTA	43620	Sioux Falls, SD-MN	50013
32019	LYON	99929	NEVADA	39900	Reno, NV	50014
34009	CAPE MAY	36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ	50015
36123	YATES	40380	Rochester, NY	99933	NEW YORK	50016
37077	GRANVILLE	20500	Durham-Chapel Hill, NC	99934	NORTH CAROLINA	50017
37087	HAYWOOD	11700	Asheville, NC	99934	NORTH CAROLINA	50018
39123	OTTAWA	45780	Toledo, OH	41780	Sandusky, OH	50019
42103	PIKE	35084	Newark, NJ-PA	99939	PENNSYLVANIA	50020
51113	MADISON	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	99949	VIRGINIA	50021
51175	SOUTHAMPTON	47260	Virginia Beach-Norfolk-Newport News, VA-NC	99949	VIRGINIA	50022
51620	FRANKLIN CITY	47260	Virginia Beach-Norfolk-Newport News, VA-NC	99949	VIRGINIA	50022
54057	MINERAL	19060	Cumberland, MD-WV	99951	WEST VIRGINIA	50023
72001	ADJUNTAS	38660	Ponce, PR	99940	PUERTO RICO	50024
72023	CABO ROJO	41900	San Germ n, PR	32420	Mayagüez, PR	50025
72055	GUANICA	49500	Yauco, PR	99940	PUERTO RICO	50026
72059	GUAYANILLA	49500	Yauco, PR	38660	Ponce, PR	50027
72079	LAJAS	41900	San Germán, PR	32420	Mayagüez, PR	50025
72081	LARES	10380	Aguadilla-Isabela, PR	99940	PUERTO RICO	50028
72083	LAS MARIAS	32420	Mayagüez, PR	99940	PUERTO RICO	50029
72111	PENUELAS	49500	Yauco, PR	38660	Ponce, PR	50027
72121	SABANA GRANDE	41900	San Germán, PR	32420	Mayagüez, PR	50025
72125	SAN GERMAN	41900	San Germán, PR	32420	Mayagüez, PR	50025
72141	UTUADO	10380	Aguadilla-Isabela, PR	99940	PUERTO RICO	50028
72153	YAUCO	49500	Yauco, PR	38660	Ponce, PR	50027

We received 11 comments on our proposal to adopt the latest OMB delineations from OMB Bulletin No. 23–01 (and the resulting changes) with the permanent 5-percent cap as a transition. The following is a summary of these

comments and our responses to those comments.

Comment: Most commenters stated that they support the adoption of the revised OMB delineations from the July 21, 2023, Bulletin No. 23–01. Most commenters also expressed support for the use of the permanent 5-percent cap policy as a transition to the policy.

Response: We appreciate the commenters' support of the adoption of the new OMB delineations and the use of the permanent 5-percent cap as a transition.

Comment: A few commenters opposed our proposal to adopt the new delineations. One commenter from Montgomery County, MD, expressed concern that the revised delineations fail to resolve the issue of the county being excluded from the Washington, DC CBSA. Other commenters stated that the adoption of the revised OMB delineations would result in a reduction in reimbursement for counties in states such as California, Illinois, and New York. One commenter suggested that the proposed updates to CBSAs based on the 2020 Decennial Census will not only eliminate any proposed rate increase but will reduce reimbursement in thirty-three percent of New York's sixty-one counties.

Response: We appreciate the concerns commenters raised regarding the impact of implementing the revised designations on their specific counties. While we understand the concern regarding the potential financial impact, we believe that implementing the revised OMB delineations will create more accurate representations of labor market areas nationally and result in hospice wage index values being more representative of the actual costs of labor in a given area. Although these comments only addressed any negative impacts on specific geographic areas, we believe it is important to note that there are many geographic locations and hospice providers that will experience positive impacts upon implementation of the revised CBSA designations. We believe that the OMB delineations for Metropolitan and Micropolitan Statistical Areas are appropriate for use in accounting for wage area differences and that the values computed under the revised delineations will result in more appropriate payments to providers by more accurately accounting for and reflecting the differences in area wage levels. We also recognize that there are areas which will experience a decrease in their wage index. As such, it is our longstanding policy to provide temporary adjustments to mitigate negative impacts from the adoption of new policies or procedures. In the FY 2025 Hospice Wage Index and Payment Rate Update proposed rule, we proposed to use the finalized 5-percent cap policy as a transition in order to mitigate the resulting short-term instability and negative impacts on certain providers. We continue to believe that the finalized 5-percent cap policy provides an adequate safeguard against any significant payment reductions, allows for sufficient time to make operational changes for future fiscal years, and provides a reasonable balance between mitigating some short-term instability in hospice payments and improving the accuracy of the payment adjustment for differences in area wage levels.

Comment: A few commenters, including MedPAC, suggested alternatives to the 5-percent cap transition policy. MedPAC suggested that the 5-percent cap limit should apply to both increases and decreases in the wage index so that no provider would have its wage index value increase or decrease by more than 5 percent. However, several commenters recommended lowering the finalized 5-percent cap on wage index decreases (for example, a 2-percent cap was recommended). These commenters stated that capping decreases at 5 percent is insufficient to mitigate negative impacts faced by hospices. One commenter stated that while the permanent maximum drop in wage index values is appreciated, even a 5 percent drop in rates from one year to the next in this inflationary time is very difficult. Another commenter recommended that CMS limit the maximum wage index reduction to a percentage equal to or less than the payment update for that year. This commenter also suggested that CMS change the policy so that there is no reduction in wage index values but instead only increases. One commenter recommended the wage index cap be lowered for FY 2025 as a transition to the adoption of the revised delineations. Two commenters requested that CMS institute a one-time zero wage index adjustment in all CBSAs where there is a negative adjustment.

Response: We appreciate the commenters' recommendations for changes to the finalized cap policy. Regarding MedPAC's suggestion that the cap on wage index changes of more than 5 percent should also be applied to wage index increases, as we discussed previously, the purpose of the finalized 5-percent cap policy is to help mitigate the significant negative impacts of certain wage index changes. Additionally, we believe that the 5-percent cap on wage index decreases is an adequate safeguard against any significant payment reductions and do not believe that capping wage index decreases at 2 percent instead of 5 percent is appropriate. We also do not believe it would be appropriate to institute a one-time zero wage index adjustment or implement a policy where there are no wage index decreases. We continue to believe that a 5-percent cap would more effectively mitigate any significant decreases in a hospice's wage index for a fiscal year, while still balancing the importance of ensuring that area wage index values accurately reflect relative differences in area wage levels. Furthermore, a 5-percent cap on wage index decreases provides a degree of predictability in payment changes for providers and allows providers time to adjust to any significant decreases they may face year to year.

Final Decision: We are finalizing our proposal to adopt the revised OMB delineations from the July 21, 2018 OMB Bulletin 23–01, and will also apply the permanent 5-percent cap on wage index decreases at the county level with the use of a transition code, so that counties impacted by the revised designations will receive a 5-percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior fiscal year for FY 2025. We are also finalizing that beginning in FY 2025, counties that have a different wage index value than the CBSA or rural area into which they are designated due to the application of the 5-percent cap (including redesignated counties that will receive the 5-percent cap and redesignated counties that move into a CBSA or rural area where all other constituent counties receive the 5-percent cap) would use a wage index transition code. These special codes are five digits in length and begin with ''50.'' The 50XXX wage index transition codes will be used only in specific counties; counties located in CBSAs and rural areas that do not correspond to a different transition wage index value will still use the CBSA number. Finally, we are finalizing the policy that the 5-percent cap will apply to a county that corresponds to a different wage index value than the wage index value in the CBSA or rural area in which they are designated due to a delineation change until the county's new wage index is more than 95 percent of the wage index from the previous fiscal year. In order to capture the correct wage index value, the county will continue to use the assigned 50XXX transition code until the county's wage index value calculated for that fiscal year using the new OMB delineations is

not less than 95 percent of the county's capped wage index from the previous fiscal year.

The final FY 2025 wage index file provides a crosswalk between the current OMB delineations and the final revised OMB delineations that will be in effect in FY 2025. This file shows each State and county and its corresponding final wage index along with the previous CBSA number, the final CBSA number or alternate identification number, and the final CBSA name. The final hospice wage index file applicable for FY 2025 (October 1, 2024 through September 30, 2025) is available on the CMS website at: *https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-wage-index.*

3. FY 2025 Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus one percentage point. Payment rates for FYs since 2002 have been updated as required by section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient hospital market basket percentage increase for that FY. In the FY 2022 IPPS final rule, we finalized the rebased and revised IPPS market basket to reflect a 2018 base year. We refer readers to the FY 2022 IPPS final rule (86 FR 45194) for further information.

Section 3401(g) of the Affordable Care Act mandated that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage would be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. 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 (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 ''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'' with ''total factor productivity'' (TFP). BLS noted that this is a change in terminology only and would 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, the data and methods are unchanged. We refer readers to *http://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/data-research/statistics-trends-and-reports/medicare-program-rates-statistics/market-basket-research-and-information.* In addition, in the FY 2022 IPPS final rule (86 FR 45214), we noted that beginning with FY 2022, CMS changed the name of this adjustment to refer to it as the ''productivity adjustment'' rather than the ''MFP adjustment''. Consistent with our historical practice, we estimate the market basket percentage increase and the productivity adjustment based on IHS Global Inc.'s (IGI's) forecast using the most recent available data. The proposed hospice payment update percentage for FY 2025 was based on the most recent estimate of the inpatient hospital market basket (based on IGI's fourth quarter 2023 forecast with historical data through the third quarter of 2023). Due to the requirements at sections 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the proposed inpatient hospital market basket percentage increase for FY 2025 of 3.0 percent is required to be reduced by a productivity adjustment as mandated by section 3401(g) of the Affordable Care Act. The proposed productivity adjustment for FY 2025 was 0.4 percentage point (based on IGI's fourth quarter 2023 forecast). Therefore, the proposed hospice payment update percentage for FY 2025 was 2.6 percent. We also proposed that if more recent data became available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the inpatient hospital market basket percentage increase or productivity adjustment), we would use such data, if appropriate, to determine the hospice payment update percentage in the FY 2025 final rule. We continue to believe it is appropriate to routinely update the hospice payment system so that it reflects the best available data about differences in patient resource use and costs among hospices as required by the statute.

In the FY 2022 Hospice Wage Index final rule (86 FR 42532), we rebased and revised the labor shares for RHC, CHC, GIP, and IRC using Medicare cost report data for freestanding hospices (CMS Form 1984–14, OMB Control Number 0938–0758) from 2018. The current labor portion of the payment rates are: RHC, 66.0 percent; CHC, 75.2 percent; GIP, 63.5 percent; and IRC, 61.0 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. The non-labor portion of the payment rates are as follows: RHC, 34.0 percent; CHC, 24.8 percent; GIP, 36.5 percent; and IRC, 39.0 percent. We received 45 comments on the proposed hospice update percentage of 2.6 percent. A summary of the comments and our responses to those comments are as follows:

Comment: A couple of commenters stated appreciation for the proposed hospice market basket update for FY 2025; however, most commenters stated that the proposed 2.6 percent increase does not cover the increased operating costs they have faced throughout the pandemic. The commenters requested CMS determine whether additional updates could be made during FY 2025.

Specifically, the commenters stated that they have been facing unprecedented increases in labor costs, particularly for nursing staff and that labor accounts for a large percentage of their operating costs, more so than other provider types. Additionally, several commenters noted that the healthcare worker shortages exacerbate wage pressure increases. For example, a few commenters stated that their compensation costs account for approximately 80 percent of the overall operating costs. Several commenters stated that they have experienced increased expenses for employed nursing staff, therapy staff, and ancillary staff. Many commenters noted the difficulty in recruiting and retaining staff, as other provider types can pay higher wages. One commenter stated that New York State Medicaid recognized the catastrophic impact of rising healthcare costs and approved a rate increase of 3.5 percent, acknowledging the higher cost of doing business in New York, which was partly driven by the largest wage increase in New York City's public sector nursing history. One industry association stated that their members reported that

workforce shortages are their biggest challenge.

The commenters also stated that the proposed payment update does not appropriately capture the inflation pressures experienced for non-labor operating expenses, specifically the increased costs for medical supplies, pharmaceuticals, materials, and utilities. One commenter stated that their total drug expenses per hospice day are 14 percent higher and medical supply costs and staff travel reimbursement (as staff travel to patient homes to provide care) have increased 4 percent and 6.5 percent, respectively, over the past year. The commenters stated that it has been difficult to budget wage increases in order to attract and retain staff while at the same time covering higher input costs for other operating expenses.

Several commenters explicitly noted that the proposed 2.6 percent increase in hospice payments is less than the current rate of U.S. inflation as measured by the Consumer Price Index for All Urban Consumers (CPI–U) which they state increased by 3.4 percent year-over-year in April 2024, nearly a percent higher than the proposed FY 2025 hospice update of 2.6 percent. One commenter also noted that the proposed update is below the 3.7 percent increase for Medicare Advantage plans. Several commenters stated that unlike other Medicare provider types, like hospitals, most hospice care is financed predominantly by Medicare and Medicaid and as a result, hospice providers are unable to shift costs to other payers to help offset losses.

MedPAC recognized that CMS is required by statute to propose an increase to the hospice payment rates; however, the Commission recommended eliminating the update for FY 2025. The Commission referenced their March 2024 Report to the Congress and that their assessment of indicators of payment adequacy for hospices—beneficiary access to care, quality of care, provider access to capital, and Medicare payments relative to providers' costs—were positive. Additionally, MedPAC noted that hospice Medicare profit margins were between 13 to 17 percent in aggregate.

Response: We appreciate the commenters' support for the statutorily required hospice payment update and reiterate that we are required to update hospice payments by the IPPS market basket update adjusted for productivity, as directed by section 1814(i)(1)(C)(ii)(VII) of the Act. We believe the increase in the 2018-based IPPS operating market basket adequately reflects the average change in the price of goods and services hospitals purchase in order to provide medical services. The IPPS market basket is a fixed-weight, Laspeyres-type index that measures price changes over time and would not reflect increases in costs associated with changes in the volume or intensity of input goods and services. As such, the IPPS market basket update would reflect the prospective price pressures described by the commenters during a high inflation period (such as faster wage growth or higher energy prices) but might not reflect other factors that could increase costs such as the quantity of labor used or any shifts between contract and staff nurses. We note that cost changes (that is, the product of price and quantities) would only be reflected when a market basket is rebased, and the base year weights are updated to a more recent time period.

We agree with the commenters that recent higher inflationary trends have impacted the outlook for price growth over the pandemic period. However, the purpose of the FY 2025 hospice payment update is to reflect the price pressures providers are expected to face in FY 2025, and thus is a forward-looking update as opposed to one that reflects historical price changes. At the time of the FY 2025 hospice PPS proposed rule, based on IGI's fourth quarter 2023 forecast with historical data through third quarter 2023, IGI forecasted the 2018-based IPPS market basket update of 3.0 percent for FY 2025 reflecting a 3.6-percent forecasted compensation price increase. We would note that the 10-year historical average (2014–2023) growth rate of the 2018-based IPPS market basket is 2.8 percent with compensation prices increasing 2.8 percent. We stated in the FY 2025 hospice PPS proposed rule (89 FR 23800) that if more recent data became available, we would use such data, if appropriate, to derive the final FY 2025 hospice payment update percentage for the final rule. For this final rule, we are using an updated forecast of the price proxies underlying the 2018-based IPPS market basket that incorporates more recent historical data and reflects a revised outlook regarding the U.S. economy, including compensation and inflationary pressures. Based on IGI's second quarter 2024 forecast with historical data through first quarter 2024, the FY 2025 IPPS market basket update is 3.4 percent (reflecting forecasted compensation price growth of 3.9 percent). The FY 2025 productivity adjustment based on IGI's second quarter 2024 forecast is 0.5 percentage point. Therefore, as discussed further in this section and after consideration of the comments received, for FY 2025, the final hospice payment update is 2.9 percent (3.4 percent market basket percentage increase less a 0.5 percentage point productivity adjustment), compared to the proposed hospice payment update of 2.6 percent. Finally, we believe the FY 2025 hospice payment update to be adequate based on the MedPAC analysis that showed positive payment indicators of beneficiary access to care, quality of care, provider access to capital, and Medicare payments relative to providers' costs.

Comment: Many commenters stated that there have been 3 years of under forecasted payment rate updates. The commenters noted that the market basket forecast for FY 2021 through FY 2023 was cumulatively under forecast by 4.6 percentage points over those 3 years and requested a one-time retrospective adjustment to rectify the significant forecast error since 2021. The commenters stated that they understand that the market basket updates are based on a forecast of projected inflation; however, they also stated that multiple years in a row of significantly under forecast updates is not sustainable and has impaired hospices' capacity to serve their beneficiary communities. Several commenters also acknowledged that while the adjustment can be applied positively or negatively, the update for the last 3 years was consistently and significantly under forecast. A few commenters pointed to the public data from the CMS Office of the Actuary, which show the actual forecast error. Finally, commenters noted that the inadequacy of this payment update is further compounded by continued sequestration, which reduces Medicare payments by two percent and is currently set to continue through FY 2032. Many commenters requested a retrospective adjustment be finalized to account for the significant forecast error since 2021.

Several commenters highlighted that the CMS response to a similar concern in the FY 2024 rule stated that CMS lacks the statutory authority to implement an adjustment; however, the commenters requested that CMS provide additional information and a specific explanation supporting that it lacks the statutory authority to apply an adjustment using the special exceptions and adjustment authority. Several commenters also stated that there exists a precedent for CMS to adjust for forecast errors in the market basket updates, as was previously implemented in a SNF PPS update, which finalized a 3.6 percent forecast error adjustment in the FY 2024 SNF

PPS final rule (88 FR 53205 through 53206). One commenter stated the cumulative forecast error of hospital market basket updates was below both the growth in the Employment Cost Index (ECI) total compensation index and the Producer Price Index (PPI)—All Commodities Index. One commenter requested that CMS impose an additional 3 percent payment adjustment at a minimum even if the full cumulative forecast error adjustment is not possible.

Several commenters stated that if CMS is limited by statute to implement a forecast error adjustment for updating hospice payments that CMS work with Congress to include funding for a one-time market basket forecast error adjustment for hospice providers as a component of any end of year legislation taken up by the 118th Congress.

Response: We thank the commenters for their recommendations. The inpatient hospital market basket percentage increases are required by law to be set prospectively, which means that the update relies on a mix of both historical data for part of the period for which the update is calculated and forecasted data for the remainder. There is currently no mechanism to adjust for market basket forecast error in the hospice payment update. Furthermore, beginning in 1989, the Congress gave hospices their first increase (20 percent) in payment since 1986 and tied future increases to the annual increase in the hospital market basket through a provision contained in the Omnibus Budget Reconciliation Act of 1989. While the projected inpatient hospital market basket percentage increases for FY 2021, FY 2022, and FY 2023 were under forecast, this was largely due to unanticipated inflationary and labor market pressures as the economy emerged from the COVID–19 PHE. Importantly, the hospital market basket has been used for many years to update hospice payment rates and an analysis of the forecast error over a longer period of time shows that the forecast error has been both positive and negative. For example, the 10-year cumulative forecast error (excluding FY 2018 when the hospice payment update was statutorily required to be 1.0 percent) was slightly positive, equal to 0.2 percentage point (2014–2023). Each year from 2014 through 2020, the final FY hospital market basket update was higher than the actual hospital market basket update once historical data was finalized; with (5 out of the 7 years between 2014 to 2020 having a forecast error greater than 0.5 percentage point.). Only considering the forecast error for years when the final inpatient hospital market basket percentage increase was lower than the actual inpatient hospital market basket percentage increase does not consider the numerous years that providers benefited from the forecast error. CMS understands that the market basket updates may differ from other overall inflation indexes such as the topline ECI, CPI, or PPI; however, we would reiterate that comparisons between these topline indexes are not comparable since they measure different mixes of products, services, or wages than reflected in the legislatively defined CMS IPPS hospital market basket.

Comment: One commenter stated they have repeatedly shared concerns with CMS on the quality of cost report data, especially with regards to capturing actual labor costs, and that cost reports should be improved and optimized before they are used for payment purposes. The commenter recommends that the cost reports be amended to allow for a greater breakdown of costs for contracted versus hospice-administered inpatient services to apportion the labor share appropriately. They further requested that CMS clarify how frequently they intend to update the labor share component moving forward and clarify the development and methodology around the ''standardization factor.'' This includes clarification as to how CMS will adjust the labor share if certain types of hospices are found to provide more services and thus, are likely to have a larger labor share but contribute fewer cost reports. Lastly the commenter recommended that the definition of a ''day'' be any 24-hour period or that CMS create a modifier to allow hospices to bill into a second day up to a 24-hour limit.

Response: We appreciate the commenter's request for future changes to the hospice cost report. The labor shares for other PPS systems (for example, IPPS and HHA) are typically updated every 4 to 5 years. As stated in the FY 2022 hospice final rule (86 FR 42533 through 42534), we tentatively plan to rebase the hospice labor shares on a similar schedule as the other payment systems under Medicare. However, in light of the COVID–19 Public Health Emergency (PHE), we plan to monitor the upcoming Medicare cost report data to see if more frequent revision of the hospice labor shares is necessary in order to reflect more recent cost structures of hospice providers. Given that the COVID–19 PHE continued into 2023, we have only been able to conduct preliminary analysis of 2021 and 2022 Medicare cost report data as the 2023 Medicare cost report data are not yet available. Therefore, in the FY 2025 hospice proposed rule, we did not propose to rebase the hospice labor shares because of this incomplete data. We will continue to monitor these data and any future revisions to the hospice labor shares will be proposed and subject to public comments in future rulemaking.

Comment: One commenter stated that the updated hospice wage index should reflect the competitive nature of the healthcare job market and include substantial increases in hourly rates for hospice registered nurses, certified nursing assistants, and support staff. They further stated that the Bureau of Labor Statistics reports that a hospice nurse earns an average of $32.10 per hour while the average for nurses in all other settings is $39.05 per hour. They noted that vacancy rates for registered nurses and licensed practical nurses is averaging as high as 20 percent in some states. They stated that this issue can be solved by increasing the payment rate of hospice workers through the update of this rule.

Response: We appreciate the commenter's concerns regarding labor wage rates. Hospice payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which provides that the update to the payment rates for subsequent FYs must be the inpatient hospital market basket percentage increase for that FY. Additionally, as mandated by section 3401(g) of the Affordable Care Act, the inpatient hospital market basket percentage increase is required to be reduced by a productivity adjustment. The inpatient hospital market basket percentage increase reflects the projected wage inflation for healthcare and non-health care workers employed in hospitals (as measured by the Employment Cost Index (ECI) for wages and salaries for hospital workers). As stated in the FY 2025 hospice proposed rule (89 FR 23800), we estimated the market basket percentage increase and the productivity adjustment based on IHS Global Inc.'s (IGI's) forecast using the most recent available data. IGI is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the price proxies of the market baskets. The proposed inpatient hospital market basket percentage increase for FY 2025 was 3.0 percent reflecting compensation prices increasing 3.6 percent. When developing its forecasts for the ECI for wages and salaries and employee benefits for hospital workers, IHS Global Inc. considers the overall competitive

nature of labor market conditions. We would note that the 10-year historical average (2014–2023) growth rate of the 2018-based IPPS market basket is 2.8 percent with compensation prices increasing 2.8 percent. As also stated in the FY 2025 hospice proposed rule (89 FR 23800), we stated that if more recent data became available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the inpatient hospital market basket percentage increase or productivity adjustment), we would use such data, if appropriate, to determine the hospice payment update percentage in the FY 2025 final rule.

Final Decision: We are finalizing the hospice payment update using the methodology outlined. For this final rule, based on the more recent IGI second quarter 2024 forecast with historical data through the first quarter of 2024 the 2018-based IPPS market basket increase factor for FY 2025 is 3.4 percent. The FY 2025 productivity adjustment based on the more recent IGI second quarter 2024 forecast is 0.5 percentage point. Therefore, CMS is finalizing for FY 2025, a hospice payment update of 2.9 percent (3.4 percent market basket percentage increase less a 0.5 percentage point productivity adjustment).

4. FY 2025 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the hospice services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP care is intended to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In addition, in that final rule, we implemented a Service Intensity Add-On (SIA) payment for RHC when direct patient care is provided by a registered nurse (RN) or social worker during the last seven days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to four hours total) that occurred on the day of service if certain criteria are met. To maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by an SIA budget neutrality factor (SBNF). The SBNF is used to reduce the overall RHC rate in order to ensure that SIA payments are budget neutral. At the beginning of every FY, SIA utilization is compared to the prior year in order calculate a budget neutrality adjustment. For FY 2025, the proposed SIA budget neutrality factor is 1.009 for RHC days 1–60 and 1.000 for RHC days 61+.

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52156), we initiated a policy of applying a wage index standardization factor to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. For FY 2025 hospice rate setting, we are continuing our longstanding policy of using the most recent data available. Specifically, we proposed to use FY 2023 claims data as of January 11, 2024 for the FY 2025 payment rate updates. We noted that the budget neutrality factors and payment rates would be updated with more complete FY 2023 claims data for the final rule. In order to calculate the wage index standardization factor, we simulate total payments using FY 2023 hospice utilization claims data with the FY 2024 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, old OMB delineations, and the 5-percent cap on wage index decreases) and FY 2024 payment rates and compare it to our simulation of total payments using FY 2023 utilization claims data, the final FY 2025 hospice wage index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the revised OMB delineations, with the 5-percent cap on wage index decreases) and FY 2024 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2024 wage index and FY 2024 payment rates for each level of care by the FY 2025 wage index and FY 2024 payment rates, we obtain a wage index standardization factor for each level of care. The wage index standardization factors for each level of care are shown in Tables 1 and 2.

The final FY 2025 RHC rates are shown in Table 9. The final FY 2025 payment rates for CHC, IRC, and GIP are shown in Table 10.

TABLE 9: Final FY 2025 Hospice RHC Payment Rates-

Code	Description	FY 2024 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY 2025 Hospice Payment Update	FY 2025 Payment Rates
651	**Routine Home Care (days 1-60)**	$218.33	1.0014	0.9984	1.029	$224.62
651	**Routine Home Care (days 61+)**	$172.35	1.0001	0.9975	1.029	$176.92

TABLE 10: Final FY 2025 Hospice CHC, IRC, and GIP Payment Rates-

Code	Description	FY 2024 Payment Rates	Wage Index Standardization Factor	FY 2025 Hospice Payment Update	FY 2025 Payment Rates
652	**Continuous Home Care Full Rate = 24 hours of care.**	$1,565.46	1.0048	1.029	$1,618.59 ($67.44 per hour)
655	**Inpatient Respite Care**	$507.71	0.9930	1.029	$518.78
656	**General Inpatient Care**	$1,145.31	0.9928	1.029	$1,170.04

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index and Rate Update final rule (76 FR 47320 through 47324), we implemented a Hospice Quality Reporting Program (HQRP) as required by those sections. Hospices were required to begin collecting quality data in October 2012 and submit those quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket percentage increase by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the Consolidated Appropriations Act (CAA), 2021 (Pub. L. 116–260) to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4-percentage points. Depending on the amount of the annual update for a particular year, a reduction of 4 percentage points beginning in FY 2024 makes a negative payment update more likely than the previous 2 percent reduction. This could result in the annual market basket update being less than zero percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. We applied this policy beginning with the FY 2024 Annual Payment Update (APU), which we based on CY 2022 quality data. Therefore, the final FY 2025 rates for hospices that do not submit the required quality data would be updated by −1.1 percent, which is the final FY 2025 hospice payment update percentage of 2.9 percent minus four percentage points. Using updated data, these final rates are shown in Tables 11 and 12.

TABLE 11: Final FY 2025 Hospice RHC Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2024 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY 2025 Hospice Payment Update of 2.9% minus 4 percentage points = -1.1%	FY 2025 Payment Rates
651	**Routine Home Care (days 1-60)**	$218.33	1.0014	0.9984	0.9890	$215.88
651	**Routine Home Care (days 61+)**	$172.35	1.0001	0.9975	0.9890	$170.05

TABLE 12: Final FY 2025 Hospice CHC, IRC, and GIP Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2024 Payment Rates	Wage Index Standardization Factor	FY 2025 Hospice Payment Update of 2.9% minus 4 percentage points = -1.1%	FY 2025 Payment Rates
652	Continuous Home Care Full Rate = 24 hours of care.	$1,565.46	1.0048	0.9890	$1,555.67 (64.82 per hour)
655	Inpatient Respite Care	$507.71	0.9930	0.9890	$498.61
656	General Inpatient Care	$1,145.31	0.9928	0.9890	$1,124.56

5. Hospice Cap Amount for FY 2025

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014 (Pub. L. 113–185, Oct. 6, 2014). Specifically, we stated that for accounting years that end after September 30, 2016, and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the CPI–U. Division CC, section 404 of the CAA, 2021 extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030. In the FY 2022 Hospice Wage Index final rule (86 FR 42539), we finalized conforming regulations text changes at § 418.309 to reflect the provisions of the CAA, 2021. Division P, section 312 of the CAA, 2022 (Pub. L. 117–103) amended section 1814(i)(2)(B) of the Act and extended the provision that mandates the hospice cap be updated by the hospice payment update percentage (the inpatient hospital market basket percentage increase reduced by the productivity adjustment) rather than the CPI–U for accounting years that end after September 30, 2016 and before October 1, 2031. Division FF, section 4162 of the CAA, 2023 (Pub. L. 118–328) amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (the inpatient hospital market basket percentage increase reduced by the productivity adjustment) rather than the CPI–U for accounting years that end after September 30, 2016 and before October 1, 2032. Division G, Section 308 of the Consolidated Appropriations Act, 2024 (CAA, 2024) (Pub. L. 118–42) extends this provision to October 1, 2033. Before the enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap amount by the CPI–U beginning on October 1, 2032. Therefore, for accounting years that end after September 30, 2016, and before October 1, 2033, the hospice cap amount is updated by the hospice payment update percentage rather than the CPI–U. As a result of the changes mandated by the CAA, 2024, we proposed conforming regulation text changes at § 418.309 to reflect the revisions at section 1814(i)(2)(B) of the Act.

The proposed hospice cap amount for the FY 2025 cap year was $34,364.85, which is equal to the FY 2024 cap amount ($33,494.01) updated by the proposed FY 2025 hospice payment update percentage of 2.6 percent. We also proposed that if more recent data became available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the hospice payment update percentage), we would use such data, if appropriate, to determine the hospice cap amount in the FY 2025 final rule. As such, the hospice cap amount for the FY 2025 cap year is $34,465.34, which is equal to the FY 2024 cap amount ($33,494.01) updated by the FY 2025 hospice payment update percentage of 2.9 percent.

We received 3 comments on the proposed hospice cap. The following is a summary of these comments and our responses:

Comment: One commenter expressed support for the FY 2025 hospice cap.

Response: We thank the commenter for their support.

Comment: Two commenters opposed an increase to the hospice cap. One commenter recommended the cap remain at the FY 2024 level of $33,494.01 and one commenter recommended that the cap be lowered for FY 2025.

Response: We thank the commenters for their recommendations to improve the hospice cap; however, we are required by law to update the hospice cap amount from the preceding year by the hospice payment update percentage, in accordance with section 1814(i)(2)(B)(ii) of the Act.

Final Decision: We are finalizing the update to the hospice cap amount for FY 2025 in accordance with statutorily mandated requirements and adopting the proposed regulation text change at § 418.309 to reflect the revisions at section 1814(i)(2)(B) of the Act, which require that, for accounting years that end after September 30, 2016, and before October 1, 2033, the hospice cap amount be updated by the hospice payment update percentage rather than the CPI–U.

B. Clarifying Regulation Text Changes and Technical Edit

1. Medical Director Condition of Participation

CMS has broad statutory authority to establish health and safety standards for most Medicare- and Medicaid-participating provider and supplier types. The Secretary gives CMS the authority to enact regulations that are in the interest of the health and safety of

individuals who are furnished services in an institution, while other laws, as outlined below, give CMS the authority to prescribe regulations as may be necessary to carry out the administration of the program. Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) added section 1861(dd) to the Act to provide coverage for hospice care to terminally ill Medicare beneficiaries who elect to receive care from a Medicare-participating hospice. The CoPs apply to the hospice as an entity, as well as to the services furnished to each individual patient under hospice care. In accordance with section 1861(dd) of the Act, the Secretary is responsible for ensuring that the CoPs are adequate to protect the health and safety of the individuals under hospice care.

Based on feedback from interested parties, including hospice providers, national hospice associations, and accrediting organizations, we identified discrepancies between the Medical Director CoP at § 418.102 and the payment requirements for the ''certification of the terminal illness'' and the ''admission to hospice care'' at § 418.22 and § 418.25, respectively. Specifically, the industry questioned the language in the requirements as it relates to medical directors in the CoPs, physician designees in the CoPs, and physician members of the interdisciplinary group (IDG) in the payment requirements. Currently, the medical director provisions in the CoPs at §§ 418.102(b) and (c) require the medical director or physician designee to review the clinical information for each patient and provide written certification that it is anticipated that the patient's life expectancy is 6 months or less if the illness runs its normal course. However, the statutory requirements in sections 1814(a)(7)(A)(i)(II) and (ii) of the Act and the regulatory payment requirements at § 418.22 (*Certification of terminal illness*) provide that the medical director of the hospice or the physician member of the hospice interdisciplinary group can certify the patient's terminal illness. Although the CoP provisions at §§ 418.102(b) and (c) include requirements for the initial certification and recertification of terminal illness, they do not include the physician member of the interdisciplinary group among the types of practitioners who can provide these certifications, even though these physicians are able to certify terminal illness under the payment regulation at § 418.22 (*Certification of terminal illness*).

This misalignment between the CoPs and the payment requirements has caused some confusion for hospice providers, accrediting bodies, and surveyors. As a result, we determined that conforming changes to the medical director CoP were appropriate for clarity and consistency. To align the medical director CoP and the hospice payment requirements, we proposed to amend § 418.102(b) by adding the physician member of the hospice interdisciplinary group, as defined in § 418.56(a)(1)(i), as an individual who may provide the initial certification of terminal illness. We also proposed to amend the medical director CoP in § 418.102(c) to include the medical director, or physician designee, as defined at § 418.3, if the medical director is not available, or physician member of the IDG among the specified physicians who may review the clinical information as part of the recertification of the terminal illness.

We refer readers to section III.B.2 of this final rule for comments and responses received on the proposed payment regulation changes regarding the certification of the terminal illness and admission to hospice care under §§ 418.22 and 418.25, which are also intended to align the medical director CoP and payment regulations.

In this section, we discuss the public comments received on the alignment of language in the existing requirements for hospices regarding the medical director, physician designee, and physician member of the IDG.

We received a total of 27 comments from individuals, health care professionals, and national associations that expressed general support and appreciation for the proposed alignment of language used in the CoPs with the language in the corresponding payment policy. Commenters highlighted how the clarification would reduce variability and confusion related to who provides certification of terminal illness. Additionally, commenters noted that the clarification supports hospice providers and audit contractors and ensures continued care for patients. The following is a summary of the comments we received, our responses, and the policies we are finalizing.

Comment: Multiple commenters expressed support and appreciation for our proposal to align the CoPs at § 418.102 with the payment policy language at §§ 418.22(c) and 418.25, stating that these changes would allow for greater clarity and consistency between key components of the hospice requirements. Commenters also stated the misalignment between the CoPs and the payment requirements has caused some confusion for hospice providers, accrediting bodies, and surveyors and that the proposed conforming changes to the medical director CoP and the payment requirements would result in more clarity and consistency for hospices.

Response: We appreciate the supportive feedback from commenters regarding the alignment of language in the CoPs with language in payment policy.

Comment: Several commenters expressed support for the proposed alignment of the CoPs with the payment policy and recommended further language alignment in the standards for the Medical Director in the hospice CoPs at § 418.102. Specifically, they recommended that we replace the terms ''physician designated by'' with ''physician designee'' in the CoP at § 418.102, which states, ''When the medical director is not available, a physician designated by the hospice assumes the same responsibilities and obligations as the medical director.'' Commenters noted that this would align with the existing terminology used throughout the requirements.

Response: We appreciate the commenters' support and recommendation to further modify the introductory language in the medical director CoP at § 418.102. We agree with the commenters' recommendation to align this first paragraph of the medical director CoP by replacing ''physician designated by'' with ''physician designee'' to align the terminology used through the requirements.

Final Decision: After consideration of public comments on this provision, we are finalizing the requirements at § 418.102(b) and § 418.102(c) as proposed. In addition, we are modifying § 418.102 by removing the phrase ''physician designated by'' and replacing it with ''physician designee as defined at § 418.3''. The definition of ''physician designee'' at § 418.3 is defined as, ''. . . a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical director when the medical director is not available.'' We are finalizing revisions to the medical director standard to state, ''The hospice must designate a physician to serve as medical director. The medical director must be a doctor of medicine or osteopathy who is an employee, or is under contract with the hospice. When the medical director is not available, a physician designee as defined at § 418.3, assumes the same responsibilities and obligations as the medical director.'' Lastly, we are

revising the standards for initial certification of terminal illness and recertification of terminal illness at § 418.102(b) and § 418.102(c), respectively, to provide in a parenthetical that physician designee, as defined at § 418.3, can conduct the review of clinical information and certification or recertification if the medical director is unavailable.

We believe this modification will provide consistency and alignment in the payment and CoP requirements. These changes align the payment requirements and the health and safety requirements such that there will be consistency across the requirements for hospices, resulting in improved compliance and clearer enforcement activities.

2. Certification of Terminal Illness and Admission to Hospice Care

The Medicare hospice benefit provides coverage for a comprehensive set of services described in section 1861(dd)(1) of the Act for individuals who are deemed ''terminally ill'' based on a medical prognosis that the individual's life expectancy is 6 months or less, as described in section 1861(dd)(3)(A) of the Act.

As such, section 1814(a)(7)(A) of the Act requires the individual's attending physician (if the patient designates an attending physician) and hospice medical director or physician member of the IDG to certify in writing at the beginning of the first 90-day period of hospice care that the individual is ''terminally ill'' based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. In a subsequent 90- or 60-day period of hospice care, only the hospice medical director or the physician member of the IDG is required to recertify at the beginning of the period that the patient is terminally ill based on such clinical judgment.

The CoPs at § 418.102 state that ''when the medical director is not available, a physician designated by the hospice assumes the same responsibilities and obligations as the medical director.'' The term ''physician designee'' was utilized in the 1983 hospice final rule (48 FR 56029) that implemented the Medicare hospice benefit when describing who can establish and review the hospice plan of care and was later defined and finalized in the FY 2008 hospice final rule (73 FR 32093) in response to comments requesting CMS clarify this individual's role. Section 418.3 defines ''physician designee'' to mean a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical director when the medical director is not available. Currently, the requirements at § 418.22(c), Sources of Certification, state that for the initial 90-day period, the hospice must obtain written certification statements from the medical director of the hospice or the physician member of the IDG and the individual's attending physician if the individual has an attending physician. For subsequent periods, only the ''medical director of the hospice or the physician member of the interdisciplinary group'' must certify terminal illness. Similarly, the requirements at § 418.22(b), Content of Certification, only include the ''the physician's or medical director's'' when referencing the clinical judgment on which the certification must be based. Additionally, § 418.25, Admission to Hospice Care, only refers to the recommendation of the hospice medical director (in consultation with the patient's attending physician (if any)) when determining admission to hospice and when reaching a decision to certify that the patient is terminally ill. We note that in the preamble of the proposed rule, we inadvertently referred to paragraph (b) of § 418.22 as the paragraph we proposed to amend. However, the proposed amendment to the text of the regulation was to paragraph (c) of § 418.22. We refer in the preamble to this final rule to the correct paragraph of § 418.22, which is paragraph (c), not paragraph (b).

In order to align §§ 418.22(c) and 418.25 with the CoPs at § 418.102, we proposed to add ''physician designee (as defined in § 418.3)'' to clarify that when the medical director is not available, a physician designated by the hospice, who is assuming the same responsibilities and obligations as the medical director, may certify terminal illness and determine admission to hospice care. We clarified that this does not connote a change in policy; rather, we believe aligning the language at §§ 418.22(c) and 418.25 with the CoPs at § 418.102 allows for greater clarity and consistency between key components of hospice regulations and policies.

We received 29 comments on these proposed clarifying hospice regulation text changes. A summary of the comments and our responses to those comments are as follows:

Comment: All commenters supported the clarifying regulation text changes and applauded CMS for the clarification and consistency between key components of the hospice regulations. Commenters stated that the clarification will help simplify language, reduce confusion among stakeholders (that is, hospice providers, CMS audit contractors, and Medicare Administrative Contractors (MACs)), and protect hospices against inappropriate citations.

Response: We thank commenters for their support.

Comment: Several commenters requested ''physician member of the interdisciplinary group'' be added to § 418.25 to further reduce confusion and provide clarity regarding the hospice admission process. Additionally, one commenter requested that nurse practitioners (NPs) and physician assistants (PAs) be allowed to certify a beneficiary as terminally ill and be included on initial hospice certifications.

Response: We thank commenters for their recommendations; however, adding ''physician member of the interdisciplinary group'' to § 418.25 would be a substantive policy change and the proposals included in the proposed rule were intended only to clarify existing policy. Additionally, allowing NPs and PAs to certify a beneficiary as terminally ill is not permitted under the statute.

Final Decision: We are finalizing the regulation text revisions to add ''physician designee (as defined in § 418.3)'' at §§ 418.22(c) and 418.25 as proposed.

3. Election of Hospice Care

A distinctive characteristic of the Medicare hospice benefit is that it requires a patient (or their representative) to intentionally choose hospice care by electing the benefit. As part of the election required by § 418.24, a beneficiary (or their representative) must file an ''election statement'' with the hospice, which must include an acknowledgement that they fully understand the palliative, rather than curative, nature of hospice care as it relates to the individual's terminal illness and related conditions, as well as other requirements as set out at § 418.24(b). Additionally, as set out at § 418.24(f), when electing the hospice benefit, an individual waives all rights to Medicare payment for any care for the terminal illness and related conditions except for services provided by the designated hospice, another hospice under arrangement with the designated hospice, and the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services. Because of this waiver, this means that the designated hospice is the only provider to which Medicare payment can be

made for services related to the terminal illness and related conditions for the patient; providers other than the designated hospice, a hospice under arrangement with the designated hospice, or the individual's attending physician cannot receive payment for services to a hospice beneficiary unless those services are unrelated to the terminal illness and related conditions when a patient is under a hospice election.

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452, 50478), we finalized a requirement that a Notice of Election (NOE) must be filed with the hospice MAC within five calendar days after the effective date of hospice election. If the NOE is filed beyond this timeframe, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50478). Also, because non-hospice providers may be unaware of a hospice election, late filing of the NOE leaves Medicare vulnerable to paying non-hospice claims related to the terminal illness and related conditions when these services are furnished by these non-hospice providers. Moreover, beneficiaries may potentially be liable for any associated cost-sharing they would not have incurred if these services were furnished by the hospice provider.

When discussing hospice election, stakeholders (such as Medicare contractors, medical reviewers, and hospices) often conflate the terms ''election statement'' and ''NOE.'' Further, we have received recent inquiries requesting clarification on timeframe requirements for both the election statement and the NOE that indicate confusion between such documents. Upon review of this regulation, we believe the organization at § 418.24 does not make it clear that these are two separate and distinct documents intended for separate purposes under the benefit. We proposed to reorganize the language in this section to clearly denote the differences between the election statement and the NOE. That is, we proposed to title § 418.24(b) as ''Election Statement'' and would include the title ''Notice of Election'' at § 418.24(e). We stated that by clearly titling this section, the requirements for the election statement and the notice of election would be distinguished from one another, mitigating any confusion between the two documents. These changes would align with existing subregulatory guidance. We also noted this reorganization would not be a change in policy, rather it is intended to identify the requirements more clearly for the election statement and the NOE by reorganizing the structure of the regulations. We believe this reorganization is important to ensure that stakeholders fully understand that the election statement is required as acknowledgement of a beneficiary's understanding of the decision to elect hospice and filed with the hospice, whereas the NOE is required for claims processing purposes and filed with the hospice MAC within five calendar days after the effective date of the election statement.

We also noted that the MACs have informed us of ongoing instances of hospices omitting certain elements of the hospice election statement. We reminded readers that a complete election statement containing all required elements as set forth at § 418.24(b) is a condition for payment. Additionally, we emphasized the importance of each element in informing the beneficiary of their coverage when choosing to elect the Medicare hospice benefit. We continued to encourage hospice agencies to utilize the ''Model Example of Hospice Election Statement'' on the hospice web page at *https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice* to limit potential claims denials.

We received 21 comments on the proposed clarification of the election statement and the NOE. A summary of the comments and our responses to those comments are as follows:

Comment: All commenters supported the reorganization and clarification of the election statement and the NOE and expressed appreciation that CMS is working to mitigate confusion between the two documents and promoting clarity. Other commenters stated that the changes are helpful in clarifying key components of the hospice regulations for hospice providers, Administrative Law Judges (ALJs), CMS audit contractors, MACs, and other stakeholders.

Response: We thank commenters for their support.

Comment: We received four comments on the reference to the model election statement and a concern that the MACs are treating the model election statement example as a required form despite CMS instruction that the model election statement is intended to be an example of a form agencies can utilize if desired. Specifically, a few commenters reported receiving ''technical denials'' from MACs when specific language or organization did not match the election statement example. Lastly, a commenter suggested that CMS conduct an analysis of overturned claim denials to improve audit activity.

Response: We thank the commenters for their feedback. We reiterate that the model election statement is intended to be an example of a form that hospices may utilize and that hospice agencies are not required to use this exact example. We appreciate the suggestion to analyze overturned claim denials in order to improve future audit activity.

Comment: One commenter recommended the physician national provider identifier (NPI) number be included on the model hospice election statement.

Response: We thank the commenter for the suggestion. A provider may add additional information, such as an NPI number, to their own election statement; however, we do not want providers to infer the NPI is required under § 418.24(b), and as such, will not add it to the model election statement at this time.

Final Decision: We are finalizing the regulation text revisions to reorganize and clarify the election statement and the NOE requirements at § 418.24 as proposed.

4. Hospice Marriage and Family Therapist Technical Edit

In the final rule that appeared in the November 16, 2023 **Federal Register** on (88 FR 78818) titled ''Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program'' there is one technical error noted in the hospice personnel requirements at § 418.114(b)(9) that is identified and corrected in this final rule.

Throughout the final rule (88 FR 78818) we correctly used the term ''marriage and family therapist.'' However, on page 79539 under § 418.114(b)(9) of the final rule, we inadvertently finalized regulation text that uses the term ''marriage and family counselor'' when the correct term is ''marriage and family therapist.'' Therefore, we are making a technical correction in this final rule by replacing ''marriage and family counselor'' with ''marriage and family therapist'' at § 418.114(b)(9).

C. Request for Information (RFI) on Payment Mechanism for High Intensity Palliative Care Services

We define hospice care as a set of comprehensive services described in section 1861(dd)(1) of the Act, identified and coordinated by an IDG to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care (§ 418.3). Hospice care changes the focus of a patient's illness to comfort care (palliative care) for pain relief and symptom management from a curative type of care. Under the hospice benefit, palliative care is defined as patient and family centered care that optimizes quality of life by anticipating, preventing, and treating suffering (§ 418.3). Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating patient autonomy, access to information, and choice. CMS continually works to ensure access to quality hospice care for all eligible Medicare beneficiaries by establishing, refining, readapting, and reinforcing policies to improve the value of care at the end of life for these beneficiaries. That is, we seek to strengthen the notion that in order to provide the highest level of care for hospice beneficiaries, we must provide ongoing focus on those services that are consistent with CMS' definitions of hospice and palliative care and eliminate any barriers to accessing hospice care.

Adequate care under the hospice benefit has consistently been associated with symptom reduction, less intensive care, decreased hospitalizations, improved outcomes from caregivers, lower overall costs, and higher alignment with patient preferences and family satisfaction.[5] Although hospice use has grown considerably since the inception of the Medicare hospice benefit in 1983, there are still barriers that terminally ill and hospice benefit eligible beneficiaries may face when accessing hospice care. Specifically, the national trends [6] that examine hospice enrollment and service utilization for those beneficiary populations with complex palliative needs and potentially high-cost medical care needs reveal that there may be an underuse of the hospice benefit, despite the demonstrated potential to both improve quality of care and lower costs.[7]

There is a subset of hospice eligible beneficiaries that would likely benefit from receiving palliative, rather than curative, chemotherapy, radiation, blood transfusions, and dialysis. Anecdotally, we have heard from beneficiaries and families their understanding that upon election of the hospice benefit, certain therapies such as dialysis, chemotherapy, radiation, and blood transfusions are not available to them, even if such therapies would provide palliation for their symptoms. Generally, these patients report that they have been told by hospices that Medicare does not allow for the provision of these types of treatments upon hospice election. While these types of treatments are not intended to cure the patient's terminal illness, some practitioners, with input from the hospice IDG, may determine that, for some patients, these adjuvant treatment modalities would be beneficial for symptom control. In such instances, these palliative treatments would be covered under the hospice benefit because they are not intended to be curative. In the FY 2024 Hospice final rule (88 FR 51168), we noted in response to our RFI on hospice utilization; non-hospice spending; ownership transparency; and hospice election decision-making, that commenters stated providing complex palliative treatments and higher intensity levels of hospice care may pose financial risks to hospices when enrolling such patients. Commenters stated that the current bundled per diem payment is not reflective of the increased expenses associated with higher-cost and certain patient subgroups. As we continue to focus on improved access and value within the hospice benefit, we solicited additional information on the potential implementation of a payment mechanism to account for the increased costs of providing more intensive palliative treatments.

We received approximately 60 comments on our RFI on high-cost palliative services. Most of the comments we received included both general recommendations as well as specific comments in response to the questions asked in the proposed rule. Therefore, we summarize general comments, followed by specific comments we received in response to each question presented in the proposed rule.

Comment: A few commenters suggested that, to minimize the complexity of the topic and prior to consideration of RFI responses, CMS should first avoid using ''comfort care'' interchangeably with ''palliative care'', clearly distinguish between ''hospice care'' and ''palliative care'', and remove the term ''palliative'' altogether and replace it with ''high-cost therapies''. Many commenters stated there is an underutilization of the hospice benefit, in part due to the availability of high-cost, intensive services outside of the hospice benefit (that is services covered under another Medicare benefit, such as ESRD). For example, several commenters stated that patients often choose not to elect hospice, or they elect later in the trajectory of their illness, as they would need to give up the option for many of the palliative but higher cost treatments. This often results in patients electing hospice services in the final days or weeks of their lives when the patient and their families do not receive the full benefit of hospice. Several anecdotal stories were provided in support of continuing these high-cost services, particularly home blood transfusions, and often these were provided to align with patient goals at end of life. A few commenters stated the issue is not a lack of access to these services, but rather hospices' decisions that the costs of these services are prohibitive. A few commenters expressed concern about potential fraudulent activity by certain providers if a separate payment mechanism was established and suggested that CMS should first identify gaps in care and potential fraud, waste, and abuse. The commenters recommended incentivizing advance care planning, as well as monitoring and enforcing appropriate provisions of the hospice benefit. Another commenter stated the financial impact is not the only concern for electing hospice; they stated that there can be a concern related to a patient's prognosis and understanding palliative treatment versus a reluctance to forgo a plan to continue curative treatment. The commenter recommended CMS consider the roles of specialists (oncologists, hematologists, etc.) when determining the impact of this potential policy on the hospice

[5] Obermeyer Z, Makar M, Abujaber S, Dominici F, Block S, Cutler DM. Association Betweeen the Medicare Hospice Benefit and Health Care Utilization and Costs for Patients With Poor-Prognosis Cancer. JAMA.2014;312(18): 1888–1896. doi:10.1001/jama.2014.14950.

[6] Wachterman MW, Hailpern SM, Keating NL, Kurella Tamura M, O'Hare AM. Association Between Hospice Length of Stay, Health Care Utilization and Medicare Costs at the End of Life Among Patients Who Received Maintenance Hemodialysis. JAMA Intern Med. 2018 Jun 1;178(6):792–799. doi:10.1001/jamainternmed.2018.0256. PMID; 29710217; PMCID: PMC5988968.

[7] Meier DE. Increased access to palliative care and hospice services: opportunities to improve value in health care. Milbank Q. 2011 Sep;89(3):343–80. doi: 10.1111/j.1468–0009.2011.00632.x. PMID: 21933272; PMCID:PMC3214714.

philosophy of reducing patients' suffering as well as the requirement to determine a life expectancy of six-months or less. Some commenters requested that CMS consider additional data mining to determine whether high intensity, high-cost palliative treatments are offered more frequently during the course of a hospice stay versus upon admission when conflicting goals of the medical providers are more obvious. Lastly, a commenter recommended better electronic medical record (EMR) coordination and interoperability between the hospice teams and specialists to ensure all potential treatments are communicated. Multiple commenters, including several national organizations, stated concern that under the current statutory budget neutrality requirement, the introduction of any new payment would have to be offset by reductions to existing payments. Commenters stated they do not believe this is tenable given hospices' financial pressures and the challenges they already experience paying for high-intensity palliative services under the current reimbursement rates. Likewise, a few commenters stated that smaller and non-profit hospices disproportionately tend to care for the sickest patients who often require these types of high-intensity services, and the costs associated with providing these higher-intensity services are too often prohibitive, particularly for these small hospices and non-profit hospices. Commenters expressed concern that any changes implemented under CMS' current statutory authority would not sufficiently address this issue. These commenters recommended CMS work with industry stakeholders to pursue legislative authority from Congress to create a payment policy to ensure that hospice patients have adequate access to high intensity palliative care services. In addition, commenters recommended CMS convene a Technical Expert Panel (TEP) in conjunction with robust data collection to be able to advance those discussions. For robust data collection, several commenters recommended gathering comprehensive data on historic and current beneficiary utilization of high-cost palliative interventions for hospice and hospice-eligible patients, conducting an analysis of any specific barriers impacting access to these services throughout the care continuum, and developing rules, protocols, and sustainable payment avenues for these kinds of treatments to improve access to hospice for traditionally underserved patients and families that come from diverse racial and ethnic backgrounds.

MedPAC reported it plans to conduct research regarding access to hospice and end-of-life care for beneficiaries with End Stage Renal Disease (ESRD), interviewing clinicians; hospice providers; and ESRD facilities, including programs that provide palliative kidney care, and other groups.

A few commenters recommended providing further education and clarity to providers and new hospice enrollees upfront to promote a better understanding of the coverage policy regarding the appropriateness of the use of high intensity palliative care services in conjunction with traditional hospice services. These commenters also recommended CMS issue guidance, rules, or incentives that make it easier for hospices to secure contracts with the upstream providers of these services. Several commenters recommended implementing measures to reduce administrative burden to hospices for these high-cost services.

We received a comment that greater utilization of physician assistants (PAs) has the potential to reduce care barriers and move toward ameliorating the problem of eligible beneficiaries not sufficiently accessing hospice services, including high-cost palliative services. The commenter recommended modifying the hospice regulations and the Medicare Benefit Policy Manual to authorize PAs employed by the hospice to serve in the role of a patient's attending physician if an attending physician was not previously selected by the patient.

Below are the questions we posed in RFI in the proposed rule, along with the comment summaries.

What could eliminate the financial risk commenters previously noted when providing complex palliative treatments and higher intensity levels of hospice care?

Comment: Several commenters strongly supported a more robust payment for high intensity palliative care services to help cover the costs. Specifically, we received multiple comments stating that if all hospices are expected to regularly provide complex palliative treatments and higher intensity levels of hospice care, additional payment or a higher daily per diem rate must be provided for patients receiving these complex, high-cost treatments. Commenters stated higher payment rates, add-on payments, or an outlier payment would allow hospice agencies to provide the additional treatments and staff to support higher intensity care without having significant financial burdens. Specifically, commenters suggested additional payments for staff training and resource support to sufficiently ensure skills to deliver high-quality, complex care and staff retention to support quality patient outcomes and cost-effective care delivery.

Commenters stated these extra payments should not only include the cost of the service or item itself, but also costs associated with the care management and coordination activities such as monitoring, mapping, office visits, repeat imaging, and transportation. Commenters recommended various modifiers or ''payment tiers'' to reflect the intensity of services or resource utilization, and suggested CMS analyze the cost of care for various services to determine individual payment tiers, as well as implementing a ''cap'' for these higher intensity service payments.

Other commenters opposed additional payment under the hospice benefit and multiple commenters recommended some version of a carve out or concurrent care payments. We received several comments recommending different payment models including adopting the Medicare Care Choices Model (MCCM) or a modified version of the MCCM and reviving and expanding the Medicare Coordinated Care Demonstration (MCCD). Many commenters stated that CMS should not attempt to cover these high-cost services within the existing hospice benefit payment structure, rather specialty providers should be able to bill Medicare Part B directly while the patient remains under a hospice plan of care. These commenters recommended CMS permit conditioned access to these treatments for beneficiaries concurrently enrolled in hospice and develop new policy and payment guidelines for the specialty practitioners. They suggested these practitioners could use modifiers and advised limiting the number of treatments while patients are under a hospice election. Some commenters recommended that the concurrent care payment for high-cost palliative treatments only be available during the first benefit period.

A few commenters recommended that in addition to covering high-cost treatments and their related medications, it would also be beneficial for Medicare to cover high-cost medications unrelated to higher intensity services (for example, novel oral anticoagulants, certain inhalers, antibiotics, other medications typically used for curative purposes) when provided with palliative intent.

What specific financial risks or costs are of particular concern to hospices that would prevent the provision of higher-cost palliative treatments when

appropriate for some beneficiaries? Are there individual cost barriers which may prevent a hospice from providing higher-cost palliative care services? For example, is there a cost barrier related to obtaining the appropriate equipment (for example, dialysis machine)? Or is there a cost barrier related to the treatment itself (for example, obtaining the necessary drugs or access to specialized staff)?

Comment: Almost all commenters provided specific financial risks and cost barriers to providing higher-cost palliative care services. Commenters stated that across all diagnoses and situations there is a wide variance of incremental costs involved in higher intensive care. Commenters described barriers related to both direct and ancillary costs. The most cited expenses included the treatment itself, staffing, equipment, transportation logistics, contracting, facility usage, and administrative burden.

Many commenters stated these palliative treatments require the use of high-cost drugs, which represent a significant proportion of the cost. Commenters noted even medications covered by Medicare Part D prior to hospice election continue to prove challenging for hospices to manage. Commenters stated that these high-cost palliative treatments can also require additional medications to address burdensome side effects and symptoms of the interventions themselves. Several commenters recommended developing a national formulary with negotiated rates that hospices could use to procure medications or seek to leverage Veterans Affairs pharmacy contracts. Alternatively, one commenter noted that while the equipment required for these services will still be needed, some of the drugs and related supplies (for bundled and separately payable drugs) and labs could potentially be discontinued or reduced, as they may not support the goals of comfort at the end of life.

Commenters also stated many of these treatments require specialized staff, such as oncologists, nephrologists, and trained nurses who have the expertise to administer complex treatments like chemotherapy and dialysis. Commenters noted the salaries and benefits for these specialized professionals are higher than for general hospice staff, adding to the financial burden on hospices. In addition, existing hospice staff may need additional training and certifications to understand and/or help administer and educate patients and families on these interventions and their side effects. Commenters stated the costs associated with staff training can include course fees, travel, and time away from regular duties which can present a significant barrier. Commenters also stated these high intensity patients also typically require more frequent medication adjustments requiring more frequent provider and nursing visits, which increases the financial burden. A commenter noted for many of these services, there is also an increased complexity for the caregiver at home, therefore there can be a greater need for respite and GIP care.

Several commenters stated that the cost of specialized equipment can vary depending on the treatment provided. Although one commenter said it is unlikely that a hospice would obtain the necessary equipment, such as a dialysis machine, as it is available in most communities, many commenters raised issues securing contracts with specialty providers and hospitals or other facilities where these treatments are administered. Commenters also stated the contracting and payment processes for these services would be an uncharted and potentially confusing process for the hospices and specialty providers alike. In addition, commenters stated hospice providers are unable to negotiate contracts at Medicare allowable rates for these related services, and therefore providers of these high-cost palliative treatments may be reluctant to reduce costs for hospices compared to other existing reimbursement rates. A few commenters noted that even if a contract is in place, there may be a lack of access to beds and treatments when needed.

Commenters also stated a potential burden with care management, such as coordination with the facilities where these treatments are delivered and with the providers who deliver them. Commenters reported that hospices can dedicate significant resources when arranging for high-intensity services including labs, imaging, and transportation for patients and family to a location where these high-cost treatments are administered. One commenter also stated patients and their specialty providers, not the hospice provider, decide where to receive treatment, and that beneficiaries may choose to continue receiving dialysis from their current provider, rather than the hospice-contracted provider.

A commenter also reported that regulatory burdens related to compliance requirements governing the provision of complex palliative treatments may add administrative burden and costs to the agency. Overall, commenters stated the complexity and variability of these costs, coupled with uncertainties in reimbursement rates for such services, pose significant barriers for hospices to offer them routinely.

Should there be any parameters around when palliative treatments should qualify for a different type of payment? For example, we are interested in understanding from hospices who do provide these types of palliative treatments whether the patient is generally in a higher level of care (CHC, GIP) when the decision is made to furnish a higher-cost palliative treatment? Should an additional payment only be applicable when the patient is in RHC?

Comment: Most commenters stated CMS should not limit higher reimbursement for complex treatments to certain types of patients. Commenters stated that patients at any level of care could benefit from a high-cost palliative service and that such service should not only be provided to patients in a higher level of care.

Several commenters stated that the use of these services does not necessarily correlate to a need for a higher intensity level of hospice care and therefore, beneficiaries do frequently remain at an RHC level. For example, a commenter stated that beneficiaries with uncontrolled symptoms and at the CHC or GIP level of care are unlikely to be candidates for receiving these high intensity services as these services are intended for long-term symptom management rather than acute symptom management. However, several commenters stated there are times when a patient might be eligible for a higher level of care for reasons unrelated to the administration of the high intensity palliative services, but that high intensity service might still be appropriate.

Commenters also reported that symptom burden can also result in the need for GIP or CHC and providing a higher intensity palliative treatment during RHC may reduce or eliminate the need for this higher level of care.

We received a few comments in support of establishing parameters around these high-cost palliative services. These commenters recommended that payment for higher cost palliative treatments should be subject only to the determination based on the ability to improve the person's quality of life. That is, these treatments should only be utilized by a hospice beneficiary expressly for palliative purposes as evidenced by current clinical guidelines for the treatment's utilization as palliative care. Another commenter stated guidelines for additional payments should be based upon identified symptom burden that would reasonably be expected to be

relieved or managed by the palliative intervention with specified outcomes.

Another commenter stated that moving to a higher level of care (for example, GIP, CHC) could trigger higher cost palliative treatments or that these patients may need a higher level of monitoring and would therefore be expected to be in GIP or CHC while receiving these treatments.

Under the hospice benefit, palliative care is defined as patient and family centered care that optimizes quality of life by anticipating, preventing, and treating suffering (§ 418.3). In addition to this definition of palliative care, should CMS consider defining palliative services, specifically regarding high-cost treatments? Note, CMS is not seeking a change to the definition of palliative care, but rather should CMS consider defining palliative services with regard to high-cost treatments?

Comment: A few commenters stated it can be easy to misconstrue the use of high-cost services, as the intent, dose, duration, or stage of the illness can dictate whether these services are palliative or curative. Additionally, commenters recommended first considering how palliative care fits within the current hospice benefit especially if palliative care is life prolonging. Another commenter recommended any palliative definitions should align with the Center to Advance Palliative Care (CPAC) definitions related to palliation.

We received multiple comments in support of defining palliative services, particularly for additional reimbursement. Commenters in support of a definition of palliative services stated it could help provide clarity, standardization, and understanding about the types of services that would be included under this potential additional payment category which could help promote equity in patient care. Commenters stated a definition of palliative services should characterize these services as resource intensive services that are independent of curative treatments. A few commenters, while in support of a definition, also cautioned that any definition should be broad enough so as not to inadvertently exclude certain services. For example, commenters stated the definition should not specify individual drugs, durable medical equipment (DME), or other therapies, to allow for separate billing for these items. Another commenter stated a definition of palliative services should be specific to services offered under the Medicare hospice benefit, to eliminate potential confusion that this would be a separate palliative care benefit. Lastly, some commenters in support of defining palliative services stated establishing specific criteria can help prevent overuse or misuse of expensive treatment, as well as allow hospices to better plan financially and ensure they are adequately compensated for providing these complex and expensive services.

We also received multiple comments in opposition of defining palliative services. These commenters stated defining services that could be disease-modifying as palliative is a dynamic area and instead treatments should be determined on an individual patient basis rather than explicitly defining palliative services. Commenters stated a flexible approach is needed, as patient and family goals and needs are highly specific and medical advances in the future could result in as-yet unidentified treatments that could be considered ''palliative services.'' A few commenters stated defining palliative services would be a substantial undertaking that would require broad stakeholder engagement, as narrowing the definition of palliative care based on certain services would likely lead to additional confusion and administrative burden. As such, any definition of ''palliative services'' as separate from the definition of palliative care should be focused on facilitating understanding of payment of these services.

Should there be documentation that all other palliative measures have been exhausted prior to billing for a payment for a higher-cost treatment? If so, would that continue to be a barrier for hospices?

Comment: Commenters stated the focus should be on the goals and quality of life for beneficiaries. They stated that physicians' clinical judgment should be the basis to determine if such treatment is necessary and beneficial to the patient. Commenters raised concerns that requiring all other palliative measures be exhausted prior to billing for a higher-cost treatment is nebulous and could be a barrier to patient care. Multiple commenters stated, while the rationale for billing for a higher-cost treatment should be documented in the record, they oppose additional requirements to document that all other palliative measures have been exhausted prior to billing for a higher-cost service. They stated this could lead to inefficiencies, administrative burden, unnecessary services, delays in hospice admissions leading to shorter lengths of hospice stays, and delays in the relief of symptoms. Commenters also stated that time spent trying other, potentially lower cost but ineffective interventions before utilizing the higher cost treatment will raise total costs for these patients and extend the time they are not receiving proper care for their condition(s). Commenters also stated as treatment decisions are often made urgently, CMS should limit the barriers to the use of complex treatments. And finally, commenters stated this could undermine the clinical judgment of the hospice IDG and upstream providers and lead to fear of retrospective audits questioning the clinical appropriateness of providing one treatment instead of another. These commenters stated that determining when all other measures have been exhausted may be clinically subjective and challenging, leading to variations in interpretation and exacerbating delays in treatment or claims denials.

Other commenters stated that the use of complex treatments is individualized and should be used only if all other treatments have been tried. Commenters recommended that documentation should include the symptoms being addressed, the treatments that have been tried unsuccessfully, and the plan for using a particular complex treatment. Some commenters stated that requiring documentation that all other palliative measures have been exhausted prior to billing ensures high-cost treatments are used as a last resort and maintains cost-effectiveness and appropriate resource allocation; however, as this could be a huge barrier to hospice providers, they suggested that covering these treatments outside of the hospice benefit may help eliminate this burden.

Should there be separate payments for different types of higher-cost palliative treatments or one standard payment for any higher-cost treatment that would exceed the per-diem rate?

Comment: A few commenters stated that making blanket inclusions of therapies in all situations would not align with the hospice philosophy and recommended separate payments for different treatments. Other commenters noted the costs of these treatments vary greatly, and separate payments would be necessary to adequately account for this variation. Commenters stated that separate payments would ensure that hospices have adequate financial resources to provide a range of higher-cost treatments as needed. They stated each treatment should be reimbursed at a predetermined rate, reflecting its value and cost-effectiveness and separate from the standard per diem payment for hospice care. Multiple commenters recommended using Medicare allowable rates and existing CPT or HCPCS codes sets. Other recommendations included individual billing modifiers that could be used when these treatments are furnished to a hospice patient for

palliative purposes. Commenters also noted that a single rate to cover all high-cost treatments would inevitably pay too much for some and not enough for others.

We received several comments in support of a single per diem rate for all high-cost treatments. Commenters stated that one standard payment for any higher-cost treatment would be in alignment with the structure of the per diem rate provided by hospice for standard care and reduce confusion. Other commenters noted that having separate payments for different types of higher-cost palliative treatments could lead to a particular therapy being inadvertently left out of the higher cost structure and managing separate payments could increase administrative complexity to the claim-submission process.

A few commenters stated either option would work as long as it alleviates the concerns of the financial impact of these high-cost treatments and other commenters recommended simply increasing reimbursement overall to encompass the costs of high-intensity treatments. A few commenters recommended starting with a single payment for a period of time while CMS engages in a robust cost analysis to develop the most appropriate payment mechanism. And finally, many commenters stated CMS should not have separate payments nor a single payment, and instead cover these treatments separately from the existing hospice benefit. Commenters again recommended concurrent care and suggested carving out these palliative treatments under Medicare Part B.

Response: We thank the commenters for their insight and thoughtful recommendations. We are incredibly appreciative of the time and effort readers put forth in collaborating with CMS as we explore ways to improve coverage under the Medicare hospice benefit. We will consider all comments and recommendations received on this rule and will continue to welcome thoughts regarding these issues through our hospice policy mailbox at *hospicepolicy@cms.hhs.gov.* We also remind readers they can report suspected fraud, waste, or abuse to CMS. Further information on reporting fraud can be found in The Medicare & You handbook at page 105 and at *https://www.cms.gov/medicare/medicaid-coordination/center-program-integrity/reporting-fraud.* Readers can also report suspected fraud, waste, and abuse to the Office of Inspector General at *https://oig.hhs.gov/fraud/report-fraud/.*

D. Proposals to the Hospice Quality Reporting Program (HQRP)

1. Background and Statutory Authority

The Hospice Quality Reporting Program (HQRP) specifies reporting requirements for the Hospice Item Set (HIS), administrative data, and Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey. Section 1814(i)(5) of the Act requires the Secretary to establish and maintain a quality reporting program for hospices, and requires, beginning with FY 2014, that the Secretary reduce the market basket update by 2 percentage points for those hospices failing to meet quality reporting requirements. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA, 2021 to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4 percentage points beginning in FY 2024 for any hospice that does not comply with the quality data submission requirements for that FY. In the FY 2024 Hospice final rule, we codified the application of the 4-percentage point payment reduction for failing to meet hospice quality reporting requirements and set completeness thresholds at § 418.312(j).

Depending on the amount of the annual update for a particular year, a reduction of 4 percentage points beginning in FY 2024 could result in the annual market basket update being less than zero percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the specified year. Typically, about 18 percent of Medicare-certified hospices are found non-compliant with the HQRP reporting requirements annually and are subject to the APU payment reduction for a given FY.

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234, 48257 through 48262), and in compliance with section 1814(i)(5)(C) of the Act, we finalized a new standardized patient-level data collection vehicle called the Hospice Item Set (HIS). We also finalized the specific collection of data items that support eight consensus-based entity (CBE)-endorsed measures for hospice.

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452), we finalized national implementation of the CAHPS® Hospice Survey, a component of the CMS HQRP which is used to collect data on the experiences of hospice patients and the primary caregivers listed in their hospice records. Readers who want more information about the development of the survey, originally called the Hospice Experience of Care Survey, may refer to the FY 2014 and FY 2015 Hospice Wage Index and Payment Update final rules (78 FR 48261 and 79 FR 50452, respectively). National implementation commenced January 1, 2015. We adopted eight CAHPS® survey-based measures for the CY 2018 data collection period and for subsequent years. These eight measures are publicly reported on the Care Compare website.

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142, 47186 through 47188), we finalized the policy for retention of HQRP measures adopted for previous payment determinations and seven factors for removal. In that same final rule, we discussed how we would provide public notice through rulemaking of measures under consideration for removal, suspension, or replacement. We also stated that if we had reason to believe continued collection of a measure raised potential safety concerns, we would take immediate action to remove the measure from the HQRP and not wait for the annual rulemaking cycle. The measures would be promptly removed and we would immediately notify hospices and the public of such a decision through the usual HQRP communication channels, including but not limited to listening sessions, email notifications, Open Door Forums, and Web postings. In such instances, the removal of a measure will be formally announced in the next annual rulemaking cycle.

On August 31, 2020, we added correcting language to the FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Correcting Amendment (85 FR 53679) hereafter referred to as the FY 2021 HQRP Correcting Amendment. In this final rule, we made correcting amendments to 42 CFR 418.312 to correct technical errors identified in the FY 2016 Hospice Wage Index and Payment Rate Update final rule. Specifically, the FY 2021 HQRP Correcting Amendment (85 FR 53679) adds paragraph (i) to § 418.312 to reflect our exemptions and extensions requirements, which were referenced in the preamble but inadvertently omitted from the regulations text. Thus, these exemptions or extensions can occur when a hospice encounters certain extraordinary circumstances.

In the FY 2017 Hospice Wage Index and Payment Rate Update final rule, we

finalized the ''Hospice Visits When Death is Imminent'' measure pair (HVWDII, Measure 1 and Measure 2), effective April 1, 2017. We refer the public to the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52144, 52163 through 52169) for a detailed discussion.

As stated in the FY 2019 Hospice Wage Index and Rate Update final rule (83 FR 38622, 38635 through 38648), we launched the ''Meaningful Measures Initiative'' (which identifies high priority areas for quality measurement and improvement) to improve outcomes for patients, their families, and providers while also reducing burden on clinicians and providers. The Meaningful Measures Initiative is not intended to replace any existing CMS quality reporting programs, but will help such programs identify and select individual measures. The Meaningful Measure Initiative areas are intended to increase measure alignment across our quality programs and other public and private initiatives. Additionally, it will point to high priority areas where there may be gaps in available quality measures while helping to guide our efforts to develop and implement quality measures to fill those gaps. More information about the Meaningful Measures Initiative can be found at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/MMF/General-info-Sub-Page.html.*

In the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 42552), we finalized two new measures using claims data: (1) Hospice Visits in the Last Days of Life (HVLDL); and (2) Hospice Care Index (HCI). We also removed the Hospice Visits when Death is Imminent (HVWDII) measure, as it was replaced by HVLDL. We also finalized a policy that claims-based measures would use 8 quarters of data to publicly report on more hospices.

In addition, we removed the seven Hospice Item Set (HIS) Process Measures from the program as individual measures, and ceased their public reporting because, in our view, the HIS Comprehensive Assessment Measure is sufficient for measuring care at admission without the seven individual process measures. In the FY 2022 Hospice Wage Index and Rate Update final rule (86 FR 42553), we finalized § 418.312(b)(2), which requires hospices to provide administrative data, including claims-based measures, as part of the HQRP requirements for § 418.306(b). In that same final rule, we provided CAHPS Hospice Survey updates.

As finalized in the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 42552), public data reflecting hospices' reporting of the two new claims-based quality measures (QMs), the ''Hospice Visits in Last Days of Life'' (HVLDL) and the ''Hospice Care Index'' (HCI) measures, are available on the Care Compare/Provider Data Catalogue (PDC) web pages as of the August 2022 refresh. In the FY 2023 and FY 2024 Hospice Wage Index final rules, we did not propose any new quality measures. However, we provided updates on already-adopted measures. Table 13 shows the current quality measures in effect for the FY 2025 HQRP, which were finalized in the FY 2022 Hospice Wage Index and Payment Rate Update final rule and have been carried over in each subsequent year.

TABLE: 13 Quality Measures in Effect for the Hospice Quality Reporting Program

Hospice Quality Reporting Program
Hospice Item Set
Hospice and Palliative Care Composite Process Measure—HIS-Comprehensive Assessment Measure at Admission includes: 1. Patients Treated with an Opioid who are Given a Bowel Regimen 2. Pain Screening 3. Pain Assessment 4. Dyspnea Treatment 5. Dyspnea Screening 6. Treatment Preferences 7. Beliefs/Values Addressed (if desired by the patient)
Administrative Data, including Claims-based Measures
Hospice Visits in Last Days of Life (HVLDL)
Hospice Care Index (HCI) 1. Continuous Home Care (CHC) or General Inpatient (GIP) Provided 2. Gaps in Skilled Nursing Visits 3. Early Live Discharges 4. Late Live Discharges 5. Burdensome Transitions (Type 1)–Live Discharges from Hospice Followed by Hospitalization and Subsequent Hospice Readmission 6. Burdensome Transitions (Type 2)–Live Discharges from Hospice Followed by Hospitalization with the Patient Dying in the Hospital 7. Per-beneficiary Medicare Spending 8. Skilled Nursing Care Minutes per Routine Home Care (RHC) Day 9. Skilled Nursing Minutes on Weekends 10. Visits Near Death
CAHPS Hospice Survey
CAHPS Hospice Survey 1. Communication with Family 2. Getting timely help 3. Treating patient with respect 4. Emotional and spiritual support 5. Help for pain and symptoms 6. Training family to care for the patient 7. Rating of this hospice 8. Willing to recommend this hospice

2. Implementation of Two Process Quality Measures Based on Proposed HOPE Data Collection

Section 1814(i)(5) of the Act requires the Secretary to establish and maintain a quality reporting program for hospices, develop and implement quality measures, and publicly report quality measures. In this final rule, we are finalizing the addition of two process measures no sooner than FY 2028 to the HQRP calculated from data collected from HOPE: *Timely Follow-Up for Pain Impact* and *Timely Follow-Up for Non-Pain Symptom Impact*. We will use the data collected from HOPE (see section III.D.3 on the proposal to implement HOPE and associated PRA), which a nurse would assess at multiple time points during a hospice stay to collect data related to patients' symptoms during those assessments. These two measures will determine whether a follow-up visit occurs within two (2) days of an initial assessment of moderate or severe symptom impact.

Symptom alleviation is an important aspect of hospice care, including both pain management and non-pain symptom management. CMS has heard this feedback consistently from both clinicians and caregivers, including the Technical Expert Panel (TEP) which CMS convened from 2019 through 2023. At present, HQRP only has a component of a measure indicating whether the pain symptom was assessed, as a part of the comprehensive assessment at admission measure. This measure alone does not adequately measure whether hospices are alleviating hospice patients' symptoms throughout their hospice stay.

CMS considers symptom management an important domain to address further via the HQRP program. Therefore, we will implement these new concepts on

timely follow-up of symptoms with the support and input of hospice experts. For cases where a patient is assessed as having high (that is, more severe) symptom impact, practitioners suggest that good care processes include trying to follow-up with the patient and having in-person visits within two (2) days to ensure treatment has helped alleviate and/or manage those symptoms. Therefore, we are finalizing two process measures derived from HOPE data—*Timely Follow-Up for Pain Impact* and *Timely Follow-Up for Non-Pain Symptom Impact*—will capture these care processes.

Our paramount concern is the successful development of an HQRP that promotes the delivery of high-quality healthcare services. We seek to adopt measures for the HQRP that promote efficient, safer, and patient-centered care. Our measure selection activities for the HQRP take into consideration input we receive from the CBE, as part of a pre-rulemaking process that we have established and are required to follow under section 1890A of the Act. The CBE convenes interested parties from multiple groups to provide CMS with recommendations on the Measures Under Consideration (MUC) list. This input informs how CMS selects certain categories of quality and efficiency measures as required by section 1890A(a)(3) of the Act. By February 1st of each year, the CBE must provide that input to CMS. For more details about the pre-rulemaking process, please visit the Partnership for Quality Measurement website at *https://p4qm.org/PRMR.*

We also consider national priorities, such as those established by the Partnership for Quality Measurement, the HHS Strategic Plan, and the National Strategy for Quality Improvement in Healthcare located at *https://www.cms.gov/cciio/resources/forms-reports-and-other-resources/quality03212011a.* To the extent possible, we have sought to adopt measures that have been endorsed by the national CBE, recommended by multiple organizations of interested parties, and developed with the input of providers, payers, and other relevant stakeholders.

a. Measure Importance

The FY 2019 Hospice Wage Index final rule (83 FR 38622) introduced the Meaningful Measure Initiative to hospice providers to identify high priority areas for quality measurement and improvement. The Meaningful Measure Initiative areas are intended to increase measure alignment across programs and other public and private initiatives. Additionally, the Initiative points to high priority areas where there may be informational gaps in available quality measures. The Initiative helps guide our efforts to develop and implement quality measures to fill those gaps and develop those concepts towards quality measures that meet the standards for public reporting. The goal of HQRP quality measure development is to identify measures from a variety of data sources that provide a window into hospice care services throughout the dying process, fit well with the hospice business model, and meet the objectives of the Meaningful Measures Initiative.

To that end, the *Timely Follow-Up for Pain Impact* and *Timely Follow-Up for Non-Pain Symptom Impact* measures will add value to HQRP by filling an identified informational gap in the current measure set. Specifically, the *Timely Follow-Up for Pain Impact* process measure will determine how many patients assessed with moderate or severe pain impact were reassessed by the hospice within 2-calendar days, and the *Timely Follow-Up for Non-Pain Symptom Impact* process measure will determine how many patients assessed with moderate or severe non-pain impact were reassessed by the hospice within 2-calendar days. Compared to the single existing HQRP measure that includes pain symptom assessment, the two HOPE-based process measures will better reflect hospices' efforts to alleviate patients' symptoms on an ongoing basis.

b. Specifications of the Measures

We are finalizing that both the process measures based on HOPE data will be calculated using assessments collected at admission or the HOPE Update Visit (HUV) timepoints. Pain symptom severity and impact will be determined based on hospice patients' responses to the pain symptom impact data elements within HOPE. Non-pain symptom severity and impact will be determined based on patients' responses to the HOPE data elements related to shortness of breath, anxiety, nausea, vomiting, diarrhea, constipation, and agitation. Additional information regarding these data items and time points can be found in the draft HOPE Guidance Manual of the HOPE web page at *https://www.cms.gov/medicare/quality/hospice/hope* and the PRA package that accompanies this Rule can be accessed at *https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pra-listing.* We finalize the proposal that only in-person visits will count for the collection of data for these proposed measures—that is, telehealth calls will not count for a follow-up. We sought comment on whether only in-person visits are appropriate for collection of data for these proposed measures or if other types of visits, such as telehealth, should be included. We are finalizing the decision that a follow-up visit cannot be the same visit as the initial assessment, but it can occur later in the same day (as a separate visit).

However, we recognize that requiring in-person visits may impact existing staffing shortages faced by many hospice providers. CMS maintains to avoid creating unnecessary burden for hospice providers. Therefore, to minimize the burdensome impact of the in-person staffing requirement and to take advantage of the staff members hospices have, we are finalizing a decision that symptom follow-up visits (SFVs), referred to in the proposed rule as the Symptom Reassessment, may be performed by either RNs or Licensed Practical Nurses (LPNs)/Licensed Vocational Nurses (LVNs).

For both the *Timely Follow-Up for Pain Impact* and *Timely Follow-Up for Non-Pain Symptom Impact* measures, beneficiaries will be included in the denominator if they have a moderate or severe level of pain or non-pain symptom impact, respectively, at their initial assessment. However, certain exclusions will apply to these denominators, such as beneficiaries who die or are discharged alive before the two-day window, if the patient/caregiver refused the follow-up visit, the hospice was unable to contact the patient/caregiver to perform the follow-up, the patient traveled outside the service area, or the patient was in the ER/hospital during the two-day follow-up window. In these situations, a hospice will be unable to conduct a follow-up due to circumstances beyond their control, and therefore these situations will not be included in the measure denominator.

The numerators for these measures will reflect beneficiaries who did receive a timely symptom follow-up. These will include beneficiaries who receive a separate HOPE follow-up within 2-calendar days of the initial assessment (for example, if a pain has moderate or severe symptoms assessed on Sunday, the hospice would be expected to complete the follow-up on or before Tuesday).

c. Measure Reportability, Variability, and Validity

As part of developing these quality measures, CMS and their measure development contractor conducted simulations of measure reportability rates and measure variability. We used

the results of the HOPE Beta Test to estimate HOPE data availability for a national population of hospice patients. Detailed information regarding reportability and variability testing is provided in the HOPE Beta Testing Report, available on the HOPE web page at *https://www.cms.gov/medicare/quality/hospice/hope.* Additionally, CMS assessed each proposed quality measure face validity with input from TEP members convened in March 2023. Further information about our validity analysis is provided in the 2022–2023 HQRP TEP Report, available in the Downloads section of the HQRP Provider and Stakeholder Engagement page. Our reportability and variability analyses did not present concerns for the proposed HOPE-based process measures, and our validity analysis indicated that the proposed measures have high face validity.

d. Future Plans for Testing HOPE-Based Quality Measures

Testing of the two process quality measures has thus far relied on data from the HOPE beta (field) test. We proposed future measure testing to be conducted using a full sample of hospices collected after HOPE has been implemented nationally, to support further development of quality measures.

e. Public Engagement and Support

CMS engaged the public in multiple stages of HOPE-based measure development. To support measure development, CMS convened multiple technical expert panel (TEP) meetings which served as information gathering activities, consistent with the Meaningful Measure Initiative. The TEP consisted of experts in hospice and clinical quality measurement, and it has contributed to development of the HOPE tool and measure concepts since 2019. Based on early TEP input about measure prioritization, measure concept development focused on pain and non-pain symptoms. TEP members noted the importance of measuring the quality of pain and symptom management, as this is a key role of hospice. Through 2020 and 2021, the TEP provided further feedback on pain and non-pain symptom measure specifications. In Spring 2023, CMS convened the TEP a final time to review the final measure specifications, HOPE Beta test results, and rate face validity of the measure score. The TEP gave strong support for the proposed measure specifications, rated high face validity for these two process measures, and noted the importance of measuring the quality of pain management in hospice care. More information about the TEP meetings and recommendations can be found in the HQRP TEP Reports for 2019–2023, available on the Provider and Stakeholder Engagement web page. CMS also sought hospice provider input during the HOPE Beta Test to further inform the development of these HOPE-based process measures. During beta testing, registered nurses (RNs) reported that the two-day window of HOPE symptom follow-up aligned with their usual practices.

f. Update on Future Quality Measure (QM) Development

As stated in the FY 2022 Hospice Wage Index final rule (86 FR 42528), we continue to consider developing hybrid quality measures that could be calculated from multiple data sources, such as claims, HOPE data, or other data sources (for example, CAHPS Hospice Survey). To support new measure development, our contractor convened technical expert panel (TEP) meetings in 2022 and 2023. The TEP agreed that CMS should consider applying several risk adjustment factors, such as age and diagnosis, to ensure comparable, representative comparisons between hospices. The TEP also suggested using length of hospice stay but not functional status as risk adjustment factor for hospice performance.

To support new HOPE-based measure development, our contractor convened technical expert panel (TEP) meetings between 2020 and 2023. The TEP recommended specifications for the two HOPE-based quality measures proposed in this Rule—*Timely Follow-Up for Pain Impact* and *Timely Follow-Up for Non-Pain Symptom Impact.* CMS also sought TEP input on several measurement concepts proposed for future quality measure development. Of these measurement concepts, the TEP supported CMS further developing the *Education for Medication Management* and *Wound Management Addressed in Plan of Care* process concepts. More information about the TEP recommendations can be found in the 2023 HQRP TEP Report, available on the Provider and Stakeholder Engagement web page. CMS will take the TEP's recommendations under consideration as we continue to develop HOPE-based quality measures.

Additional information about CMS's HOPE-based measure development efforts is available in the 2022–2023 HQRP TEP Summary Report (*https://www.cms.gov/files/document/2023-hqrp-tep-summary-report.pdf* and the 2023 Information Gathering Report, available on the HQRP Provider and Stakeholder Engagement web page, or at *https://www.cms.gov/files/document/hospicequalityreportingprograminformationgatheringreport2023508.pdf.* For further details about the ongoing development of these measures, please visit the Partnership for Quality Measurement website: *https://p4qm.org/*.

Comment: We received 13 public comments regarding the two HOPE-based process measures. Public comments generally supported the addition of the two proposed HOPE-based QMs.

Several commenters suggested modifications to the measures. One commenter suggested that CMS discontinue the collection of some HIS measures rather than combining them into the HOPE tool. One commenter suggested that CMS standardize the definitions of slight, moderate, and severe symptom impact to improve the reliability of QM data. One commenter requested guidance regarding how hospices should categorize patients whose symptom impact has lessened or stabilized at the time of the follow-up visit. Another commenter suggested that CMS calculate the measures both with and without patients who refused to visit to determine whether visit refusals correlate with other quality concerns.

One commenter requested clarification regarding penalties to hospices for patients who decline a symptom follow-up visit. One comment requested clarification about the start date of HOPE QM public reporting and whether the start date would be based on the Fiscal Year (FY) or the Calendar Year (CY). One commenter requested clarification regarding penalties to hospices for patients who decline a symptom follow-up visit. Another commenter requested that CMS provide data regarding the proportion of QRP compliant agencies nationally, efforts to improve hospices' ability to report data to CMS, and efforts to enhance transparency to the public. Several commenters requested that CMS delay public reporting of the HOPE-based QMs until 2028 to ensure adequate time for hospices and EMR vendors to implement the measures, as well as sufficient time to collect data and issue provider preview reports.

Some commenters expressed concerns about the new QMs. One comment recommended the measures be further developed before implementation, citing the lack of CBE endorsement. Several comments encouraged CMS to next focus on developing HOPE-based outcome measures, which would add further value to HQRP.

Response: CMS appreciates all public comments regarding the new HOPE-

based process QMs. We understand that there are several tools to measure the severity of these symptoms. However, the items for Symptom Impact are not measuring symptom intensity or severity, but rather the impact the patient is experiencing. The Symptom Impact data elements were adapted from an Integrated Palliative Outcome Scale (IPOS) data element that asked about the effect of symptoms on the patient. Please refer to the HOPE development and Testing Report posted on the HOPE web page for more details: *https://www.cms.gov/files/document/hqrp-hospice-outcomes-and-patient-evaluation-hope-development-and-testing-report.pdf.* We will continue to provide guidance on this measure, which will be informed by commenters questions and concerns.

CMS is committed to providing hospice providers and vendors with adequate time to implement the new HOPE-based QMs, and intends to support hospices during the transition period. In this final rule, we clarified the timeframes for anticipated public reporting. Additional guidance regarding the new HOPE-based measures will be provided through education and training materials and events leading up to the public reporting of the measures. CMS also intends to continue working with the CBE to ensure that these and future quality measures meaningfully measure the quality of hospice care and help patients, families, and caregivers to make important hospice decisions.

Comments: We received 15 public comments regarding the time points and burden of the two HOPE-based measures.

Several commenters sought clarification on the number of symptom follow-up visits required and whether the symptom follow-up is allowed at the admission or HUV timepoints. One comment suggested that symptom follow-up should be considered an additional timepoint if it may not be completed during another timepoint.

Several commenters requested that CMS clarify whether the time frame for symptom follow-up will be 48 hours or 2-calendar days. One commenter requested that CMS extend the time frame for follow-up visits. Another commenter appreciated CMS' decision that the symptom follow-up visit cannot be the same as the initial assessment visit, although it can occur in the same day.

Several commenters expressed concerns about the anticipated burden the new measures will add to hospices. Many commenters requested that we allow telehealth or phone visits for symptom follow-up. Two commenters recommended that patients' preference for and tolerance of pain be included in the measures. Two commenters requested that LPNs be allowed to reassess patients' symptom impact. One commenter requested that occupational therapists be included as members of the hospice interdisciplinary team for purposes of the new QMs. One comment suggested that any hospice team member should be allowed to complete the symptom follow-up visit, whether clinical or administrative.

Many comments expressed concern that the symptom follow-up visits (SFV) would create undue burden unless they can be completed via telehealth or phone visits. Two comments highlighted staffing challenges, and several other comments anticipated burdensome costs due to staff training, EMR management, monitoring and oversight, and/or the increased number of patient visits. One commenter raised concerns that the measures would disproportionately burden rural hospices.

Response: CMS appreciates all comments regarding the new HOPE-based process QMs and their corresponding time points.

At this time, CMS does not believe the symptom follow-up should be considered a unique HOPE time point. Commenters seeking additional guidance regarding the symptom follow-up visits should refer to the HOPE v1.0 Guidance Manual (page 8 and 9), which states that ''Depending upon responses to J2051. Symptom Impact, at Admission and the two HUV timepoints, up to three symptom follow-up visits may be required over the course of the hospice stay.'' The Guidance Manual further states that ''Although multiple symptom follow-up visits are not required for the purpose of the HQRP, it is expected that the hospice staff will continue to follow up with the patient, based on their clinical and symptom management needs.''

We acknowledge the commenters' recommendation that more hospice team members should be allowed to complete the symptom follow-up visit. Therefore, in this final rule, we have decided that both RNs and LPNs/LVNs may complete the symptom follow-up. At this time, CMS believes it is most appropriate for clinical staff to complete symptom assessments and follow-up visits.

While we understand commenters' concerns about the potential staffing burdens of in-person visits, CMS selected this requirement based on expert input regarding hospice best practices. However, to minimize the burdensome impact of the in-person staffing requirement and to take advantage of the staff members hospices have, we are finalizing a decision that symptom follow-up visits (SFVs) may be performed by either RNs or LPNs/LVNs. We will continue to monitor the provision and burden of in-person HOPE follow-up visits after HOPE implementation and evaluate whether revisions to the HOPE administration requirements are necessary. If modifications to the HOPE instrument are required, they will be proposed in future rulemaking.

Commenters seeking additional guidance regarding the symptom follow-up visits should refer to the HOPE v1.0 Guidance Manual (page 8 and 9), which states that ''Depending upon responses to J2051. Symptom Impact, at Admission and the two HUV timepoints, up to three symptom follow-up visits may be required over the course of the hospice stay.'' The Guidance Manual further states that ''Although multiple symptom follow-up visits are not required for the purpose of the HQRP, it is expected that the hospice staff will continue to follow up with the patient, based on their clinical and symptom management needs.''

CMS is committed to providing hospice providers and vendors with adequate time to implement the new HOPE-based QMs, and intends to support hospice stakeholders during the transition period. In this final rule, CMS has clarified the time frames for the HOPE-based QMs and anticipated public reporting. Additional guidance regarding the new HOPE-based measures will be provided through education and training materials and events leading up to the public reporting of the measures, anticipated to occur no earlier than November 2027 (FY 2028). CMS also intends to continue working with CBEs to ensure that these and future quality measures meaningfully measure the quality of hospice care and help patients, families, and caregivers to make important hospice decisions.

After considering the public feedback received on the FY 2025 Hospice proposed rule we are finalizing the measures with modifications from the version proposed in the proposed rule. As finalized, theses QMs measure whether patients receive an in-person nursing follow-up visit within 2-calendar days of initial assessment of moderate to severe symptoms impact. Theses (SFVs) may be performed by RNs or LPNs/LVNs. CMS believes that these finalized measures will add value to HQRP. We will continue to monitor measure performance after

implementation and will evaluate incoming HOPE data to determine whether to revise the measures in future rulemaking.

3. Hospice Outcomes & Patient Evaluation (HOPE) Assessment Instrument

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary.

CMS has developed a new standardized patient level data collection tool, the Hospice Outcomes & Patient Evaluation or HOPE. In past rules, we have described this as a new collection tool, however we believe it is better characterized as a modification of, and functional replacement for, the existing HIS structure.

We proposed and now finalize the decision to begin collecting the HOPE standardized patient level data collection tool on or after October 1, 2025, for quality measures discussed in section III.D.2 of this final rule. The HOPE assessment instrument will replace the HIS upon implementation, as discussed in section III.D.6.(b) of this final rule. In the FY 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements final rule (84 FR 38484), we finalized the instrument name and discussed the primary objectives for HOPE. Specifically, HOPE will provide data for the HQRP quality measures and its requirements through standardized data collection; and provide additional clinical data that could inform future payment refinements. All data collected by the instrument are expected to be used for quality measures, as authorized under section 1814(i)(5)(C) of the Act, and only for quality measures under section 1814(i)(5)(D) of the Act, which will include the measures *Timely Follow-Up for Pain Impact* and *Timely Follow-Up for Non-Pain Symptom Impact* measures finalized in this rule.

HOPE will be a component of implementing high-quality and safe hospice care for patients, Medicare beneficiaries and non-beneficiaries alike. HOPE will also contribute to the patient's plan of care through providing patient data throughout the hospice stay. We finalize the proposal to collect data from multiple time points across the hospice stay, that will inform hospice providers potentially resulting in improved practice and care quality. Additional information about the final HOPE tool v1.0 and the data elements included therein are available at *https://www.cms.gov/medicare/quality/hospice/hope* discussed in the Paperwork Reduction Act submission for this collection (CMS–10390).

We stated in the FY 2022 Hospice Wage Index and Payment Update final rule (86 FR 42528) that while the standardized patient assessment data elements for certain post-acute care providers required under the IMPACT Act of 2014 are not applicable to hospices, it would be reasonable to include some of those standardized elements that could appropriately and feasibly apply to hospice to the extent permitted by our statutory authority. Many patients move through other providers within the healthcare system to hospice. Therefore, considering tracking key demographic and social risk factor items that apply to hospice could support our goals for continuity of care, overall patient care and well-being, development of infrastructure for the interoperability of electronic health information, and health equity which is also discussed in this rule. We will propose any additions of standardized elements in future rulemaking.

In the FY 2023 Hospice final rule (87 FR 45669), we outlined the testing phases HOPE has undergone, including cognitive, pilot, alpha testing, and national beta field testing. National beta testing, completed at the end of October 2022, allowed us to obtain input from participating hospice teams about the assessment instrument and field testing to refine and support the final items and time points for HOPE. It also allowed us to estimate the time to complete the HOPE elements and establish the interrater reliability of each item. For additional details and results from HOPE testing, see the HOPE Testing Report, available in the Downloads section of the HOPE page of the HQRP website.

CMS will adopt and implement HOPE as a standardized patient element set to replace the current Hospice Item Set (HIS). Relative to HIS, HOPE includes new items in several domains that are new or expanded (Sociodemographic, Living Arrangements, Availability of Assistance, Diagnoses, Symptom Impact Assessment, Imminent Death, Skin), and includes an additional timepoint (the Hospice Update Visit, or HUV).

HOPE v1.0 will contain demographic, record processing, and patient-level standardized data elements that will be collected by all Medicare-certified hospices for all patients, regardless of payer source or patient age, to support HQRP quality measures. New HOPE data elements will be collected in real-time to assess patients based on the hospice's interactions with the patient and family/caregiver, accommodate patients with varying clinical needs, and provide additional information to contribute to the patient's care plan throughout the hospice stay (not just at admission and discharge). These data elements represent domains such as Administrative, Preferences for Customary Routine Activities, Active Diagnoses, Health Conditions, Medications, and Skin Conditions. HOPE data will be collected by hospice staff for each patient admission at three distinct time points: admission, the hospice update visit (HUV), and discharge, as discussed in the PRA as well as sections IV.A and V of this final rule in which we discuss Collection of Information requirements and the Regulatory Impact Analysis. We finalize the timepoint for the HOPE Update Visits (HUV), which is dependent on the patient's length of stay (LOS), is limited to a subset of HOPE items addressing clinical issues important to the care of hospice patients as updates to the hospice plan of care. HOPE data will be collected at these timepoints during the hospice's routine clinical assessments, based on unique patient assessment visits and additional follow-up visits as needed. As further discussed in the finalized HOPE Guidance Manual and PRA, not all HOPE items will be required to be completed at every timepoint. These time points could also be revised in future rulemaking.

HOPE data reporting and collection will be effective beginning on or after October 1, 2025 to support the quality measures anticipated for public reporting on or after FY 2028. After HOPE implementation, hospices will no longer need to collect and submit the Hospice Item Set (HIS). Additional details regarding the data collection required for the new HOPE item set are discussed in section III.D.6, ''Form, Manner, and Timing of Quality Measure Data Submission'', and section IV, ''Collection of Information.''

We are finalizing updates § 418.312(a)(b)(1) to require hospices to complete and submit a standardized set of items for each patient to capture patient-level data, regardless of payer or patient age. This change will take effect October 1, 2025. This update will replace the previous requirement for hospices to complete the HIS and the newly standardized set of items will have to be completed at admission and discharge, and at the two HUV timepoints within the first 30 days after the hospice election. We note that, as authorized under section 1814(i)(5) of the Act, CMS would impose a 4 percent reduction on hospices for failure to submit HOPE collections timely with respect to that FY.

CMS is committed to ensuring hospices are ready for the data reporting and collection beginning on or after October 1, 2025. We will provide information about upcoming provider trainings related to HOPE v1.0 that will be posted on the CMS HQRP website [8] on the Announcement and Spotlight [9] page and announced during Open Door Forums. Past trainings about the HQRP are available through the HQRP Training and Education Library.[10] These trainings will help providers understand the requirements necessary to be successful with the HQRP, including how data collected via the new HOPE tool is submitted for quality measures and contributes to compliance with the HQRP.

The final HOPE Guidance Manual v1.0 will be available on the HQRP HOPE web page after the publication of the final rule. This guidance manual offers hospices direction on the collection and submission of hospice patient stay data to CMS to support the HQRP quality measures.

Public Availability of Data Submitted

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality measure data submitted by hospices available to the public. The procedures ensure that a hospice will have the opportunity to review the data regarding the hospice's respective program before it is made public. In addition, under section 1814(i)(5)(E) of the Act, the Secretary is authorized to report data collected to support quality measures under section 1814(i)(5)(C) of the Act on the CMS website, that relate to services furnished by a hospice. We recognize that public reporting of quality measure data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality measure data. We also recognize it is essential that the data made available to the public be meaningful and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. The development and implementation of a standardized data set for hospices should precede public reporting of hospice quality measures. Once hospices have implemented the standardized data collection approach, we will have the data needed to establish the scientific soundness of the quality measures that can be calculated using the standardized data. It is critical to establish the reliability and validity of the measures prior to public reporting in order to demonstrate the ability of the measures to distinguish the quality of services provided. To establish reliability and validity of the quality measures, at least four quarters of data will need to be analyzed. Typically, the first two quarters of data reflect the learning curve of the providers as they adopt a standardized data collection; these data are not used to establish reliability and validity. We are finalizing the decision that the data from the first quarter Q4 CY 2025, if HOPE data collection begins in October 2025, it will not be used for assessing validity and reliability of the quality measures.

We will assess the quality and completeness of the data that we receive as we near the end of Q4 2025 before public reporting the measures. Data collected by hospices during the four quarters of CY 2026 (for example, Q 1, 2, 3 and 4 CY 2026) will be analyzed starting in CY 2027. We will inform the public of the decisions about whether to report some or all of the quality measures publicly based on the findings of analysis of the CY 2026 data.

In addition, as noted, the Affordable Care Act requires that reporting on the quality measures adopted under section 1814(i)(5)(D) of the Act be made public on a CMS website and that providers have an opportunity to review their data prior to public reporting. In light of all the steps required prior to data being publicly reported, we finalize the decision that public reporting of the proposed quality measures will be implemented no earlier than FY 2028, allowing ample time for data analysis, review of measures' appropriateness for use for public reporting, and allowing hospices the required time to review their own data prior to public reporting.

CMS will consider public reporting using fewer than four (4) quarters of data for the initial reporting period, but we are finalizing the decision to use 4 quarters of data as the standard reporting period for future public reporting. If the initial reporting period would include any excluded quarters of data, we will use as many non-excluded quarters of data as are included in the reporting period for public reporting. For example, if the first reporting period includes Q4 2025 through Q3 2026, then public reporting of HOPE will be based on Q1 2026, Q2 2026, and Q3 2026. The next public reporting period would include Q1 2026–Q4 2026, and public reporting would be based on four (4) quarters of data, as would all subsequent rolling reporting periods.

Comment: We received 43 comments related to the HOPE instrument. Most commenters supported the implementation of the HOPE tool as a replacement for HIS and commended CMS's efforts to improve data collection and enhance the quality of care for patients. However, those in support of the HOPE tool expressed a variety of concerns with the HOPE instrument proposal. A majority of commenters asked for CMS to allow both HOPE assessments and reassessments to be completed via telehealth, as well as allow any member of the IDG to complete the assessments, to reduce the burden of in-patient visits. Most commenters also asked for a delay in implementation, ranging from July 2025 to FY 2027, to account for the need to implement new staff training, system updates, and additional staffing. This delay would also allow EMR vendors to update their systems to account for the new instrument. In relation, some commenters also asked for a phased approach rather than requiring hospices to reach the 90 percent threshold immediately upon implementation or allow a ''pilot'' period to test out the new processes and instrument. Some commenters also expressed concern that the burden estimates did not seem to reflect the total additional clinical and administrative costs that would be incurred by implementing the HOPE instrument.

Other commenters requested clarifications regarding the assessments and instrument items. One of the most common requests for clarification is whether the HOPE assessment needs to be completed for all patients or only those over the age of 18. Many commenters also sought clarification around the timing associated with the symptom follow-up visits—whether it is 48 hours or two calendar days. Other questions included how long the symptom follow-up visits should continue, if the admission and comprehensive assessment can be done on the same visit, and how the date for completing the assessment and symptom follow-up visits should be entered.

Some commenters recommended modifications to the HOPE instrument. One commenter felt that HOPE should assess the spiritual and psychosocial aspects of the hospice experience. A few comments mentioned specific data elements included in the HOPE tool.

[8] *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/hospice-quality-reporting.*

[9] *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/hospice-quality-reporting/spotlight.*

[10] *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/hospice-quality-reporting/hospice-quality-reporting-training-training-and-education-library.*

One noted the item A1805, ''Admitted From and thought it should be revised to name the referral source. There were also several clarifications suggested for some of the new items.

Many commenters mentioned that the instrument, as it exists now, contains only process measures and they urged CMS to consider adding outcome measures in the future. Some commenters also suggested that CMS monitor and evaluate the measures post-implementation to ensure the validity of the data and that providers aren't ''manipulating'' the data to their benefit when possible. Finally, regarding public reporting, some commenters sought clarification on how many quarters will be excluded and if providers will be able to preview the data before it is publicly reported.

Response: CMS appreciates all stakeholders' input regarding the new HOPE instrument. In this final rule, we have clarified the timing and requirements for pain and non-pain symptom follow-up visits, which must be completed within 2 calendar days of an initial assessment. Commenters seeking additional guidance regarding the pain and non-pain symptom follow-up visits should refer to the HOPE v1.0 Guidance Manual (page 8 and 9), which states that ''Depending upon responses to J2051. Symptom Impact, at Admission and the two HUV timepoints, up to three symptom follow-up visits may be required over the course of the hospice stay.'' The Guidance Manual further states that ''Although multiple symptom follow-ups are not required for the purpose of the HQRP, it is expected that the hospice staff will continue to follow up with the patient, based on their clinical and symptom management needs.''

A few comments mentioned specific data elements included in the HOPE tool. With respect to the comment regarding item A1805, ''Admitted From'' and the suggestion that this be revised to name the referral source,[11] we note that this item, along with many others, has been included in the HIS since 2014, and while there are several new items in HOPE, many are original and have not changed, or include only minor adjustments for HOPE. There were also several clarifications suggested for some of the new items, such as A1110. Language, I0010. Principle Diagnosis, and J0915. Neuropathic pain.[12]

During the development of HOPE, CMS considered how to capture data that could reflect the quality of the spiritual and psychosocial aspects of the hospice experience. For more information about the results of these development efforts, please refer to the HOPE Beta Testing Report, available at: *https://www.cms.gov/files/document/hqrp-hospice-outcomes-and-patient-evaluation-hope-development-and-testing-report.pdf*

While we understand commenters' concerns about the potential staffing burdens of in-person visits, CMS selected this requirement based on expert input regarding hospice best practices. We will continue to monitor the provision and burden of in-person HOPE follow-up visits after HOPE implementation and evaluate whether revisions to the HOPE administration requirements are necessary. If modifications to the HOPE instrument are required, they will be proposed in future rulemaking.

CMS also reminds commenters that the burden calculations associated with HOPE only reflect the costs of implementation and administration of the HOPE assessment instrument, and do not include costs hospices may incur associated with visits to patients. This calculation methodology is consistent with the current HIS instrument. Additionally, the HOPE burden calculations represent incremental or additional costs hospices will incur in addition to the existing costs associated with HIS, as HOPE will replace HIS once implemented. Therefore, any costs hospices currently incur administering HIS will still be incurred but will not be the direct result of implementation of HOPE. We will continue to monitor the cost impact of HOPE after implementation.

CMS is committed to providing hospice providers and vendors with adequate time to implement the new HOPE instrument and intends to support hospice stakeholders during the transition period. Additional guidance regarding the new HOPE-based measures will be provided through education and training materials and events leading up to the implementation of the instrument in October 2025. Providers will have the opportunity to preview HOPE data before it is publicly reported, with the first HOPE-based QM public reporting anticipated to be no earlier than November 2027 (FY 2028).

We recognize commenters' concerns that there will not be a phased approach for the 90 percent reporting threshold as there was with HIS. CMS remains committed to providing hospice providers and vendors with adequate time to implement these provisions. Because hospices already have a 90 percent reporting threshold for HIS and HOPE builds on the foundations of HIS, we anticipate that hospices will be able to continue meeting the 90 percent reporting threshold after HOPE implementation.

Additional guidance regarding the new HOPE-based measures will be provided through education and training materials and events leading up to the public reporting of the measures, anticipated to occur no earlier than November 2027 (FY 2028). CMS also intends to continue working with CBEs to ensure that these and future quality measures meaningfully measure the quality of hospice care and help patients, families, and caregivers to make important hospice decisions.

CMS appreciates commenters' recommendations to develop HOPE-based outcome measures. We intend to continue to develop HOPE-based outcome measures to add to HQRP to increase the value of the quality data collected and reported by the program.

Comment: We received 21 public comments related to the HUV timepoints. Many comments expressed concern that the HUV timepoints would create undue burden unless it can be completed via telehealth or phone visits. One comment suggested that CMS should add a third HUV timepoints at the first patient recertification and start of their second benefit period.

One comment suggested revising the items included in the HUV timepoints to omit some administrative items, while adding items that may enhance hospices' ability to evaluate health equity, such as Living Arrangement, Availability of Assistance, and Preferences for Customary Routine and Activities.

Several comments sought clarification on the HOPE submission rate and whether the HUV may be conducted at the same visit as updates to the comprehensive assessment. Two

[11] A1805 replaces a similar item (A1802) that has been included in the Hospice Item Set (HIS) since its inception in 2014. The change was made to use 1805 in order to align across settings as this item is in use in the SNF setting.

[12] A2220 Language is a cross-setting item and currently in use in the other PAC settings. This has been added to HOPE to assist hospice providers and CMS in understanding the language needs of hospice patients and their families. I0010 Principle Diagnosis is the primary terminal diagnosis for which the patient is being referred to hospice. All care related to the primary hospice diagnosis is expected to be covered under the Medicare Hospice Benefit (MHB). J0915 Neuropathic pain has been added to HOPE for possible risk adjustment in future outcome quality measures that measure improvement in symptoms. Neuropathic pain is unique and unlike other types of pain can take more time and be much more difficult to successfully treat and improve.

comments expressed concern that the cost burden estimates in the proposed rule were unrealistic in light of the amount of additional data collection and newly required visits.

Response: CMS appreciates all stakeholders' input regarding the HUV timepoints. While we understand commenters' concerns about the potential staffing burdens of in-person visits, CMS selected this requirement based on expert input regarding hospice best practices. We will continue to monitor the provision and burden of in-person HOPE follow-up visits after HOPE implementation and evaluate whether revisions to the HOPE administration requirements are necessary. If modifications to the HOPE instrument are required, they will be proposed in future rulemaking.

CMS also reminds commenters that the burden calculations associated with HOPE only reflect the costs of implementation and administration of the HOPE assessment instrument, and do not include costs hospices may incur associated with visits to patients. This calculation methodology is consistent with the current HIS instrument. Additionally, the HOPE burden calculations represent incremental or additional costs hospices will incur in addition to the existing costs associated with HIS, as HOPE will replace HIS once implemented. Therefore, any costs hospices currently incur administering HIS will still be incurred but will not be the direct result of implementation of HOPE. We will continue to monitor the cost impact of HOPE after implementation to determine whether adjustments to the HUV are necessary.

Likewise, CMS will continue to evaluate HOPE after implementation to determine whether items should be added to or removed from the HUV timepoints. While CMS considered a third timepoints and more, the current HOPE v1.0 is a start to collecting more useful data during the hospice stay for the HQRP. This input may be considered for future versions of HOPE.

Comment: We received 5 public comments related to CMS' future quality measure development efforts. Commenters were generally supportive of CMS's ongoing measure development efforts. Several commenters suggested additional measure concepts for CMS consideration, including patients' access to hospice teams, ensuring that hospices can provide all four levels of hospice care, and patients' ability to manage their own health care. One commenter encouraged CMS to include the entire hospice team in the measure assessment and outcomes plan development, including occupational therapy.

Response: CMS appreciates all stakeholders' input regarding ongoing and future quality measure development. We will take all public comments into consideration as we select measure development priorities. We intend to continue to develop HOPE-based outcome measures to add to HQRP to increase the value of the quality data collected and reported by the program. Additional information regarding quality measure development will be provided in future rulemaking.

4. Health Equity Updates Related to HQRP

a. Background

Universal Foundation

To further the goals of the CMS National Quality Strategy (NQS), CMS leaders from across the Agency have come together to move towards a building-block approach to streamline quality measures across CMS quality programs for the adult and pediatric populations. We believe that this ''Universal Foundation'' of quality measures will focus provider attention, reduce burden, 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 CMS moves forward with the Universal Foundation, we will be working to identify foundational measures in other specific settings and populations to support further measure alignment across CMS programs as applicable.

TEP Recommendations

In November and December 2022, CMS convened a group of stakeholders to provide input on the health equity measure development process. This HQRP and HH QRP Health Equity Structural Composite Measure Development Technical Expert Panel (or Home Health & Hospice HE TEP) included health equity experts from hospice and home health settings specializing in quality assurance, patience advocacy, clinical work, and measure development.

The TEP largely supported the potential health equity measure domains of Equity as a Key Organizational Priority, Trainings for Health Equity, and Organizational Culture of Equity. The TEP also recommended that CMS not only measure equity in service provision, but also equity in access to services. TEP members raised concerns about collecting hospice quality measure data from family or caregivers of hospice decedents rather than collecting data directly from patients while they are receiving care. Vulnerable populations without contacts post-mortem may be left out of data collection, such as hospice patients who do not have family members to help with their care or unhoused people. This feedback highlighted the importance of including SDOH such as housing instability in hospice quality reporting. Hospice TEP members also recommended adding specific questions to the CAHPS® survey about cultural sensitivity.

Additional information regarding the Home Health & Hospice HE TEP are available in the TEP Report, available on the Hospice QRP Health Equity web page at *https://www.cms.gov/medicare/quality/hospice/hospice-qrp-health-equity.*

b. Request for Information (RFI) Regarding Future HQRP Social Determinants of Health (SDOH) Items

CMS is committed to developing approaches to meaningfully incorporate the advancement of health equity into the HQRP. One consideration is including social determinants of health (SDOH) into our quality measures and data stratification. SDOH are the socioeconomic, cultural, and environmental circumstances in which individuals live that impact their health. SDOH can be grouped into five broad domains: economic stability; education access and quality; health care access and quality; neighborhood and built environment; and social and community context. Health-related social needs (HRSNs) are the resulting effects of SDOH, which are individual-level, adverse social conditions that negatively impact a person's health or health care. Examples of HRSN include lack of access to food, housing, or transportation, and have been associated with poorer health outcomes, greater use of emergency departments and hospitals, and higher health care costs. Certain HRSNs can lead to unmet social needs that directly influence an individual's physical, psychosocial, and functional status.

This is particularly true for food security, housing stability, utilities security, and access to transportation. In recent years, we have addressed SDOH through the identification and standardization of screening for HRSN, including finalizing several standardized patient assessment data requirements for post-acute care providers [13] and testing the Accountable Health Communities (AHC) model under section 1115A of the Social Security Act.[14]

We have repeatedly heard from the public that CMS should develop new HQRP mechanisms to better address significant and persistent health care outcome inequities. For example, in the FY 2022 Hospice Wage Index final rule, we received comments supportive of gathering standardized patient assessment data elements and additional SDOH data to improve health equity. In the FY 2023 Hospice final rule, we again received comments highlighting the need for more sociodemographic and SDOH data to effectively evaluate health equity in hospice settings. Commenters suggested that CMS consider standardizing the sociodemographic and SDOH data collected across provider settings and across third party vendors (for example, EMRs) and other tools. To this end, CMS expects to seek endorsement by the CBE contracted with CMS under section 1890(a) of the Act for measures that would utilize SDOH data within HQRP.

We are committed to achieving health equity in health care outcomes for our beneficiaries, including by improving data collection to better measure and analyze disparities across programs and policies.[15] We believe that the ongoing measurement of SDOHs will have two significant benefits. First, because SDOHs disproportionately impact underserved communities, promoting measurement of these factors may serve as evidence-based building blocks for supporting healthcare providers and health systems in actualizing commitment to address disparities, improving health equity through addressing the social needs with community partners, and implementing associated equity measures to track progress.[16]

Second, these factors could support ongoing HQRP initiatives by providing data with which to measure stratified resident risk and organizational performance. Further, we believe measuring resident-level SDOH through screening is essential in the long-term in encouraging meaningful collaboration between healthcare providers and community-based organizations, as well as in implementing and evaluating related innovations in health and social care delivery. Analysis of SDOH measures could allow providers to more effectively identify patient needs and identify opportunities for effective partnership with community-based organizations with the capacity to help address those needs. Thorough SDOH measures would also provide a better evidence base for evaluating the effectiveness and appropriateness of health and social care delivery innovations. The SDOH category of standardized patient assessment data elements could provide hospices and policymakers with meaningful measures as we seek to reduce disparities and improve care for beneficiaries with social risk factors. SDOH measures would also permit us to develop the statistical tools necessary to reduce costs and improve the quality of care for all beneficiaries. We note that advancing health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars [17] and a Biden-Harris Administration priority.[18]

CMS reviewed SDOH domains to determine which domains align across post-acute care (PAC) and hospice care settings, circumstances, and setting-specific care goals. CMS identified four SDOH domains that are relevant across the PAC and hospice care setting: housing instability, food insecurity, utility challenges, and barriers to transportation access. These data elements have supported measures of quality in other settings. For example, as of 2023 the Hospital Inpatient Quality Reporting Program mandates reporting on the ''Screening for Social Drivers of Health'' and ''Screen Positive Rate for Social Drivers of Health'' measures.

These SDOH are important to consider for all patients, however they may manifest differently for patients in hospice compared to other care settings. For example, HRSNs such as housing instability and utilities challenges may be especially problematic for hospice patients in home-based hospice care, which comprises most hospice care.[19] In contrast, other HRSNs may seem less relevant for hospice patients but may still influence the end-of-life outcomes in different ways. For example, compared to other settings, food insecurity may not be as common an issue for EOL patients, who typically have reduced needs for food and water. However, caregiver experiences of food insecurity may have important consequences on their ability to carry out their caregiving responsibilities. Therefore, CMS requested input on which of the existing HRSN data collection items outlined below are suitable for the hospice setting, and how they may need to be adapted to be more appropriate for the hospice setting.

[13] See the ''Medicare and Medicaid Programs: CY 2020 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; Home Health Quality Reporting Requirements; and Home Infusion Therapy Requirements'' final rule (84 FR 39151) as an example. In the interim final rule with comment period (IFC) ''Medicare and Medicaid Programs, Basic Health Program and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program'' (85 FR 27550 through 27629), CMS delayed the compliance dates for these standardized patient assessment data under the Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP), Long-Term Care Hospital (LTCH) QRP, Skilled Nursing Facility (SNF) QRP, and the Home Health (HH) QRP due to the public health emergency. In the ''CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID–19 Reporting Requirements for Long-Term Care Facilities'' final rule (86 FR 62240 through 62431), CMS finalized its proposals to require collection of standardized patient assessment data under the IRF QRP and LTCH QRP effective October 1, 2022, and January 1, 2023, for the HH QRP.

[14] The Accountable Health Communities Model is a nationwide initiative established by the Center for Medicare and Medicaid Innovation Center to test innovative payment and service delivery models that have the potential to reduce Medicare, Medicaid, and Children's Health Insurance Program expenditures while maintaining or enhancing the quality of beneficiaries care and was based on emerging evidence that addressing health-related social needs through enhanced clinical-community linkages can improve health outcomes and reduce costs. More information can be found at: *https://www.cms.gov/priorities/innovation/innovation-models/ahcm.*

[15] Centers for Medicare & Medicaid Services. CMS Quality Strategy. 2016. *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf*

[16] American Hospital Association. (2020). Health Equity, Diversity & Inclusion Measures for Hospitals and Health System Dashboards. December 2020. Accessed: January 18, 2022. Available at: *https://ifdhe.aha.org/system/files/media/file/2020/12/ifdhe__inclusion__dashboard.pdf.*

[17] 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.*

[18] The White House. The Biden-Harris Administration Immediate Priorities [website]. *https://www.whitehouse.gov/priorities/*

[19] Tucker-Seeley, R.D., Abel, G.D., Uno, H., & Prigerson, H. (2014). Financial hardship and the intensity of medical care received near death. *Psychooncology,24*(5):572–8. doi:10.1002/pon.3624.

Housing Instability

Healthy People 2030 prioritizes economic stability as a key SDOH, of which housing stability is a component.[20] [21] Lack of housing stability encompasses several challenges, such as having trouble paying rent, overcrowding, moving frequently, or spending the bulk of household income on housing.[22] These experiences may negatively affect physical health and make it harder to access health care. Lack of housing stability can also lead to homelessness, which is housing deprivation in its most severe form. The United States Department of Housing and Urban Development (HUD) defines literal homelessness as ''lacking a fixed regular, and adequate nighttime residence.'' [23] On a single night in 2023, roughly 653,100 people, or 20 out of every 10,000 people in the United States, were experiencing homelessness.[24] Studies also found that newly homeless people have an increased risk of premature death and experience chronic disease more often than among the general population.

The following options were identified as potential complimentary items to collect housing information, in addition to proposed HOPE item A1905—Living Arrangements.

Exhibit I. Potential Items to Screen for Housing Instability in Hospice

Tool	Item	Response Options	Source
Accountable Health Communities Health Related Social Needs (AHC HRSN)	Think about the place you live. Do you have problems with any of the following?	a. Pests such as bugs, ants, or mice b. Mold c. Lead paint or pipes d. Lack of heat e. Oven or stove not working f. Smoke detectors missing or not working g. Water leaks h. None of the above	https://www.cms.gov/priorities/innovation/files/worksheets/ahcm-screeningtool.pdf
Protocol for Responding to & Assessing Patients' Assets, Risks & Experience	Are you worried about losing your housing?	a. Yes b. No c. I choose not to answer this question	https://prapare.org/wp-content/uploads/2023/01/PRAPARE-English.pdf

Food Insecurity

The U.S. Department of Agriculture, Economic Research Service defines a lack of food security as a household-level economic and social condition of limited or uncertain access to adequate food.[25] Food insecurity has been a priority for the Biden-Harris Administration, with the White House recently announcing 141 stakeholder funding commitments to support the White House Challenge to End Hunger and Build Healthy Communities.[26] Adults who are food insecure may be at an increased risk for a variety of negative health outcomes and health disparities. For example, a study found that food-insecure adults may be at an increased risk for obesity.[27] Nutrition security is also an important component that builds on and complements long standing efforts to advance food security. The United States Department of Agriculture (USDA) defines nutrition security as ''consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.'' [28] While having enough food is one of many predictors for health outcomes, a diet low in nutritious foods is also a factor.[29] Studies have shown that older adults struggling with food security consume fewer calories and nutrients and have lower overall dietary quality than those who are food secure, which can put them at nutritional risk. Older adults are also at a higher risk of developing malnutrition, which is considered a state of deficit, excess, or

[20] *https://health.gov/healthypeople/priority-areas/social-determinants-health.*

[21] Healthy People 2030 is a long-term, evidence-based effort led by the U.S. Department of Health and Human Services (HHS) that aims to identify nationwide health improvement priorities and improve the health of all Americans.

[22] Kushel, M.B., Gupta, R., Gee, L., & Haas, J.S. (2006). Housing instability and food insecurity as barriers to health care among low-income Americans. *Journal of General Internal Medicine, 21*(1), 71–77. doi: 10.1111/j.1525-1497.2005.00278.x.

[23] *https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/four-categories/category-1/.*

[24] The 2023 Annual Homeless Assessment Report (AHAR) to Congress. The U.S. Department of Housing and Urban Development 2023. *https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf.*

[25] U.S. Department of Agriculture, Economic Research Service. (n.d.). *Definitions of food security.* Retrieved March 10, 2022, from *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/.*

[26] *https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/27/fact-sheet-the-biden-harris-administration-announces-nearly-1-7-billion-in-new-commitments-cultivated-through-the-white-house-challenge-to-end-hunger-and-build-healthy-communities/.*

[27] Hernandez, D.C., Reesor, L.M., & Murillo, R. (2017). Food insecurity and adult overweight/obesity: Gender and race/ethnic disparities. *Appetite, 117,* 373–378.

[28] Food and Nutrition Security. (n.d.). USDA. *https://www.usda.gov/nutrition-security.*

[29] National Center for Health Statistics. (2022, September 6). Exercise or Physical Activity. Retrieved from Centers for Disease Control and Prevention: *https://www.cdc.gov/nchs/fastats/exercise.htm.*

imbalance in protein, energy, or other nutrients that adversely impacts an individual's own body form, function, and clinical outcomes. Up to 50 percent of older adults are affected by or at risk for malnutrition, which is further aggravated by a lack of food security and poverty.[30]

Exhibit II. Potential Items to Screen for Food Insecurity in Hospice

Tool	Item	Response Options	Source
Health Begins - Upstream Risk Screening Tool	Which of the following describes the amount of food your household has to eat: (Check one.)	a. Enough to eat b. Sometimes not enough to eat c. Often not enough to eat	https://www.aamc.org/media/25736/download
Hunger Vital Sign	1. Within the past 12 months we worried whether our food would run out before we got money to buy more.	a. Often true b. Sometimes true c. Never true	https://childrenshealthwatch.org/public-policy/hunger-vital-sign/
	2. Within the past 12 months the food we bought just didn't last and we didn't have money to get more.	a. Often true b. Sometimes true c. Never true	
Children's HealthWatch	In the past year, have you ever used a Food Pantry/Soup Kitchen or received a food donation?	Yes No	http://childrenshealthwatch.org/public-policy/hunger-vital-sign/

Utility Insecurity

A lack of energy (utility) security can be defined as an inability to adequately meet basic household energy needs.[31] According to the Department of Energy, one in three households in the US are unable to adequately meet basic household energy needs.[32] The consequences associated with a lack of utility security are represented by three primary dimensions: economic, physical, and behavioral. Individuals with low incomes are disproportionately affected by high energy costs, and they may be forced to prioritize paying for housing and food over utilities. Some people may face limited housing options and are at increased risk of living in lower-quality physical conditions with malfunctioning heating and cooling systems, poor lighting, and outdated plumbing and electrical systems. Finally, individuals who lack of utility security may use negative behavioral approaches to cope, such as using stoves and space heaters for heat.[33] In addition, data from the Department of Energy's US Energy Information Administration confirm that a lack of energy security disproportionately affects certain populations, such as low-income and African American households.[34] The effects of a lack of utility security include vulnerability to environmental exposures such as dampness, mold, and thermal discomfort in the home, which have direct effect on residents' health. For example, research has shown associations between a lack of energy security and respiratory conditions as well as mental health–related disparities and poor sleep quality in vulnerable populations such as older adults, children, the socioeconomically disadvantaged, and the medically vulnerable.[35] Adopting a data element to collect information about utility security across PAC settings could facilitate the identification of residents who may not have utility security and who may benefit from engagement efforts.

[30] Food Research & Action Center (FRAC). ''Hunger is a Health Issue for Older Adults: Food Security, Health, and the Federal Nutrition Programs.'' December 2019. *https://frac.org/wp-content/uploads/hunger-is-a-health-issue-for-older-adults-1.pdf.*

[31] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[32] US Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[33] Hernández D. ''What 'Merle' Taught Me About Energy Insecurity and Health.'' Health Affairs, VOL.37, NO.3: Advancing Health Equity Narrative Matters. March 2018. *https://doi.org/10.1377/hlthaff.2017.1413.*

[34] US Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[35] Hernández D. ''Understanding 'energy insecurity' and why it matters to health.'' Soc Sci Med. 2016; 167:1–10.

Exhibit III. Potential Items to Screen for Utility Challenges in Hospice

Tool	Item	Response Options	Source
North Carolina Medicaid Screening Tool	Within the past 12 months, have you been unable to get utilities (heat, electricity) when it was really needed?	Yes No	https://www.ncdhhs.gov/about/department-initiatives/healthy-opportunities/screening-questions
WELL RX Toolkit	Do you have trouble paying for your utilities (gas, electricity, phone)?	Yes No	https://sirenetwork.ucsf.edu/tools-resources/resources/wellrx-toolkit
Health Leads - Social Needs Screening Toolkit	In the last 12 months, has the electric, gas, oil, or water company threatened to shut off your services in your home?	Yes No	https://healthleadsusa.org/wp-content/uploads/2023/05/Screening_Toolkit_2018.pdf

Transportation Needs

Transportation barriers can both directly and indirectly affect a person's health. A lack of transportation can keep patients from accessing medical appointments, getting medications, or from getting things they need daily. It can also affect a person's health by creating a barrier to accessing goods and services, obtaining adequate food and clothing, or attending social activities. Therefore, reliable transportation services are fundamental to a person's health.

Exhibit IV. Potential Items to Screen for Transportation Challenges in Hospice

Tool	Item	Response Options	Source
AHC HRSN	In the past 12 months, has lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?	Yes No	https://www.cms.gov/priorities/innovation/files/worksheets/ahcm-screeningtool.pdf
Borders	Are you regularly able to get a friend or relative to take you to doctor's appointments?	Yes No	https://oaktrust.library.tamu.edu/bitstream/handle/1969.1/6016/etd-tamu-2006A-URSC-Borders.pdf

All Domains

Exhibit V. Potential Items to Screen for All Domains

Tool	Item	Response Options	Source
Kaiser Permanente's Your Current Life Situation Survey	In the past 3 months, did you have trouble paying for any of the following?	a. Food b. Housing c. Heat and electricity d. Medical needs e. Transportation f. Childcare g. Debts h. Other i. None of these	https://sirenetwork.ucsf.edu/sites/default/files/Your%20Current%20Life%20Situation%20Questionnaire%20v2-0%20%28Core%20and%20supplemental%29%20no%20highlights.pdf

We solicited public comment on the following questions:

- For each of the domains:

++ Are these items relevant for hospice patients? Are these items relevant for hospice caregivers?

++ Which of these items are most suitable for hospice?

++ How might the items need to be adapted to improve relevance for hospice patients and their caregivers? Would you recommend adjusting the listed timeframes for any items? Would you recommend revising any of the items' response options?

- Are there additional SDOH domains that would also be useful for identifying and addressing health equity issues in Hospice?

Comment: We received 39 public comments related to the RFI on health equity and SDOH. The majority of commenters were supportive of including sociodemographic and SDOH data to evaluate health equity in the hospice setting. The same majority supported the inclusion of the four proposed domains, while offering insights into what they felt was most relevant within each domain and what additional factors or questions CMS should consider within each domain (for example, for food insecurity, thinking about nutritional supplements for those who no longer consume food in traditional ways; for transportation item, focusing on caregiver transportation needs to enhance their ability to support the beneficiary).

Several commenters expressed concern with how the collected SDOH data will be, or should be, used by hospices. They encouraged CMS to establish clear expectations on how hospices should utilize the data to improve patient care and address patient needs. They felt it was important that the data be used, and not just collected. Similarly, several commenters recommended that SDOH data collection must be coupled with provider education, adequate resources, and community networks that would allow agencies to effectively address SDOH needs, improve quality of care, and achieve health equity. Some commenters also mentioned concerns around the burden associated with collecting this additional data, especially considering the short length of stays many hospice patients experience. There were suggestions to allow the data to be gathered from pre-existing sources, such as EHRs from PCPs or standardized SDOH data elements used in other healthcare settings, as well as allowing the data to be collected through observation, in addition to talking with the patient and/or caregivers.

Other commenters made additional suggestions, such as including the response option, ''I choose not to answer this question,'' for all SDOH questions for those who are reluctant or refuse to answer a question and reducing the time window listed in some questions to allow the hospice provider to pinpoint more pressing needs and to take into account the shorter length of stay of most hospice beneficiaries (for example, considering the past 3 or 6 months rather than the past 12 months). Several commenters also noted that adaptations of the SDOH items may be necessary to account for differences in facility versus home-based hospice care.

Lastly, suggestions for additional domains for consideration included: the presence of a caregiver, economic stability, criminal history, access to a PCP, education levels, preferred language, religion, gender identity, exposure to adverse weather events, safety of foods being consumed (for example, expired goods), home accessibility, and health literacy. A few commenters suggested specific tools, such as the Use of Area Deprivation Index (ADI), a Needs Navigation model, and the Accountable Health Communities Health Related Social Needs Screening Tool.

Response: CMS appreciates all stakeholders' input regarding the potential inclusion of additional SDOH items in HQRP, among other efforts to improve hospice health equity. We will consider this input on the proposed and other recommended potential SDOH items in HQRP as we continue work to develop and work towards implementation of these data elements.

5. CAHPS Hospice Survey and Measure Changes

a. Survey and Measure Changes

In the Fiscal Year 2024 Hospice Payment Rate Update final rule (88 FR 51164), CMS provided the results of a mode experiment conducted with 56 large hospices in 2021. The experiment tested a web-mail mode, modification to survey administration protocols such as adding a prenotification letter and extending the data collection period, and a revised survey version. Because we believe the results of the experiment were successful, we are finalizing changes to the CAHPS Hospice Survey and administrative protocol. The revised survey is shorter and simpler than the current survey and includes new questions on topics suggested by

stakeholders. Specifically, finalized changes to the survey and the quality measures derived from testing include:

- Removal of three nursing home items and an item about moving the family member [36] that are not included in scored measures.
- Removal of one survey item regarding confusing or contradictory information from the Hospice Team Communication measure [37]
- Replacement of the multi-item Getting Hospice Care Training measure [38] with a new, one-item summary measure.
- Addition of two new items, which will be used to calculate a new Care Preferences measure.
- Simplified wording to component items in the Hospice Team Communication, Getting Timely Care, and Treating Family Member with Respect measures.

The revised CAHPS Hospice Survey, including the new Care Preferences measure, the revised Hospice Team Communication measure, and the revised Getting Hospice Care Training measure received endorsement through the Consensus Standards Approval Committee (CSAC) Fall 2022 endorsement and maintenance cycle. Recommendations from the endorsement committee resulted in edits to the Getting Emotional and Religious Support to reflect cultural needs.

The Care Preferences, Hospice Team Communication, and Getting Hospice Care Training measures were on the 2023 Measures Under Consideration list (MUC2023–183, 191 & 192) and evaluated by the Pre-Rulemaking Measure Review (PRMR) Post-Acute Care/Long-Term Care (PAC/LTC) Committee. The Consensus-Based Entity (CBE) utilizes the Novel Hybrid Delphi and Nominal Group (NHDNG) multi-step process, which is an iterative consensus-building approach aimed at a minimum of 75 percent agreement among voting members, rather than a simple majority vote, and supports maximizing the time spent to build consensus by focusing discussion on measures where there is disagreement. The final result from the committee's vote can be: ''Recommend'', ''Recommend with conditions'', ''Do not recommend'' or ''Consensus not reached''. ''Consensus not reached'' signals continued disagreement amongst the committee despite being presented with perspectives from public comment, committee member feedback and discussion, and highlights the multi-faceted assessments of quality measures. The CBE did not reach consensus on the CAHPS Hospice Survey measures. More details regarding the CBE Pre-Rulemaking Measure Review (PRMR) voting procedures may be found in Chapter 4 of the Guidebook of Policies and Procedures for Pre-Rulemaking Measure Review and Measure Set Review.[39]

Comment: Most commenters overwhelmingly supported the changes proposed for the CAHPS Hospice survey, including implementation of a web-mail mode, a shortened and simplified CAHPS Hospice Survey, extension of the field period, and the switch from Telephone Only to Mail Only as the reference mode for mode adjustments. However, many commenters asked that CMS delay the implementation of changes to the CAHPS Hospice Survey questionnaire and survey administration procedures.

Response: CMS appreciates the input and support of all stakeholders regarding the proposed changes. We had proposed that updates to the CAHPS Hospice Survey questionnaire and survey administration procedures, including availability of a new web-mail mode, be implemented with January 2025 decedents. The web-mail mode is optional; hospices do not need to select this mode in the first quarter in which it is available. Rather, hospices may choose to pursue this mode for any future quarter, when they and their EMR vendors are ready to provide caregiver email addresses. The sample frame file layout provided in the Quality Assurance Guidelines currently available on the CAHPS Hospice Survey website (*https://hospicecahpssurvey.org/en/quality-assurance-guidelines/*) includes a variable for caregiver email addresses.

In response to commenters' concerns, CMS is finalizing implementation for April 2025 decedents, allowing hospices and vendors additional time to prepare. Survey vendors will be evaluated as to their readiness to administer the updated CAHPS Hospice Survey, as well as the web-mail mode. Training materials will be made available in early fall 2024; administration for April 2025 decedents is not slated to begin until summer 2025, allowing approximately 10 months for vendors to program and prepare materials. A draft of the updated survey instrument is already available for survey vendor review on the CAHPS Hospice Survey website (*https://www.hospicecahpssurvey.org/globalassets/hospice-cahps4/survey-instruments/revised_cahps-hospice-survey_for-website.pdf*).

CMS is finalizing the decision to implement the revised CAHPS Hospice Survey beginning with April 2025 decedents. Table 14 provides a comparison of the current and proposed CAHPS Hospice Survey measures.

[36] The current version of the CAHPS Hospice Survey is available at: *https://hospicecahpssurvey.org/en/survey-materials/*. The proposed items for removal from this version of the survey are: Questions 32 through 34 (nursing home items), Question 30 (item about moving a family member), Question 10 (item regarding confusing or contradictory information), and Questions 17 through 20, 23, 28, and 29 (screening and evaluative items used to calculate the Getting Hospice Care Training measure).

[37] Ibid.

[31] Ibid.

[39] *https://p4qm.org/sites/default/files/2023-09/Guidebook-of-Policies-and-Procedures-for-Pre-Rulemaking-Measure-Review-%28PRMR%29-and-Measure-Set-Review-%28MSR%29-Final_0.pdf.*

TABLE 14: Comparison of Current and Proposed CAHPS Hospice Survey Measures

Measure	Item(s) in Current Measure	Item(s) in Proposed Revised or New Measure
Getting Timely Care	"How often did you get the help you needed from the hospice team during evenings, weekends, or holidays?"	"How often did you get the help you needed from the hospice team during evenings, weekends, or holidays?"
	"While your family member was in hospice care, when you or your family member asked for help from the hospice team, how often did you get help as soon as you needed it?"	"When you or your family member asked for help from the hospice team, how often did you get help as soon as you needed it?"
Hospice Team Communication	"While your family member was in hospice care, how often did the hospice team keep you informed about when they would arrive to care for your family member?"	"How often did the hospice team let you know when they would arrive to care for your family member?"
	"While your family member was in hospice care, how often did the hospice team explain things in a way that was easy to understand?"	"How often did the hospice team explain things in a way that was easy to understand?"
	"While your family member was in hospice care, how often did the hospice team keep you informed about your family member's condition?"	"How often did the hospice team keep you informed about your family member's condition?"
	"While your family member was in hospice care, how often did anyone from the hospice team give you confusing or contradictory information about your family member's condition or care?"	N/A (removed from revised survey)
	"How often did the hospice team listen carefully to you when you talked with them about problems with your family member's hospice care?"	"How often did the hospice team listen carefully to you when you talked with them about problems with your family member's hospice care?"
	"While your family member was in hospice care, how often did the hospice team listen carefully to you?"	"While your family member was in hospice care, how often did the hospice team listen carefully to you?"
Treating Family Member with Respect	"While your family member was in hospice care, how often did the	"How often did the hospice team treat your family member with dignity and respect?"

Measure	Item(s) in Current Measure	Item(s) in Proposed Revised or New Measure
	hospice team treat your family member with dignity and respect?"	
	"While your family member was in hospice care, how often did you feel that the hospice team really cared about your family member?"	"How often did you feel that the hospice team really cared about your family member?"
Getting Help for Symptoms	"Did your family member get as much help with pain as he or she needed?"	"Did your family member get as much help with pain as they needed?"
	"How often did your family member get the help he or she needed for trouble breathing?"	"How often did your family member get the help they needed for trouble breathing?"
	"How often did your family member get the help he or she needed for trouble with constipation?"	"How often did your family member get the help needed for trouble with constipation?"
	"How often did your family member get the help he or she needed from the hospice team for feelings of anxiety or sadness?"	"How often did your family member get the help they needed from the hospice team for feelings of anxiety or sadness?"
Getting Emotional and Religious Support	"Support for religious or spiritual beliefs includes talking, praying, quiet time, or other ways of meeting your religious or spiritual needs. While your family member was in hospice care, how much support for your religious and spiritual beliefs did you get from the hospice team?"	"Support for religious, spiritual, or cultural beliefs may include talking, praying, quiet time, and respecting traditions. While your family member was in hospice care, how much support for your religious, spiritual, and cultural beliefs did you get from the hospice team?"
	"While your family member was in hospice care, how much emotional support did you get from the hospice team?"	"While your family member was in hospice care, how much emotional support did you get from the hospice team?"
	"In the weeks after your family member died, how much emotional support did you get from the hospice team?"	"In the weeks after your family member died, how much emotional support did you get from the hospice team?"
Getting Hospice Care Training	"Side effects of pain medicine include things like sleepiness. Did any member of the hospice team discuss side effects of pain medicine with you or your family member?"	N/A (removed from revised survey)
	"Did the hospice team give you the training you needed about what side effects to watch for from pain medicine?"	N/A (removed from revised survey)

Measure	Item(s) in Current Measure	Item(s) in Proposed Revised or New Measure
	"Did the hospice team give you the training you needed about if and when to give more pain medicine to your family member?"	N/A (removed from revised survey)
	"Did the hospice team give you the training you needed about how to help your family member if he or she had trouble breathing?"	N/A (removed from revised survey)
	"Did the hospice team give you the training you needed about what to do if your family member became restless or agitated?"	N/A (removed from revised survey)
	N/A (not on current survey)	"Hospice teams may teach you how to care for family members who need pain medicine, have trouble breathing, are restless or agitated, or have other care needs. Did the hospice team teach you how to care for your family member?"
Care preferences	N/A (not on current survey)	"Did the hospice team make an effort to listen to the things that mattered most to you or your family member?"
	N/A (not on current survey)	"Did the hospice team provide care that respected your family member's wishes?"
Overall rating	"Please answer the following questions about your family member's care from the hospice named on the survey cover. Do not include care from other hospices in your answers. Using any number from 0 to 10, where 0 is the worst hospice care possible and 10 is the best hospice care possible, what number would you use to rate your family member's hospice care?"	"Please answer the following questions about the hospice named on the survey cover. Do not include care from other hospices in your answers. Using any number from 0 to 10, where 0 is the worst hospice care possible and 10 is the best hospice care possible, what number would you use to rate your family member's hospice care?"
Willingness to recommend	"Would you recommend this hospice to your friends and family?"	"Would you recommend this hospice to your friends and family?"

Comment: Some commenters requested changes in wording to the proposed new unscored item on unfair treatment because of race or ethnicity, noting that the proposed item uses a frequency response scale that may lead respondents to assume that unfair treatment occurred, and suggesting a broader question that addresses more potential sources of perceived unfair treatment.

Response: CMS thanks the commenters for these suggestions and may consider them in the future. The unfair treatment question included in the proposed updated CAHPS Hospice Survey questionnaire is the version that CMS tested in a 2021 experiment. Given the unique features of hospice and the caregiver respondents to the CAHPS Hospice Survey, CMS generally includes only those survey items that have been tested among hospice caregivers. The frequency response scale (never/sometimes/usually/always) used in the proposed question is parallel to the response scale to many questions on

the CAHPS Hospice Survey. The ''never'' response option allows respondents to indicate that unfair treatment did not occur. In the 2021 experiment, 98.8 percent of respondents selected ''never,'' indicating clearly that respondents did not assume unfair treatment occurred.

Comment: Some commenters requested updates to the questions on race and ethnicity to adhere to the Office of Management and Budget (OMB)'s recently published revised ''Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.''

Response: CMS is currently evaluating the best option for implementing the revised standards for collecting race and ethnicity across all CAHPS surveys. When plans are finalized for implementing the revised standards, we will alert survey vendors and hospices.

Comment: Some commenters requested alignment across of CAHPS surveys in terms of language translations offered. One commenter asked that the web survey be available in multiple languages.

Response: The CAHPS Hospice Survey is available in a wide array of languages commonly spoken in the United States: English, Spanish, Traditional Chinese, Simplified Chinese, Russian, Portuguese, Vietnamese, Polish, and Korean. These translations are made available on the survey website (*https://hospicecahpssurvey.org/en/survey-materials/*); however, some translations have never been administered. We will continue to make additional translations available as additional needs are identified for translations.

Comment: A few commenters suggested additional edits to CAHPS Hospice Survey content, including minor edits to question wording, removal of an item regarding whether the respondent is male or female, and addition of a question about pain medication training.

Response: CMS appreciates commenters' suggestions regarding potential revisions to the questionnaire. The proposed updated CAHPS Hospice Survey questionnaire was drafted and tested in response to stakeholder feedback received over several years. Revisions, including item deletions and additions, were informed by submissions in response to calls for public comment in prior years' of federal rulemaking and by CMS's consensus-based entity, as well as a formal literacy review, a technical expert panel, cognitive interviews, and field testing. CMS is finalizing the updated CAHPS Hospice Survey questionnaire as proposed, to be implemented beginning with April 2025 decedents.

b. Impact to Public Reporting and Star Ratings

CAHPS Hospice Survey measure scores are calculated across eight rolling quarters and are published quarterly for all hospices with 30 or more completed surveys over the reporting period. The Family Caregiver Survey Rating summary Star Rating is also calculated using eight rolling quarters and is publicly reported for all hospices with 75 or more completed surveys over the reporting period. Star Ratings are updated every other quarter. To determine what impact the changes to the survey measures would have on public reporting, CMS considered the nature of the measure change. As ''Care Preferences'' would be a new measure for the CAHPS Hospice Survey, we would have to wait to introduce public reporting until we have eight quarters of data. Although the revised ''Getting Hospice Care Training'' measure would be conceptually similar to the current ''Getting Hospice Care Training'' measure, we believe the change (one summary item instead of several items) is substantive and the revised measure should be treated as new for purposes of public reporting and Star Ratings. As such, we are waiting to publicly report the new version of ''Getting Hospice Care Training'' until we have eight quarters of data. We anticipate that the first Care Compare refresh in which publicly reported measures scores would be updated to include the new measures would be February 2028 (FY 2028), with scores calculated using data from Q2 2025 through Q1 2027. Because measure scores are calculated quarterly and Star Ratings are calculated every other quarter, these changes may be introduced in different quarters for measure scores and Star Ratings. In the interim period, measure scores would be made available to hospices confidentially in their Provider Preview reports once they met a threshold number of completed surveys.

We believe the finalized changes to the ''Hospice Team Communication'' measure (removing one item and slight wording changes) are non-substantive (that is, would not meaningfully change the measure) and that the measure could continue to be publicly reported and used in Star Ratings in the transition period between the current and new surveys. During the transition period, scores and Star Ratings would be calculated by combining scores from quarters using the current and new survey. As a result of the survey measure changes, the Family Caregiver Survey Rating summary Star Rating will be based on seven measures rather than the current eight measures during the interim period until a full eight quarters of data are available for the ''Getting Hospice Care Training'' measure. The summary Star Rating would be based on nine measures once eight quarters of data are available for the new Care Preference and Getting Hospice Care Training measures.

c. Survey Administration Changes

CMS is also finalizing the decision to add a web-mail mode (email invitation to a web survey, with mail follow-up to non-responders); to add a pre-notification letter; and to extend the field period from 42 to 49 days, beginning with April 2025 decedents. The 2021 mode experiment found increases to response rates with these changes to survey administrative protocols. The web-mail mode would be an alternative to the current modes (mail-only, telephone-only, and mixed mode (mail with telephone follow-up)) that hospices could select. In the mode experiment, among those with no available email addresses, response rates to the mail-only and web-mail modes were similar (35.2 percent vs. 34.3 percent); however, among those with available email addresses, adjusted response rates were substantially and significantly different—36.7 percent for mail-only versus 49.6 percent for web-mail—suggesting a notable benefit of the web-mail mode for hospices with available email addresses for some caregivers.

In the mode experiment, we found that mailing a pre-notification letter one week prior to survey administration was associated with an increase in response rates of 2.4 percentage points. We currently require a prenotification letter for the Medicare Advantage and Prescription Drug Plan and the In-center Hemodialysis CAHPS initiatives, so there is precedent for this requirement for CAHPS surveys, and mailing the letter is well within the capabilities of all approved survey vendors.

Comment: Some commenters supported the addition of a prenotification letter as an evidence-based approach to increasing survey response rates, while other commenters noted concerns that a prenotification letter might increase costs to hospices. One commenter suggested that the prenotification letter be sent 14 days prior to survey administration.

Response: Mailed prenotification letters increase response to the first survey mailings, thereby reducing costs

associated with sending a second mailing. CMS anticipates that any increases in cost will be small relative to the anticipated gains in survey response rates expected from the addition of a prenotification letter. In a 2021 experiment, CMS tested a prenotification letter 7 days prior to survey administration and determined that it was both acceptable to caregivers and workable on the current timeline for survey administration and data submission. CMS is finalizing the addition of a prenotification letter to the CAHPS Hospice Survey administration process beginning with April 2025 decedents.

Currently, the CAHPS Hospice Survey is fielded over 42 days; responses that come in after the 42-day window are not included in analysis and scoring. Extending the field period by one week (to 49 days) is feasible within the current national implementation data collection and submission timeline. Our decision to extend the field period to 49 days is estimated to result in an increased response rate of 2.5 percentage points in the mail-only mode, the predominant mode in which CAHPS Hospice Surveys are currently administered.

d. Case-mix and Mode Adjustments

Prior to public reporting, hospices' CAHPS Hospice Survey scores are adjusted for the effects of both mode of survey administration and case mix. Case mix refers to characteristics of the decedent and the caregiver that are not under control of the hospice that may affect reports of hospice experiences. Case-mix adjustment is performed within each quarter of data after data cleaning and mode adjustment. The current case-mix adjustment model includes the following variables: response percentile (the lag time between patient death and survey response), decedent's age, payer for hospice care, decedent's primary diagnosis, decedent's length of final episode of hospice care, caregiver's education, decedent's relationship to caregiver, caregiver's preferred language and language in which the survey was completed, and caregiver's age. CMS reviewed the variables included in the case-mix adjustment models currently in use for the CAHPS Hospice Survey to determine if any changes needed to be introduced along with the revised survey and new mode. We found that no case-mix variables need to be added or removed.

With the introduction of a new mode of survey administration and survey items, CMS finalizes the decision to update the analytic adjustments that adjust responses for the effect of mode on survey responses. When we make mode adjustments, it is necessary to choose one mode as a reference mode. One can then interpret all adjusted responses from all modes as if they had been surveyed in the reference mode. Telephone-only is currently the reference mode for the CAHPS Hospice Survey. We are finalizing the decision to change the reference mode to mail-only. In the 2015 CAHPS Hospice Survey mode experiment, telephone-only respondents had consistently worse scores than mail-only respondents across measures. However, in the 2021 mode experiment, differences in scores between mail-only and telephone-only respondents were no longer in a consistent direction across measures. Given this, we are finalizing the decision to use mail-only as the reference mode beginning with April 2025 decedents as most surveys are currently completed in the mail-only mode.

Comment: Several commenters recommended that CMS add race and ethnicity to the case-mix adjustment model to reflect that hospices vary with regard to the proportion of their patients who are members of traditionally underserved communities.

Response: CMS is committed to scoring CAHPS Hospice Survey measures in a manner that allows for fair comparison between hospices, regardless of the populations they serve. Case-mix adjustment must account for factors outside of hospices' control that affect how caregivers respond to the CAHPS Hospice Survey. Given disagreement about whether and how to directly adjust for race and ethnicity, CMS instead adjusts CAHPS Hospice Survey measures for factors that are often associated with race and ethnicity. These include markers of socioeconomic status, such as caregiver education and payer for hospice care; preferred language, which has been shown to be associated with systematic differences in response; response percentile, which considers differential likelihood of response across hospices; and length of stay, a care pattern which in some instances may be associated with differential care preferences across racial and ethnic groups.

Comment: A commenter suggested that length of stay should be considered in analysis of CAHPS Hospice Survey data, noting that very short lengths of stay can influence survey responses.

Response: CMS agrees that length of stay is an important consideration; for this reason, caregivers of decedents who received hospice care for less than 48 hours are not eligible for the CAHPS Hospice Survey, and length of stay is one of the variables used in case-mix adjustment of CAHPS Hospice Survey measure scores.

Comment: Several commenters requested that CMS conduct an analysis of the effects of updates to the CAHPS Hospice Survey questionnaire and administration procedures on the Hospice Special Focus Program (SFP) algorithm.

Response: CMS has specified four CAHPS Hospice Survey measures for use in calculating the SFP algorithm. These measures, Help for Pain and Symptoms, Getting Timely Help, Willingness to Recommend this Hospice, and Overall Rating of this Hospice, are not undergoing substantive changes in the proposed update of the CAHPS Hospice Survey questionnaire (that is, no survey items are being removed from, replaced, or added to these measures). CMS adjusts measure scores for mode of survey administration, so the introduction of a new mode should not impact measure scores. All changes to the survey instrument and administration procedures will be introduced at the same time for all hospices, so it should affect their scores equally; therefore, changes are not expected to differentially impact any hospices' performance on the SFP algorithm.

6. Form, Manner, and Timing of Quality Measure Data Submission

a. Statutory Penalty for Failure To Report

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act was amended by the CAA, 2021 and the payment reduction for failing to meet hospice quality reporting requirements was increased from 2 percent to 4 percent beginning with FY 2024. During FYs 2014 through 2023, the Secretary reduced the market basket update by 2 percentage points for non-compliance. Beginning in FY 2024 and for each subsequent year, the Secretary will reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality measure data submission requirements for that FY. In the FY 2023 Hospice Wage Index final rule (87 FR 45669), we revised our regulations at § 418.306(b)(2) in accordance with this statutory change (86 FR 42605).

b. HOPE Data Collection

Hospices will be required to begin collecting and submitting HOPE data as of October 1, 2025. After this effective date, hospices will no longer be required to collect or submit the Hospice Item Set (HIS).

Hospices will begin the use of HOPE in October 2025 and submit HOPE assessments to the CMS data submission and processing system in the required format designated by CMS (as set out in subregulatory guidance. At the time of implementation (that is, October 2025), all HOPE records will need to be submitted as an XML file, which is also the required format for the HIS. The format is subject to change in future years as technological advancements occur and healthcare provider use of electronic records increases, as well as systems become more interoperable.

We will provide the HOPE technical data specifications for software developers and vendors on the CMS website. Software developers and vendors should not wait for final technical data specifications to begin development of their own products. Rather, software developers and vendors are encouraged to thoroughly review the draft technical data specifications and provide feedback to CMS so we may address potential issues adequately and in a timely manner. We will conduct a call with software developers and vendors after the draft specifications are posted, during which we will respond to questions, comments, and suggestions. This process will ensure software developers and vendors are successful in developing their products to better support the successful implementation of HOPE for all parties. Hospice providers will need to use vendor software to submit HOPE records to CMS. As with HIS, facilities that fail to submit at least 90 percent of all required HOPE assessments to CMS will be subject to a 4 percent reduction. See ''Submission of Data Requirements'' section below for additional information.

c. Retirement of Hospice Abstraction Reporting Tool (HART)

In 2014, CMS made a free tool (Hospice Abstraction Reporting Tool, or HART) available which providers could use to collect HIS data. Over time we observed that only a small percentage of hospices utilized the tool. Therefore, in light of the limited utility the free tool provided, we will no longer provide a free tool for standardized data collection. Beginning October 1, 2025, hospices will need to select a private vendor to collect and submit HOPE data to CMS.

d. Compliance

HQRP Compliance requires understanding three timeframes for both HIS and CAHPS: The relevant Reporting Year; the payment FY; and the Reference Year.

(1) The 'Reporting Year'' (HIS) or 'Data Collection Year'' (CAHPS) is based on the calendar year (CY). It is the same CY for both HIS (or HOPE, once it is implemented) and CAHPS. If the CAHPS Data Collection year is CY 2025, then the HIS (or HOPE) reporting year is also CY 2025.

(2) In the ''Payment FY'', the APU is subsequently applied to FY payments based on compliance in the corresponding Reporting Year/Data Collection Year.

(3) For the CAHPS Hospice Survey, the Reference Year is the CY before the Data Collection Year. The Reference Year applies to hospices submitting a size exemption from the CAHPS survey (there is no similar exemption for HIS or HOPE). For example, for the CY 2025 data collection year, the Reference Year is CY 2024. This means providers seeking a size exemption for CAHPS in CY 2025 will base it on their hospice size in CY 2024.

Submission requirements are codified at 42 CFR 418.312. Table 15 summarizes the three timeframes. It illustrates how the CY interacts with the FY payments, covering the CY 2023 through CY 2026 data collection periods and the corresponding APU application from FY 2025 through FY 2028. Please note that during the first reporting year that implements HOPE, APUs may be based on fewer than four quarters of data. CMS will provide additional subregulatory guidance regarding APUs for the HOPE implementation year.

TABLE 15: HQRP Reporting Requirements and Corresponding Annual Payment Updates

Reporting Year for HIS/HOPE and Data Collection Year for CAHPS data (Calendar year)	Annual Payment Update Impacts Payments for the FY	Reference Year for CAHPS Size Exemption (CAHPS only)
CY 2023	FY 2025 APU	CY 2022
CY 2024	FY 2026 APU	CY 2023
CY 2025	FY 2027 APU	CY 2024
CY 2026	FY 2028 APU	CY 2025

As illustrated in Table 15 CY 2023 data submissions compliance impacts the FY 2025 APU. CY 2024 data submissions compliance impacts the FY 2026 APU. CY 2025 data submissions compliance impacts FY 2027 APU. This CY data submission impacting FY APU pattern follows for subsequent years.

e. Submission of Data Requirements

As finalized in the FY 2016 Hospice Wage Index final rule (80 FR 47142, 47192), hospices' compliance with HIS requirements beginning with the FY 2020 APU determination (that is, based on HIS—Admission and Discharge records submitted in CY 2018) are based on a timeliness threshold of 90 percent. This means CMS requires that hospices

submit 90 percent of all required HIS records within 30 days of the event (that is, patient's admission or discharge). The 90-percent threshold is hereafter referred to as the timeliness compliance threshold. Ninety percent of all required HIS records must be submitted and accepted within the 30-day submission deadline to avoid the statutorily-mandated payment penalty.

We will apply the same submission requirements for HOPE admission, discharge, and two HUV records. After HIS is phased out, hospices will continue to submit 90 percent of all required HOPE records to support the quality measures within 30 days of the event or completion date (patient's admission, discharge, and based on the patient's length of stay up to two HUV timepoints.

Hospice compliance with claims data requirements is based on administrative data collection. Since Medicare claims data are already collected from claims, hospices are considered 100 percent compliant with the submission of these data for the HQRP. There is no additional submission requirement for administrative data.

To comply with CMS' quality reporting requirements for CAHPS, hospices are required to collect data monthly using the CAHPS Hospice Survey. Hospices comply by utilizing a CMS-approved third-party vendor. Approved Hospice CAHPS vendors must successfully submit data on the hospice's behalf to the CAHPS Hospice Survey Data Center. A list of the approved vendors can be found on the CAHPS Hospice Survey website: *www.hospicecahpssurvey.org.*

Table 16. HQRP Compliance Checklist illustrates the APU and timeliness threshold requirements.

TABLE 16: HQRP Compliance Checklist

Annual payment update	HIS/HOPE	CAHPS
FY 2025	Submit at least 90 percent of all HIS records within 30 days of the event date (for example patient's admission or discharge) for patient admissions/discharges occurring 1/1/23-12/31/23	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2023-12/31/2023
FY 2026	Submit at least 90 percent of all HIS records within 30 days of the event date (for example, patient's admission or discharge) for patient admissions/discharges occurring 1/1/24-12/31/24	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2024-12/31/2024
FY 2027	Submit at least 90 percent of all HIS/HOPE records within 30 days of the event date (for example, patient's admission or discharge) for patient admissions/discharges occurring 1/1/25-12/31/25	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2025-12/31/2025
FY 2028	Submit at least 90 percent of all HIS/HOPE records within 30 days of the event or completion date (for example, patient's admission date, HUV completion date or discharge date) for patient admissions/discharges occurring 1/1/26-12/31/26	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2026-12/31/2026

Note: The data source for the claims-based measures will be Medicare claims data that are already collected and submitted to CMS. There is no additional submission requirement for administrative data (Medicare claims), and hospices with claims data are 100-percent compliant with this requirement.

Most hospices that fail to meet HQRP requirements do so because they miss the 90 percent threshold. We offer many training and education opportunities through our website, which are available 24/7, 365 days per year, to enable hospice staff to learn at the pace and time of their choice. We want hospices to be successful with meeting the HQRP requirements. We encourage hospices to use the website at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Quality-Reporting-Training-Training-and-Education-Library.* For more information about HQRP Requirements, we refer readers to visit the frequently-updated HQRP website and especially the Requirements and Best Practice, Education and Training Library, and Help Desk web pages at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting.* We also encourage readers to visit the HQRP web page and sign-up for the Hospice Quality ListServ to stay informed about HQRP.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, 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. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 required 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 solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. Hospice Outcomes & Patient Evaluation (HOPE)

As finalized in section III. of this final rule, we are using HOPE to collect QRP information through revisions to § 418.312(b). We are also finalizing the requirement of HOPE as a hospice patient-level item set to be used by all hospices to collect and submit standardized data on each patient admitted to hospice. The OMB control number will remain 0938–1153. HOPE will be used to support the standardized collection of the requisite data elements to calculate quality measures being utilized by the QRP. Hospices will be required to complete and submit an admission HOPE and a discharge HOPE collecting a range of status data (set out in the PRA accompanying this Rule, as well as the HOPE Guidance Manual finalized in this Rule) for each patient, as well as a HOPE Update Visit assessment, when applicable, starting October 1, 2025, for FY 2027 APU determination.

CMS data indicates that approximately 5,640 hospices enroll approximately 2,763,850 patients in hospice annually.

According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2022 (see *http://www.bls.gov/oes/current/oes_nat.htm),* the median hourly wage for Registered Nurses is $39.05 and the mean hourly wage for Medical Secretaries is $18.51. With fringe benefits and overhead, the total per hour rate for Registered Nurses is $78.10, and the total per hour rate for Medical Secretaries is $37.02. The foregoing wage figures are outlined in Table 17:

TABLE 17: National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Median hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Registered Nurse	29-1141	$39.05	$39.05	$78.10
Medical Secretary	43-6013	$18.51	$18.51	$37.02

The annual time and cost burden for HOPE is calculated by determining the number of hours spent on each HOPE timepoint and using an average salary for nurses and medical secretaries to determine the average cost of the time spent on the assessment.

The total number of Medicare-participating hospices (5,640) and the total number of admissions per year (2,763,850) are gathered from claims data collected by CMS. Based on these claims data, we determined that there are approximately 490 admissions per hospice per year. We then use data from previous HIS item timings and HOPE beta testing to determine the average time to complete the three HOPE timepoints. The time-to-complete is then calculated for each HOPE timepoint for nurses (clerical staff are assumed to take 5 minutes per timepoint to upload data). HOPE Admission is estimated to take 27 minutes for a nurse to complete relative to HIS, the new HOPE HUV is estimated to take 22 minutes for a nurse to complete, and 5 minutes for clerical staff to upload data and HOPE Discharge is estimated to take 0 minutes to complete. Together, these burden increases represent a 54-minute increase per assessment (22 + 27 + 5 = 54 minutes). We also note that, due to the addition of the HUV timepoints, hospices will submit an estimated 2,763,850 additional HOPE assessments (one HUV assessment per admission).

By multiplying the average time-to-complete with the number of records for a timepoint, we determine the average increase in burden hours spent for both nurses and clinical staff annually (Admission: 1,243,733 hours, HUV: 1,243,733 hours, Discharge: 0 hours).

For additional information regarding the calculation of HOPE time and cost burdens, please refer to the HOPE Beta Testing Report found on the HOPE web page at *https://www.cms.gov/medicare/quality/hospice/hope* and the PRA package associated with this rule found at *https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pra-listing.*

To calculate the cost burden, we multiply hospice staff wages by the amount of time those staff need to spend administering HOPE. We use the most recent hourly wage data for Registered Nurses ($39.05 per hour) and Medical Secretaries ($18.51 per hour) from the U.S. Bureau of Labor Statistics. These wages are doubled to account for fringe benefits ($78.10 for Registered Nurses, $37.02 for Medical Secretaries). Nurse and Medical Secretary wages are then calculated separately by multiplying time spent on timepoints with the number of HOPE records with the average wages (for example: 49 clinical minute increase on HOPE × 490 HOPE records per year/60 minutes × $78.10 = $31,253.02 nursing wages spent per hospice per year). The calculations for each of these hospice staff disciplines are added together to determine the total cost burden increase per hospice.

Based on these calculations, we estimate that our proposal would therefore result in an incremental increase of 2,487,466-hour annual burden (1,243,733 hours for HOPE Admissions, 1,243,733 hours for HOPE Update Visits, and 0 hours for HOPE Discharges) at a cost of $184,792,739. The total cost burden per hospice ($32,764.67) is calculated by adding the total clinical cost ($31,253.02,) with the total clerical staff cost burden (5 minutes × 490 HOPE Records per each hospice per year/60 minutes per hour × $37.02 per hour = $1,511.65). This leads to a cost burden of $184, 792,739 across all hospices ($32,764.67 per hospice × 5,640 hospices). Table 18 provides the summary of changes in burden relative to the new HOPE Admission, Update Visit and Discharge timepoints. We received public comments that expressed concerns about the anticipated incremental burden the new measures will add to hospices. This increase in incremental burden is explained further in the Regulatory Impact Analysis (RIA) section of this Rule, and is also discussed in detail in the Information Collection Request and PRA accompanying this Rule.

TABLE 18: Summary of Changes in Burden

Regulation Section(s)	Number of Respondents	Number of Responses (per year)	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting ($)	Total Cost ($)
HOPE Admission Timepoint	5,640	2,763,850	Clinician: 0.45 Clerical: 0	Clinician: 1,243,733 Clerical: 0	Clinician at $78.10 per hour; Clerical staff at $37.02 per hour	$97,135,547
HUV Timepoint	5,640	2,763,850	Clinician: 0.37 Clerical: 0.083	Clinician: 1,013,411 Clerical: 230,321	Clinician at $78.10 per hour; Clerical staff at $37.02 per hour	$87,657,192
HOPE Discharge Timepoint	5,640	2,763,850	Clinician: 0 Clerical: 0	Clinician: 0 Clerical: 0	Clinician at $78.10 per hour; Clerical staff at $37.02 per hour	$0
TOTAL IMPACT	**5,640**	**2,763,850**	**Clinician: 0.82 Clerical: 0.083**	**Clinician: 2,257,144 Clerical: 230,321**	**Clinician at $78.10 per hour; Clerical staff at $37.02 per hour**	**$184,792,739**

Numbers may not add due to rounding.

B. Amendment of HQRP Data Completeness Thresholds

The amended HQRP data completeness thresholds reflect the same thresholds which have been applied to the HQRP since the FY 2018 Hospice final rule as they relate to HIS. As such, this requirement does not impose any additional completeness or timeliness burden on hospices for the forthcoming fiscal year.

V. Regulatory Impact Analysis

A. Statement of Need

1. Hospice Payment

This final rule meets the requirements of our regulations at § 418.306(c) and (d), which require annual issuance, in the **Federal Register**, of the Hospice Wage Index based on the most current available CMS hospital wage data, including any changes to the definitions of CBSAs or previously used Metropolitan Statistical Areas (MSAs), as well as any changes to the methodology for determining the per diem payment rates. This final rule updates the payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2025 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act.

2. Quality Reporting Program

This final rule updates the requirements for HQRP to use a new standardized patient assessment tool, HOPE, which is more comprehensive than the previous HIS and includes new data elements and a new time point. These changes will allow HQRP to reflect a more consistent and holistic view of each patient's hospice election. This new reporting instrument will collect data that supports current and newly finalized quality measures included in this rule and potential future quality measures. The new HOPE data elements are not only collected by chart abstraction but in real-time to adequately assess patients based on the hospice's interactions with the patient and family/caregiver, accommodate patients with varying clinical needs, and provide additional information to contribute to the patient's care plan throughout the hospice stay (not just at admission and discharge).

B. Overall Impacts

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 14094 on Modernizing Regulatory Review (April 6, 2023), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (CRA) (5 U.S.C. 804(2)).

Executive Orders 12866 (as amended by E.O. 14094) and E.O. 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 14094 amends 3(f) of Executive Order 12866 to define a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $200 million or more in any 1 year, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creates a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive Order.

A regulatory impact analysis (RIA) must be prepared for a regulatory action that is significant section 3(f)(1). Based on our estimates, OMB'S Office of Information and Regulatory Affairs has determined this rulemaking is significant under section 3(f)(1) of E.O. 12866. Accordingly, we have prepared a regulatory impact analysis presents the costs and benefits of the rulemaking to the best of our ability. Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), OIRA has also determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

1. Hospice Payment

The aggregate impact of the payment provisions in this final rule will result in an estimated increase of $790 million in payments to hospices, resulting from the finalized hospice payment update percentage of 2.9 percent for FY 2025. The impact analysis of this rule represents the projected effects of the changes in hospice payments from FY 2024 to FY 2025. Using the most recent complete data available at the time of rulemaking, in this case FY 2023 hospice claims data as of May 09, 2024, we simulate total payments using the FY 2024 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, and old OMB delineations with the 5-percent cap on wage index decreases) and FY 2024 payment rates and compare it to our simulation of total payments using FY 2023 utilization claims data, the final FY 2025 Hospice Wage Index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the revised OMB delineations with a 5-percent cap on wage index decreases) and FY 2024 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2024 wage index and payment rates for each level of care by the final FY 2025 wage index and FY 2024 payment rates, we obtain a wage index standardization factor for each level of care. We apply the wage index standardization factors so that the aggregate simulated payments do not increase or decrease due to changes in the wage index.

Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time- period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

2. Hospice Quality Reporting Program

As finalized in section III of this final rule, we are requiring implementation of a hospice patient-level item set to be used by all hospices to collect and submit standardized data on each patient admitted to hospice. Based on the cost estimates provided in the Collection of Information section, we are finalizing an annual cost burden of $184,729,739 across all hospices ($32,764.67 per hospice × 5,640 hospices) starting in FY 2026.

TABLE 19: Summary of Burden Hours and Costs*

Regulation Section(s)	Number of Respondents	Number of Responses (per year)	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting ($)	Total Cost ($)
HOPE Admission Timepoint	5,640	2,763,850	Clinician: 0.45 Clerical: 0	Clinician: 1,243,733 Clerical: 0	Clinician at $78.10 per hour; Clerical staff at $37.02 per hour	$97,135,547
HUV Timepoints	5,640	2,763,850	Clinician: 0.37 Clerical: 0.083	Clinician: 1,013,411 Clerical: 230,321	Clinician at $78.10 per hour; Clerical staff at $37.02 per hour	$87,657,192
HOPE Discharge Timepoint	5,640	2,763,850	Clinician: 0 Clerical: 0	Clinician: 0 Clerical: 0	Clinician at $78.10 per hour; Clerical staff at $37.02 per hour	$0
TOTAL IMPACT	**5,640**	**2,763,850**	**Clinician: 0.82 Clerical: 0.083**	**Clinician: 2,257,144 Clerical: 230,321**	**Clinician at $78.10 per hour; Clerical staff at $37.02 per hour**	**$184,792,739**

Numbers may not add due to rounding.

Our final analysis will therefore result in a 2,487,466 -hour annual burden (1,243,733 hours for HOPE Admissions, 1,243,733 hours for HOPE Update Visits, and 0 hours for HOPE Discharges). The total cost burden per hospice ($32,764.67) is calculated by adding the total nursing cost with the total clerical staff cost burden. This leads to a cost burden of $184, 792,739 across all hospices ($32,764.67 per hospice × 5,640 hospices). This burden is also discussed in detail below and as part of an accompanying PRA submission.

C. Detailed Economic Analysis

1. Hospice Payment Update for FY 2025

The FY 2025 hospice payment impacts appear in Table 20. We tabulate the resulting payments according to the classifications (for example, provider type, geographic region, facility size), and compare the difference between current and future payments to determine the overall impact. The first column shows the breakdown of all hospices by provider type and control (non-profit, for-profit, government, other), facility location, and facility size. The second column shows the number of hospices in each of the categories in the first column. The third column shows the effect of using the FY 2025 updated wage index data and moving from the old OMB delineations to the new revised OMB delineations with a 5-percent cap on wage index decreases. The aggregate impact of the changes in column three is zero percent, due to the hospice wage index standardization factors. However, there are distributional effects of using the FY 2025 hospice wage index. The fourth column shows the effect of the hospice payment update percentage as mandated by section 1814(i)(1)(C) of the Act and is consistent for all providers. The hospice payment update percentage of 2.9 percent is based on the 3.4 percent inpatient hospital market basket percentage increase reduced by a final 0.5 percentage point productivity adjustment. The fifth column shows the total effect of the updated wage data and the hospice payment update percentage on FY 2025 hospice payments. As illustrated in Table 20, the combined effects vary by specific types of providers and by location. We note that simulated payments are based on utilization in FY 2023 as seen on Medicare hospice claims (accessed from the CCW on May 09, 2024) and only include payments related to the level of care and do not include payments related to the service intensity add-on.

As illustrated in Table 20, the combined effects vary by specific types of providers and by location.

TABLE 20: Impact to Hospices for FY 2025

Hospice Subgroup	Hospices	FY 2025 Updated Wage Data and Revised OMB Delineations	FY 2025 Hospice Payment Update (%)	Overall Total Impact for FY 2025
All Hospices	6,073	0.0%	2.9%	2.9%
Hospice Type and Control				
Freestanding/Non-Profit	551	0.2%	2.9%	3.1%
Freestanding/For-Profit	4,028	0.0%	2.9%	2.9%
Freestanding/Government	37	-0.7%	2.9%	2.2%
Freestanding/Other	362	-0.2%	2.9%	2.7%
Facility/HHA Based/Non-Profit	317	-0.7%	2.9%	2.2%
Facility/HHA Based/For-Profit	190	0.0%	2.9%	2.9%
Facility/HHA Based/Government	71	0.2%	2.9%	3.1%
Facility/HHA Based/Other	84	-0.9%	2.9%	2.0%
Subtotal: Freestanding Facility Type	4,978	0.1%	2.9%	3.0%
Subtotal: Facility/HHA Based Facility Type	662	-0.5%	2.9%	2.4%
Subtotal: Non-Profit	868	0.0%	2.9%	2.9%
Subtotal: For Profit	4,221	0.0%	2.9%	2.9%
Subtotal: Government	108	-0.2%	2.9%	2.7%
Subtotal: Other	446	-0.3%	2.9%	2.6%
Hospice Type and Control: Rural				
Freestanding/Non-Profit	124	0.0%	2.9%	2.9%
Freestanding/For-Profit	351	0.3%	2.9%	3.2%
Freestanding/Government	22	-0.2%	2.9%	2.7%
Freestanding/Other	55	0.4%	2.9%	3.3%
Facility/HHA Based/Non-Profit	118	0.2%	2.9%	3.1%
Facility/HHA Based/For-Profit	52	0.5%	2.9%	3.4%
Facility/HHA Based/Government	55	0.3%	2.9%	3.2%
Facility/HHA Based/Other	46	0.0%	2.9%	2.9%
Hospice Type and Control: Urban				
Freestanding/Non-Profit	427	0.2%	2.9%	3.1%
Freestanding/For-Profit	3,677	0.0%	2.9%	2.9%
Freestanding/Government	15	-0.9%	2.9%	2.0%
Freestanding/Other	307	-0.2%	2.9%	2.7%
Facility/HHA Based/Non-Profit	199	-0.9%	2.9%	2.0%
Facility/HHA Based/For-Profit	138	0.0%	2.9%	2.9%
Facility/HHA Based/Government	16	0.2%	2.9%	3.1%
Facility/HHA Based/Other	38	-1.1%	2.9%	1.8%

Hospice Subgroup	Hospices	FY 2025 Updated Wage Data and Revised OMB Delineations	FY 2025 Hospice Payment Update (%)	Overall Total Impact for FY 2025
Hospice Location: Urban or Rural				
Rural	826	0.3%	2.9%	3.2%
Urban	5,247	0.0%	2.9%	2.9%
Hospice Location: Region of the Country (Census Division)				
New England	148	-1.6%	2.9%	1.3%
Middle Atlantic	280	-0.7%	2.9%	2.2%
South Atlantic	607	1.0%	2.9%	3.9%
East North Central	606	0.1%	2.9%	3.0%
East South Central	252	0.9%	2.9%	3.8%
West North Central	417	-0.1%	2.9%	2.8%
West South Central	1,154	0.5%	2.9%	3.4%
Mountain	610	1.5%	2.9%	4.4%
Pacific	1,951	-1.9%	2.9%	1.0%
Outlying	48	-1.6%	2.9%	1.3%
Hospice Size				
0 - 3,499 RHC Days (Small)	1,494	-1.1%	2.9%	1.8%
3,500-19,999 RHC Days (Medium)	2,738	-0.3%	2.9%	2.6%
20,000+ RHC Days (Large)	1,841	0.1%	2.9%	3.0%

Source: FY 2023 hospice claims data from CCW accessed on May 9, 2024.
Note: The overall total impact reflects the addition of the individual impacts, which includes the wage index impact, new OMB delineations, as well as the 2.9% hospice payment update percentage.

Due to missing Provider of Services file information (from which hospice characteristics are obtained), some subcategories in the impact tables have fewer agencies represented than the overall total (of 6,073). Subtypes involving ownership only add up to 5,643 while subtypes involving facility type only add up to 5,640.
Region Key:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central=Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming
Pacific= Alaska, California, Hawaii, Oregon, Washington
Outlying=Guam, Puerto Rico, Virgin Islands

2. Impacts for the Hospice Quality Reporting Program for FY 2025

The HQRP requires the active collection under OMB control number #0938–1153 (CMS 10390; expiration 01/31/2026) of the Hospice Items Set (HIS) and CAHPS® Hospice Survey (OMB control number 0938–1257 (CMS–10537; 07/31/2026). Failure to submit data required under section 1814(i)(5) of the Act with respect to a CY will result in the reduction of the annual market basket percentage increase otherwise applicable to a hospice for that calendar year.

Once adopted, the federal government will incur costs related to the transition from HIS to HOPE. These costs will include provider training, preparation of HOPE manuals and materials, receipt and storage of data, data analysis, and upkeep of data submission software. There are costs associated with the maintenance and upkeep of a CMS-sponsored web-based program that hospice providers would use to submit their HOPE data. In addition, the Federal government will also incur costs for help-desk support that must be provided to assist hospices with the data submission process. There will also be costs associated with the transmission, analysis, processing, and storage of the hospice data by CMS contractors.

Also, pursuant to section 1814(i)(5)(A)(i) of the Act, hospices that do not submit the required QRP data would receive a 4 percentage point reduction of the annual market basket increase. The federal government will incur additional costs associated with aggregation and analysis of the data necessary to determine provider compliance with the reporting requirements for any given fiscal year.

The total annual cost to the federal government for the implementation and ongoing management of HOPE data is estimated to be $1,583,500. As this number is the same as the current final costs to the federal government associated with HIS, HOPE implementation and ongoing maintenance would not incur additional annual costs.

The costs to hospice providers associated with HOPE are calculated as follows:

Part 1. Time Burden

Estimated Number of Admissions and Records per Hospice

	Admissions/Records	Hospices	Per Year		Per 3 Years
Admissions	2,763,850	5,640	490		1,470
Total HOPE Records (Admission, HUV, Discharge)	8,291,550	5,640	1,470		4,410

Estimated Number of Admissions and Records for all Hospices

	Admissions/Records	Hospices		Per 3 Years
Admissions	2,763,850	5,640		8,291,550
Total HOPE Records (Admission, HUV, Discharge)	8,291,550	5,640		24,874,650

Estimated HOPE Burden Hours per Year, by Time Point

Burden Hours per year (HOPE Admission)			
Discipline	**Records**	**Hours**	**Total time**
Clinical	2,763,850	0.45 (27 minutes)	1,243,733 hours
Clerical	2,763,850	0 (0 minutes)	0 hours
Total (HOPE Admission)			**1,243,733 hours**
Burden Hours per year (HOPE HUV)			
Discipline	**Records**	**Hours**	**Total time**
Clinical	2,763,850	0.37 (22 minutes)	1,013,411 hours
Clerical	2,763,850	0.083 (5 minutes)	230,321 hours
Total (HOPE HUV)			**1,243,733 hours**
Burden Hours per year (HOPE Discharge)			
Discipline	**Records**	**Hours**	**Total time**
Clinical	2,763,850	0 (0 minutes)	0 hours
Clerical	2,763,850	0 (0 minutes)	0 hours
Total (HOPE Discharge)			**0 hours**

Part 2. Cost/Wage Calculation

Note that this analysis of HOPE costs presents rounded inputs for each calculation and based on the incremental increase of burden from the HIS timepoints. The actual calculations were performed using unrounded inputs, so the outputs of each equation shown may vary slightly from what would be expected from the rounded inputs.

Time for All Hospices

Discipline	**Hours**	**Records**	**Total time**
Nursing	0.82 (49 minutes)	2,763,850	2,257,144 hours
Administrative Assistant	0.08 (5 minutes)	2,763,850	230,321 hours
Total			**2,487,465 hours**

TABLE 21: Aggregate Cost Calculations

Aggregate Annual Cost Per Hospice			
Discipline	**Hours**	**Wages**	**Total cost**
Clinical	400.17	$78.10	$31,253.02
Clerical	40.83	$37.02	$1,511.65
Total			**$32,764.67**
Aggregate Annual Cost For All Hospice Providers			
Discipline	**Hours**	**Wages**	**Total cost**
Clinical	2,257,144	$78.10	$176,282,998
Clerical	230,321	$37.02	$8,526,477
Total			**$184,792,739**
Aggregate 3-Year Cost Per Hospice Provider			
Discipline	**Hours**	**Wages**	**Total cost**
Clinical	1205.4	$78.10	$93,760
Clerical	117.6	$37.02	$4,534
Total			$98,294
Aggregate 3-Year Cost For All Hospice Providers.			
Discipline	**Hours**	**Wages**	**Total cost**
Clinical	6,711,432	$78.10	$528,848,994
Clerical	690,963	$37.02	$25,579,431
Total			**$554,428,425**

Additional details regarding these costs and calculations are available in the FY 2025 PRA package.

In addition, the transition from HIS to HOPE may result in other clinical and administrative time to hospice providers. However, as illustrated above the incremental burden assumes that hospices are providing in-person visits as part of their regular update to the plan of care, and anticipated patient needs for pain and symptom management (42 CFR 418.54 and 418.56) beyond meeting the requirement for quality reporting data collection (42 CFR 418.312). This assumption is supported by HOPE testing and hospice provider and TEP feedback throughout the HOPE development process. CMS acknowledges that we have not in this rule quantified the costs associated beyond the time necessary to gather and submit assessment instrument data. However, based on public comments, we will monitor the burden of in-person follow-up visits after HOPE implementation and its implications to quality of care, as noted above.

3. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review this rule, we assume that the total number of unique commenters on this year's proposed rule will be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this final 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 the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this final rule. We received no comments on the approach to estimating the number of entities that will review this final rule. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the occupational wage information from the BLS for medical and health service managers (Code 11–9111); we estimate that the cost of reviewing this rule is $129.28 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). This final rule consists of approximately 53,138 words. Assuming an average reading speed we estimate that it would take approximately 1.76 hour for staff to review half of this final rule. For each hospice that reviews the rule, the estimated cost is $227.53 (1.76 hours × $129.28). Therefore, we estimate that the total cost of reviewing this regulation is $25,028 ($227.53 × 110 reviewers).

D. Alternatives Considered

1. Hospice Payment

For the FY 2025 Hospice Wage Index and Rate Update final rule, we considered alternatives to the proposals articulated in section III.A of this final rule. We considered not proposing to adopt the OMB delineations listed in OMB Bulletin 23–01; however, we have historically adopted the latest OMB delineations in subsequent rulemaking after a new OMB Bulletin is released.

Since the hospice payment update percentage is determined based on statutory requirements, we did not consider alternatives to updating the hospice payment rates by the hospice payment update percentage. The final 2.9 percent hospice payment update percentage for FY 2025 is based on a 3.4 percent inpatient hospital market basket percentage increase for FY 2025, reduced by a 0.5 percentage point productivity adjustment. Payment rates since FY 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent years must be the market basket percentage increase for that FY. Section 3401(g) of the Affordable Care Act also mandates that, starting with FY 2013 (and in subsequent years), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. For FY 2025, since the hospice payment update percentage is determined based on statutory requirements at section 1814(i)(1)(C) of the Act, we did not consider alternatives for the hospice payment update percentage.

2. Hospice Quality Reporting Program

CMS considered proposing the HOPE instrument with more items, including data collection about the treatment and activities provided by multiple disciplines (such as medical social workers (MSW) and chaplains). However, CMS ultimately omitted those additional items, and is only finalizing HOPE with items deemed relevant to current and planned quality measurement and public reporting activities.

CMS considered proposing that hospices only need to collect HOPE data during one HUV rather than two. CMS considered changing the data submission requirement from thirty (30) days to fifteen (15) days. However, CMS determined that such a change would provide minimal benefit at this time while also being disruptive to hospice providers and this was not proposed or finalized.

E. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf*), in Table 22, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. Table 22 provides our best estimate of the possible changes in Medicare payments under the hospice benefit as a result of the policies in this rule. This estimate is based on the data for 6,044 hospices in our impact analysis file, which was constructed using FY 2023 claims (accessed from the CCW on May 09, 2024). All expenditures are classified as transfers to hospices. Also, Table 22 also provides the impact costs associated with the Hospice Quality Reporting Program starting FY 2026.

TABLE 22: Accounting Statement
Classification of Estimated Transfers and Costs

Hospice Payment Update	**FY 2024 to FY 2025**
Category	**Transfers**
Annualized Monetized Transfers	$790 million*
From Whom to Whom?	Federal Government to Medicare Hospices
Hospice Quality Reporting Program	**FY 2026 to FY 2029**
Category	**Costs**
Annualized Costs	$185 million (2% Discount Rate)

*The increase of $790 million in transfer payments is a result of the 2.9 percent hospice payment update compared to payments in FY 2024.

F. Regulatory Flexibility Act (RFA)

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 jurisdictions. We consider all hospices as small entities as that term is used in the RFA. The North American Industry Classification System (NAICS) was adopted in 1997 and is the current standard used by the Federal statistical agencies related to the U.S. business economy. There is no NAICS code specific to hospice services. Therefore, we utilized the NAICS U.S. industry title ''Home Health Care Services'' and corresponding NAICS code 621610 in determining impacts for small entities. The NAICS code 621610 has a size standard of $19 million.[40] Table 23 shows the number of firms, revenue, and estimated impact per home health care service category.

[40] Ibid INK ''*https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards__Effective%20March%2017%2C%202023%20%281%29%20%281%29__0.pdf https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards__Effective%20March%2017%2C%202023%20%281%29%20%281%29__0.pdf* .''

TABLE 23: NUMBER OF FIRMS, REVENUE, AND ESTIMATED IMPACT OF HOME HEALTH CARE SERVICES BY NAICS CODE 621610

NAICS Code	NAICS Description	Enterprise Size	Number of Firms	Receipts ($1,000)	Estimated Impact ($1,000) per Enterprise Size
621610	Home Health Care Services	<100	5,861	210,697	$35.95
621610	Home Health Care Services	100-499	5,687	1,504,668	$264.58
621610	Home Health Care Services	500-999	3,342	2,430,807	$727.35
621610	Home Health Care Services	1,000-2,499	4,434	7,040,174	$1,587.77
621610	Home Health Care Services	2,500-4,999	1,951	6,657,387	$3,412.29
621610	Home Health Care Services	5,000-7,499	672	3,912,082	$5,821.55
621610	Home Health Care Services	7,500-9,999	356	2,910,943	$8,176.81
621610	Home Health Care Services	10,000-14,999	346	3,767,710	$10,889.34
621610	Home Health Care Services	15,000-19,999	191	2,750,180	$14,398.85
621610	Home Health Care Services	≥20,000	961	51,776,636	$53,877.87
621610	Home Health Care Services	Total	23,801	82,961,284	$3,485.62

Source: Data obtained from United States Census Bureau table "us_6digitnaics_rcptsize_2017" (SOURCE: 2017 County Business Patterns and Economic Census) Release Date: 5/28/2021: https://www2.census.gov/programs-surveys/susb/tables/2017/
Notes: Estimated impact is calculated as Receipts ($1,000)/Number of firms.

The Department of Health and Human Services' practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of hospice visits are Medicare paid visits, and therefore the majority of hospice's revenue consists of Medicare payments. Based on our analysis, we conclude that the policies finalized in this rule would result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of hospices. Therefore, the Secretary has certified that this hospice final rule would have significant economic impact on a substantial number of small entities. We estimate that the net impact of the policies in this rule is 2.9 percent or approximately $790 million in increased revenue to hospices in FY 2025. The 2.9 percent increase in expenditures when comparing FY 2024 payments to estimated FY 2025 payments is reflected in the last column of the first row in Table 20 and is driven solely by the impact of the hospice payment update percentage reflected in the fourth column of the impact table. In addition, small hospices will experience a lower estimated increase (1.8 percent), compared to large hospices (3.0 percent) due to the final updated wage index. Further detail is presented in Table 20 by hospice type and location.

We estimate that the new impact of the HQRP data collection requirements would be $32,764.81 per hospice. While small hospices will incur the same data collection impact as all other hospices, we recognize that the impact value is likely to represent a larger percentage of small provider costs. HOPE already minimizes the burden that Information Collection Requests (ICRs) place on the provider. The type of quality data specified for participation in the HQRP is already currently collected by hospices as part of their patient care processes.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a MSA and has fewer than 100 beds. This rule will only affect hospices. Therefore, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals (see Table 19).

G. Unfunded Mandates 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 2024, that threshold is approximately $183 million. This rule will have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of $183 million or more in any 1 year.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this rule under these criteria of Executive Order 13132 and have determined that it will not impose substantial direct costs on State or local governments.

I. Conclusion

The aggregate payments to hospices in FY 2025 will increase by $790 million as a result of the hospice payment update, compared to payments in FY 2024. We estimate that in FY 2025, hospices in urban areas would experience, on average, a 2.9 percent increase in estimated payments compared to FY 2024; while hospices in rural areas would experience, on average, a 3.2 percent increase in estimated payments compared to FY 2024. Hospices providing services in the Mountain region would experience the largest estimated increases in payments of 4.4 percent. Hospices serving patients in the Pacific region will experience, on average, the lowest estimated increase of 1.0 percent in FY 2025 payments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services,

approved this document on July 23, 2024.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 418 as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 418.22 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 418.22 Certification of terminal illness.

* * * * *

(c) * * *

(1) * * *

(i) The medical director of the hospice, the physician designee (as defined in § 418.3), or the physician member of the hospice interdisciplinary group; and

* * * * *

■ 3. Section 418.24 is amended by—

■ a. Revising paragraphs (a) and (b)(3);

■ b. Redesignating paragraphs (e) through (h) as paragraphs (f) through (i), respectively; and

■ c. Adding paragraph (e).

The revisions and addition read as follows:

§ 418.24 Election of hospice care.

(a) *Election statement.* An individual who meets the eligibility requirement of § 418.20 may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative (as defined in § 418.3) may file the election statement.

(b) * * *

(3) Acknowledgement that the individual has been provided information on the hospice's coverage responsibility and that certain Medicare services, as set forth in paragraph (g) of this section, are waived by the election. For Hospice elections beginning on or after October 1, 2020, this would include providing the individual with information indicating that services unrelated to the terminal illness and related conditions are exceptional and unusual and hospice should be providing virtually all care needed by the individual who has elected hospice.

* * * * *

(e) *Notice of election.* The hospice chosen by the eligible individual (or his or her representative) must file the Notice of Election (NOE) with its Medicare contractor within 5 calendar days after the effective date of the election statement.

(1) *Consequences of failure to submit a timely notice of election.* When a hospice does not file the required Notice of Election for its Medicare patients within 5 calendar days after the effective date of election, Medicare will not cover and pay for days of hospice care from the effective date of election to the date of filing of the notice of election. These days are a provider liability, and the provider may not bill the beneficiary for them.

(2) *Exception to the consequences for filing the NOE late.* CMS may waive the consequences of failure to submit a timely-filed NOE specified in paragraph (e)(1) of this section. CMS will determine if a circumstance encountered by a hospice is exceptional and qualifies for waiver of the consequence specified in paragraph (e)(1) of this section. A hospice must fully document and furnish any requested documentation to CMS for a determination of exception. An exceptional circumstance may be due to, but is not limited to, the following:

(i) Fires, floods, earthquakes, or similar unusual events that inflict extensive damage to the hospice's ability to operate.

(ii) A CMS or Medicare contractor systems issue that is beyond the control of the hospice.

(iii) A newly Medicare-certified hospice that is notified of that certification after the Medicare certification date, or which is awaiting its user ID from its Medicare contractor.

(iv) Other situations determined by CMS to be beyond the control of the hospice.

■ 4. Section 418.25 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 418.25 Admission to hospice care.

(a) The hospice admits a patient only on the recommendation of the medical director (or the physician designee, as defined in § 418.3) in consultation with, or with input from, the patient's attending physician (if any).

(b) In reaching a decision to certify that the patient is terminally ill, the hospice medical director (or the physician designee, as defined in § 418.3) must consider at least the following information:

* * * * *

■ 5. Section 418.102 is amended by revising the introductory paragraph, paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 418.102 Condition of participation: Medical director.

The hospice must designate a physician to serve as medical director. The medical director must be a doctor of medicine or osteopathy who is an employee or is under contract with the hospice. When the medical director is not available, a physician designee as defined at § 418.3 assumes the same responsibilities and obligations as the medical director.

* * * * *

(b) *Standard: Initial certification of terminal illness.* The medical director (or physician designee, as defined in § 418.3, if the medical director is unavailable) or physician member of the IDG reviews the clinical information for each hospice patient and provides written certification that it is anticipated that the patient's life expectancy is 6 months or less if the illness runs its normal course. The physician must consider the following when making this determination:

* * * * *

(c) *Standard: Recertification of the terminal illness.* Before each recertification period for each patient, as described in § 418.21(a), the medical director (or physician designee, as defined in § 418.3, if the medical director is unavailable) or physician member of the IDG must review the patient's clinical information.

* * * * *

■ 6. Section 418.114 is amended by revising paragraph (b)(9) to read as follows:

§ 418.114 Condition of participation: Personnel qualifications.

* * * * *

(b) * * *

(9) Marriage and family therapist as defined at § 410.53.

* * * * *

§ 418.309 [Amended]

■ 7. Section 418.309 is amended in paragraphs (a)(1) and (2) by removing ''2032'' and adding in its place ''2033''.

■ 8. Section 418.312 is amended by revising paragraph (b)(1) to read as follows:

§ 418.312 Data submission requirements under the hospice quality reporting program.

* * * * *

(b) * * *

(1) Hospices are required to complete and submit a standardized set of items for each patient to capture patient-level data, regardless of payer or patient age. The standardized set of items must be completed no less frequently than at

admission, the hospice update visit (HUV), and discharge, as directed in the associated guidance manual and required by the Hospice Quality Reporting Program. Definitions for changes in patient condition that warrant updated assessment, as well as the data elements to be completed for each applicable change in patient condition, are to be provided in sub-regulatory guidance for the current standardized hospice instrument.

* * * * *

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–16910 Filed 7–30–24; 4:15 pm]

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2025 and Updates to the IRF Quality Reporting Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1804–F]

RIN 0938–AV31

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2025 and Updates to the IRF Quality Reporting Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final action.

SUMMARY: This final action updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2025. As required by statute, this final action includes the classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2025. We are updating the Office of Management and Budget (OMB) market area delineations for the IRF prospective payment system (PPS) wage index and applying a 3-year phase-out of the rural adjustment. This rule also includes updates for the IRF Quality Reporting Program (QRP).

DATES: This final action is effective on October 1, 2024.

Applicability dates: The updated IRF prospective payment rates are applicable for IRF discharges occurring on or after October 1, 2024, and on or before September 30, 2025 (FY 2025).

FOR FURTHER INFORMATION CONTACT:

Patricia Taft, (410)–786–4561, for general information.

Kim Schwartz, (410) 786–2571, for information about the IRF payment policies, payment rates and coverage policies.

Ariel Cress, (410) 786–8571, for information about the IRF quality reporting program.

I. Executive Summary

A. Purpose

This final rule updates the prospective payment rates for IRFs for FY 2025 (that is, for discharges occurring on or after October 1, 2024, and on or before September 30, 2025) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this final rule includes the classification and weighting factors for the IRF PPS's case-mix groups (CMGs), a description of the methodologies and data used in computing the prospective payment rates for FY 2025, and revised OMB core-based statistical area delineations from the July 21, 2023, OMB Bulletin (No. 23–01) for the IRF PPS wage index.

For the IRF QRP, this rule finalizes the collection of four new items as standardized patient assessment data elements and the modification of one item collected as a standardized patient assessment data element, in the IRF-Patient Assessment Instrument (IRF–PAI) beginning with the FY 2028 IRF QRP. This final rule also finalizes a proposal with modification to remove one assessment item from the IRF–PAI. In addition, this final rule provides a summary of the information received on our Request for Information on quality measure concepts for the IRF QRP in future years and an IRF star rating system.

B. Summary of Major Provisions

In this final rule, we use the methods described in the FY 2024 IRF PPS final rule (88 FR 50956) to update the prospective payment rates for FY 2025 using updated FY 2023 IRF claims and the most recent available IRF cost report data, which is FY 2022 IRF cost report data. We also use the revised OMB market area delineations from the July 21, 2023, OMB Bulletin (No. 23–01) for the IRF PPS wage index, and apply a 3-year phase-out of the rural adjustment for those IRFs changing from rural to urban.

For the IRF QRP, we are finalizing four new items as standardized patient assessment data elements that IRFs must collect and submit using the IRF–PAI beginning with the FY 2028 IRF QRP: one item for Living Situation, two items for Food, and one item for Utilities. We are also finalizing our proposal to modify the current Transportation item beginning with the FY 2028 IRF QRP. Additionally, we are finalizing with modification our proposal to remove Item 14. Admission Class from the IRF–PAI. Finally, in the proposed rule, we sought input from interested parties on future IRF QRP quality measure concepts and an IRF star rating system and are providing a summary of the comment we received.

C. Summary of Impact

TABLE 1—COST AND BENEFIT

Provision description	Transfers/costs
FY 2025 IRF PPS payment rate update.	The overall economic impact of this final rule is an estimated $280 million in increased payments from the Federal Government to IRFs during FY 2025.
FY 2028 IRF QRP changes.	The overall economic impact of this final rule is an estimated increase in cost to IRFs of $392,113.40 beginning with the FY 2028 IRF QRP.

II. Background

A. Statutory Basis and Scope for IRF PPS Provisions

Section 1886(j) of the Act provides for the implementation of a per-discharge PPS for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. A complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880) and we provided a general description of the IRF PPS for FYs 2007 through 2019 in the FY 2020 IRF PPS final rule (84 FR 39055 through 39057). A general description of the IRF PPS for FYs 2020 through 2024, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS.*

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct CMGs, as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a

factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166), we are finalizing a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area market definitions; modifications to the CMGs, tier comorbidities; and CMG relative weights, implementation of a new teaching status adjustment for IRFs; rebasing and revising the market basket used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule.

In response to COVID–19 Public Health Emergency (PHE), we published two interim final rules with comment period affecting IRF payment and conditions for participation. The interim final rule with comment period (IFC) entitled ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency,'' published on April 6, 2020 (85 FR 19230) (hereinafter referred to as the April 6, 2020 IFC), included certain changes to the IRF PPS medical supervision requirements at 42 CFR 412.622(a)(3)(iv) and 412.29(e) during the PHE for COVID–19. In addition, in the April 6, 2020 IFC, we removed the post-admission physician evaluation requirement at § 412.622(a)(4)(ii) for all IRFs during the PHE for COVID–19. In the FY 2021 IRF PPS final rule, to ease documentation and administrative burden, we permanently removed the post-admission physician evaluation documentation requirement at § 412.622(a)(4)(ii) beginning in FY 2021.

A second IFC, entitled ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program,'' was published on May 8, 2020 (85 FR 27550) (hereinafter referred to as the May 8, 2020 IFC). Among other changes, the May 8, 2020 IFC included a waiver of the ''3-hour rule'' at § 412.622(a)(3)(ii) to reflect the waiver required by section 3711(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, enacted on March 27, 2020). In the May 8, 2020 IFC, we also modified certain IRF coverage and classification requirements for freestanding IRF hospitals to relieve acute care hospital capacity concerns in States (or regions, as applicable) experiencing a surge during the PHE for COVID–19. In addition to the policies adopted in our IFCs, we responded to the PHE with numerous blanket waivers [1] and other flexibilities,[2] some of which are applicable to the IRF PPS. CMS finalized these policies in the Calendar Year 2023 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems final rule with comment period (87 FR 71748). Subsequently, on May 11, 2023, the U.S. Department of Health and Human Services (''HHS'') declared the expiration of the COVID–19 public health emergency. (See *https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*) As a result, the ''3-hour rule'' waiver at § 412.622(a)(3)(ii), and other IRF flexibilities were terminated.

The regulatory history previously included in each rule or notice issued under the IRF PPS, including a general description of the IRF PPS for FYs 2007 through 2024, is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS.*

B. Provisions of the Affordable Care Act and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Affecting the IRF PPS in FY 2012 and Beyond

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final

[1] CMS, ''COVID–19 Emergency Declaration Blanket Waivers for Health Care Providers,'' (updated Feb. 19, 2021) (available at *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf*).

[2] CMS, ''COVID–19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing,'' (updated March 5, 2021) (available at *https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf*).

rule, we refer to the two statutes collectively as the ''Affordable Care Act'' or ''ACA''.

The ACA included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the ACA also added section 1886(j)(3)(C)(ii)(I) of the Act (providing for a ''productivity adjustment'' for FY 2012 and each subsequent FY). The productivity adjustment for FY 2025 is discussed in section V.D. of this final rule. Section 1886(j)(3)(C)(ii)(II) of the Act provides that the application of the productivity adjustment to the market basket update may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY.

Section 3004(b) of the ACA and section 411(b) of the MACRA (Pub. L. 114–10, enacted on April 16, 2015) also addressed the IRF PPS. Section 3004(b) of ACA reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) of the Act and inserted a new section 1886(j)(7) of the Act, which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction to the market basket increase factor otherwise applicable to an IRF (after application of paragraphs (C)(iii) and (D) of section 1886(j)(3) of the Act) for a FY if the IRF does not comply with the requirements of the IRF QRP for that FY. Application of the 2-percentage point reduction may result in an update that is less than 0.0 for a FY and in payment rates for a FY being lower than payment rates for the preceding FY. Reporting-based reductions to the market basket increase factor are not cumulative; they only apply for the FY involved. Section 411(b) of the MACRA amended section 1886(j)(3)(C) of the Act by adding paragraph (iii), which required us to apply for FY 2018, after the application of section 1886(j)(3)(C)(ii) of the Act, an increase factor of 1.0 percent to update the IRF prospective payment rates.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule (66 FR 41316), upon the admission and discharge of a Medicare Part A fee-for-service (FFS) patient, the IRF is required to complete the appropriate sections of a Patient Assessment Instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each Medicare Advantage (MA) patient, as described in the FY 2010 IRF PPS final rule (74 FR 39762) and the FY 2010 IRF PPS correction notice (74 FR 50712). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a five-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last four characters are numeric characters that represent the distinct CMG number. A free download of the Grouper software is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.* The Grouper software is also embedded in the internet Quality Improvement and Evaluation System (iQIES) User tool available in iQIES at *https://www.cms.gov/medicare/quality-safety-oversight-general-information/iqies.*

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, enacted on August 21, 1996) compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA) (Pub. L. 107–105, enacted on December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once a MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit to their MAC an informational-only bill (type of bill (TOB) 111) that includes Condition Code 04. This will ensure that the MA days are included in the hospital's Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for FY 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amended section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the ''Medicare Program; Electronic Submission of Medicare Claims'' final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at *https://www.cms.gov/manuals/downloads/clm104c25.pdf.*

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR part 160 and part 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at *https://www.cms.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600.)

The MAC processes the claim through its software system. This software system includes pricing programming called the ''Pricer'' software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

III. Summary of Provisions of the Final Rule

In this FY 2025 IRF PPS final rule, we are finalizing our proposal to update the IRF PPS for FY 2025 and the IRF QRP for FY 2028.

The finalized policy changes and updates to the IRF prospective payment rates for FY 2025 will be as follows:

- Update the CMG relative weights and average length of stay values for FY 2025, in a budget neutral manner, as discussed in section IV.
- Update the IRF PPS payment rates for FY 2025 by the market basket increase factor, based upon the most current data available, with a productivity adjustment required by section 1886(j)(3)(C)(ii)(I) of the Act, as described in section V.
- Update the FY 2025 IRF PPS payment rates by the FY 2025 wage index, describe the adoption of the revised OMB market area delineations, the phase-out of the rural adjustment for those IRFs changing from rural to urban, and the labor related share in a budget-neutral manner, as discussed in section V.
- Describe the calculation of the IRF standard payment conversion factor for FY 2025, as discussed in section V.
- Update the outlier threshold amount for FY 2025, as discussed in section VI.
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2025, as discussed in section VI.

The finalized policy changes and updates to the IRF QRP for FY 2028 will be as follows:

- Adoption of four items as standardized patient assessment data elements and modification of one item currently collected as a standardized patient assessment data element in the IRF–PAI.
- Remove Item 14. Admission Class item from the IRF–PAI.
- Summarize comments received on the request for information on IRF QRP quality measure and concepts.
- Summarize comments received on the request for information on an IRF QRP star rating system.

IV. Analysis of and Responses to Public Comments

We received 44 timely responses from the public, many of which contained multiple comments on the FY 2025 IRF PPS proposed rule (89 FR 22246). We received comments from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting firms. The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses.

A. General Comments on the FY 2025 IRF PPS Proposed Rule

In addition to the comments we received on specific proposals contained within the proposed rule (which we address later in this final rule), commenters also submitted more general observations on the IRF PPS and IRF care generally.

Comment: We received several comments that were outside the scope of the FY 2025 IRF PPS proposed rule. Specifically, we received comments regarding updates to the facility-level adjustments (for example, teaching, LIP, and rural); the removal of physician-centric language from regulatory text; the inclusion of recreational therapy in the IRF intensity of therapy requirement; the consequences of increased Medicare Advantage participation for IRFs and Medicare Advantage (MA) payment adjustments; disclosures of ownership and additional disclosable parties' information in the skilled nursing facility setting; and applicability of the IPPS low wage index policy for the IRF PPS wage index.

Response: We thank the commenters for bringing these issues to our attention, and we will take these comments into consideration for potential policy refinements or direct the comments to the appropriate subject matter experts.

V. Updates to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay (ALOS) Values for FY 2025

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed for an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this final rule, we update the CMG relative weights and ALOS values for FY2025. Typically, we use the most recent available data to update the CMG relative weights and ALOS values. For FY 2025, we are using the FY 2023 IRF claims and FY 2022 IRF cost report data. These data are the most current and complete data available at this time. Currently, only a small portion of the FY 2023 IRF cost report data is available for analysis, but the majority of the FY 2023 IRF claims data are available for analysis.

In the FY 2025 IRF PPS proposed rule, we proposed that if more recent data became available after the publication of the proposed rule and before the publication of the final rule, we would use such data to determine the FY 2025 CMG relative weights and ALOS values in this final rule.

We proposed to apply these data using the same methodologies that we have used to update the CMG relative weights and ALOS values each FY since we implemented an update to the methodology. The detailed cost to charge ratio (CCR) data from the cost reports of IRF provider units of primary acute care hospitals is used for this methodology, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process to calculate the CMG relative weights for this final rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in Step 1.

Step 3. We use the adjusted costs from Step 2 to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2025 CMG relative weights using a normalization factor that results in the average CMG relative weights in FY 2025 being the same as the average CMG relative weights in the FY 2024 IRF PPS final rule (88 FR 50956).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we are updating the CMG relative weights for FY 2025 in such a way that total estimated aggregate payments to IRFs for FY 2025 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2025 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY

2025 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2025 by applying the changes to the CMG relative weights (as discussed in this final rule).

Step 3. Divide the amount calculated in Step 1 by the amount calculated in Step 2 to determine the budget neutrality factor of 0.9976 that would maintain the same total estimated aggregate payments in FY 2025 with and without the changes to the final CMG relative weights.

Step 4. Apply the budget neutrality factor from Step 3 to the FY 2025 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V. of this final rule, we discuss the use of the existing methodology to calculate the standard payment conversion factor for FY 2025.

In Table 2, ''Relative Weights and Average Length of Stay Values for Case Mix Groups,'' we present the CMGs, the comorbidity tiers, the corresponding relative weights, and the ALOS values for each CMG and tier for FY 2025. The ALOS for each CMG is used to determine when an IRF discharge meets the definition of a short stay transfer, which results in a per diem case level adjustment.

TABLE 2: Relative Weights and Average Length of Stay Values for the Case Mix-Groups

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comor-bidity Tier	Tier 1	Tier 2	Tier 3	No Comor-bidity Tier
0101	Stroke M >=72.50	0.9790	0.8491	0.7759	0.7394	10	10	9	8
0102	Stroke M >=63.50 and M <72.50	1.2423	1.0774	0.9845	0.9383	11	11	11	10
0103	Stroke M >=50.50 and M <63.50	1.6012	1.3887	1.2690	1.2093	14	15	13	13
0104	Stroke M >=41.50 and M <50.50	2.0435	1.7722	1.6195	1.5434	17	17	16	16
0105	Stroke M <41.50 and A >=84.50	2.5553	2.2161	2.0251	1.9300	22	22	20	20
0106	Stroke M <41.50 and A <84.50	2.9064	2.5206	2.3034	2.1951	24	24	23	23
0201	Traumatic brain injury M >=73.50	1.0198	0.8399	0.7629	0.7182	9	10	8	8
0202	Traumatic brain injury M >=61.50 and M <73.50	1.3336	1.0984	0.9976	0.9393	12	12	11	10
0203	Traumatic brain injury M >=49.50 and M <61.50	1.6608	1.3679	1.2424	1.1697	14	15	13	13
0204	Traumatic brain injury M >=35.50 and M <49.50	2.0598	1.6966	1.5409	1.4508	18	17	16	15
0205	Traumatic brain injury M <35.50	2.6385	2.1731	1.9738	1.8583	29	22	19	18
0301	Non-traumatic brain injury M >=65.50	1.1987	0.9590	0.8810	0.8303	10	10	9	9
0302	Non-traumatic brain injury M >=52.50 and M <65.50	1.5498	1.2400	1.1390	1.0735	13	12	12	11
0303	Non-traumatic brain injury M >=42.50 and M <52.50	1.8648	1.4919	1.3705	1.2917	15	15	14	14
0304	Non-traumatic brain injury M <42.50 and A >=78.50	2.1621	1.7298	1.5890	1.4977	20	17	16	15
0305	Non-traumatic brain injury M <42.50 and A <78.50	2.3845	1.9077	1.7524	1.6517	20	19	17	16
0401	Traumatic spinal cord injury M >=56.50	1.2060	1.0725	1.0411	0.9460	13	11	11	11
0402	Traumatic spinal cord injury M >=47.50 and M <56.50	1.5554	1.3832	1.3427	1.2201	16	14	14	13
0403	Traumatic spinal cord injury M >=41.50 and M <47.50	1.9519	1.7358	1.6850	1.5311	18	17	17	17
0404	Traumatic spinal cord injury M <31.50 and A <61.50	3.0476	2.7102	2.6309	2.3906	23	31	24	23
0405	Traumatic spinal cord injury M >=31.50 and M <41.50	2.4236	2.1553	2.0922	1.9011	27	21	21	21
0406	Traumatic spinal cord injury M >=24.50 and M <31.50 and A >=61.50	3.0925	2.7501	2.6696	2.4258	27	31	26	25
0407	Traumatic spinal cord injury M <24.50 and A >=61.50	4.2278	3.7597	3.6497	3.3163	42	39	33	36
0501	Non-traumatic spinal cord injury M >=60.50	1.2699	0.9879	0.9333	0.8600	11	11	10	10
0502	Non-traumatic spinal cord injury M >=53.50 and M <60.50	1.5931	1.2393	1.1709	1.0789	16	12	12	12
0503	Non-traumatic spinal cord injury M >=48.50 and M <53.50	1.8261	1.4206	1.3421	1.2368	15	14	14	13
0504	Non-traumatic spinal cord injury M >=39.50 and M <48.50	2.1707	1.6887	1.5954	1.4702	19	17	16	16
0505	Non-traumatic spinal cord injury M <39.50	3.0163	2.3466	2.2169	2.0429	26	23	22	20
0601	Neurological M >=64.50	1.3287	0.9948	0.9287	0.8376	10	10	10	9
0602	Neurological M >=52.50 and M <64.50	1.6853	1.2618	1.1779	1.0623	13	12	12	11
0603	Neurological M >=43.50 and M <52.50	1.9858	1.4867	1.3879	1.2517	15	14	13	13
0604	Neurological M <43.50	2.4904	1.8645	1.7406	1.5698	20	17	16	16
0701	Fracture of lower extremity M >=61.50	1.2542	0.9702	0.9191	0.8492	12	11	10	9
0702	Fracture of lower extremity M >=52.50 and M <61.50	1.5492	1.1984	1.1352	1.0488	13	13	12	11
0703	Fracture of lower extremity M >=41.50 and M <52.50	1.9051	1.4737	1.3960	1.2898	16	15	14	14
0704	Fracture of lower extremity M <41.50	2.3273	1.8003	1.7054	1.5756	19	18	17	16

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0801	Replacement of lower-extremity joint M >=63.50	1.2157	0.9755	0.8894	0.8295	10	10	9	9
0802	Replacement of lower-extremity joint M >=57.50 and M <63.50	1.3783	1.1060	1.0083	0.9404	11	11	10	10
0803	Replacement of lower-extremity joint M >=51.50 and M <57.50	1.5341	1.2310	1.1223	1.0468	12	12	11	11
0804	Replacement of lower-extremity joint M >=42.50 and M <51.50	1.7187	1.3791	1.2574	1.1727	14	14	13	12
0805	Replacement of lower-extremity joint M <42.50	2.0613	1.6540	1.5080	1.4065	16	16	15	14
0901	Other orthopedic M >=63.50	1.2017	0.9625	0.8971	0.8208	10	10	9	9
0902	Other orthopedic M >=51.50 and M <63.50	1.4967	1.1988	1.1173	1.0223	12	12	12	11
0903	Other orthopedic M >=44.50 and M <51.50	1.7873	1.4315	1.3343	1.2208	14	14	13	13
0904	Other orthopedic M <44.5	2.1416	1.7153	1.5988	1.4628	17	17	16	15
1001	Amputation lower extremity M >=64.50	1.2110	1.0015	0.9149	0.8196	11	11	10	9
1002	Amputation lower extremity M >=55.50 and M <64.50	1.5341	1.2687	1.1590	1.0383	14	14	12	11
1003	Amputation lower extremity M >=47.50 and M <55.50	1.7974	1.4865	1.3579	1.2166	15	15	14	13
1004	Amputation lower extremity M <47.50	2.3011	1.9031	1.7384	1.5575	19	19	17	16
1101	Amputation non-lower extremity M >=58.50	1.2650	1.0169	1.0169	0.9964	10	11	12	11
1102	Amputation non-lower extremity M >=52.50 and M <58.50	1.6083	1.2928	1.2928	1.2667	13	14	14	13
1103	Amputation non-lower extremity M <52.50	2.0056	1.6122	1.6122	1.5796	17	14	17	14
1201	Osteoarthritis M >=61.50	1.3277	1.0094	0.9464	0.8652	11	10	9	10
1202	Osteoarthritis M >=49.50 and M <61.50	1.6074	1.2220	1.1458	1.0475	13	11	11	11
1203	Osteoarthritis M <49.50 and A >=74.50	2.0824	1.5831	1.4844	1.3570	16	17	15	14
1204	Osteoarthritis M <49.50 and A <74.50	2.1837	1.6602	1.5566	1.4231	17	15	16	13
1301	Rheumatoid other arthritis M >=62.50	1.0905	0.9016	0.8606	0.8006	10	9	10	8
1302	Rheumatoid other arthritis M >=51.50 and M <62.50	1.4906	1.2325	1.1765	1.0944	13	12	12	12
1303	Rheumatoid other arthritis M >=44.50 and M <51.50 and A >=64.50	1.6958	1.4022	1.3384	1.2451	15	13	13	13
1304	Rheumatoid other arthritis M <44.50 and A >=64.50	2.1416	1.7707	1.6902	1.5724	16	17	16	16
1305	Rheumatoid other arthritis M <51.50 and A <64.50	2.0509	1.6957	1.6186	1.5058	17	14	14	16
1401	Cardiac M >=68.50	1.1285	0.8890	0.8266	0.7606	10	9	9	8
1402	Cardiac M >=55.50 and M <68.50	1.4312	1.1275	1.0483	0.9646	12	12	11	10
1403	Cardiac M >=45.50 and M <55.50	1.7512	1.3796	1.2827	1.1803	14	14	13	12
1404	Cardiac M <45.50	2.1458	1.6904	1.5717	1.4462	18	16	15	14
1501	Pulmonary M >=68.50	1.2739	1.0339	0.9724	0.9096	12	10	9	9
1502	Pulmonary M >=56.50 and M <68.50	1.6160	1.3116	1.2335	1.1539	13	12	12	11
1503	Pulmonary M >=45.50 and M <56.50	1.8366	1.4906	1.4019	1.3114	16	14	13	12
1504	Pulmonary M <45.50	2.2744	1.8460	1.7361	1.6240	19	17	16	15
1601	Pain syndrome M >=65.50	1.3092	0.9725	0.8790	0.8137	9	10	9	9
1602	Pain syndrome M >=58.50 and M <65.50	1.5003	1.1144	1.0072	0.9324	10	11	10	10
1603	Pain syndrome M >=43.50 and M <58.50	1.8947	1.4073	1.2720	1.1775	13	13	13	12
1604	Pain syndrome M <43.50	2.3475	1.7436	1.5760	1.4589	14	15	16	14
1701	Major multiple trauma without brain or spinal cord injury M >=57.50	1.3371	1.0393	0.9626	0.8733	11	11	10	10

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1702	Major multiple trauma without brain or spinal cord injury M >=50.50 and M <57.50	1.6612	1.2913	1.1959	1.0850	13	14	12	12
1703	Major multiple trauma without brain or spinal cord injury M >=41.50 and M <50.50	1.9740	1.5344	1.4211	1.2893	16	15	14	14
1704	Major multiple trauma without brain or spinal cord injury M >=36.50 and M <41.50	2.2343	1.7367	1.6084	1.4592	17	17	16	15
1705	Major multiple trauma without brain or spinal cord injury M <36.50	2.6220	2.0381	1.8875	1.7124	22	20	19	17
1801	Major multiple trauma with brain or spinal cord injury M >=67.50	1.0603	0.8458	0.8030	0.7445	11	10	10	9
1802	Major multiple trauma with brain or spinal cord injury M >=55.50 and M <67.50	1.4225	1.1348	1.0774	0.9989	13	12	12	11
1803	Major multiple trauma with brain or spinal cord injury M >=45.50 and M <55.50	1.8276	1.4580	1.3842	1.2834	17	16	15	14
1804	Major multiple trauma with brain or spinal cord injury M >=40.50 and M <45.50	1.9986	1.5944	1.5136	1.4034	18	16	15	15
1805	Major multiple trauma with brain or spinal cord injury M >=30.50 and M <40.50	2.4231	1.9330	1.8351	1.7015	19	21	18	17
1806	Major multiple trauma with brain or spinal cord injury M <30.50	3.4412	2.7452	2.6062	2.4164	39	28	24	23
1901	Guillain-Barré M >=66.50	1.0402	0.7997	0.7462	0.7333	11	9	9	8
1902	Guillain-Barré M >=51.50 and M <66.50	1.6645	1.2797	1.1941	1.1734	17	14	13	13
1903	Guillain-Barré M >=38.50 and M <51.50	2.5114	1.9307	1.8016	1.7704	23	19	17	19
1904	Guillain-Barré M <38.50	3.6583	2.8125	2.6244	2.5790	32	29	25	25
2001	Miscellaneous M >=66.50	1.1804	0.9429	0.8808	0.8017	10	10	9	9
2002	Miscellaneous M >=55.50 and M <66.50	1.4718	1.1756	1.0982	0.9996	12	12	11	11
2003	Miscellaneous M >=46.50 and M <55.50	1.7625	1.4078	1.3151	1.1970	15	14	13	12
2004	Miscellaneous M <46.50 and A >=77.50	2.1073	1.6832	1.5724	1.4312	18	16	15	15
2005	Miscellaneous M <46.50 and A <77.50	2.2212	1.7742	1.6574	1.5086	19	18	16	15
2101	Burns M >=52.50	1.5049	1.1435	1.1435	0.9766	14	14	13	11
2102	Burns M <52.50	2.3176	1.7611	1.7611	1.5040	19	23	18	15
5001	Short-stay cases, length of stay is 3 days or fewer	0.0000	0.0000	0.0000	0.1710	0	0	0	2
5101	Expired, orthopedic, length of stay is 13 days or fewer	0.0000	0.0000	0.0000	0.7522	0	0	0	8
5102	Expired, orthopedic, length of stay is 14 days or more	0.0000	0.0000	0.0000	1.7926	0	0	0	16
5103	Expired, not orthopedic, length of stay is 15 days or fewer	0.0000	0.0000	0.0000	0.9195	0	0	0	9
5104	Expired, not orthopedic, length of stay is 16 days or more	0.0000	0.0000	0.0000	2.3834	0	0	0	23

Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how we estimate that the application of the revisions for FY 2025 would affect

particular CMG relative weight values, which would affect the overall distribution of payments within CMGs and tiers. We note that, because we implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs for FY 2025 would not be affected as a result of the proposed CMG relative weight revisions. However, the revisions would affect the distribution of payments within CMGs and tiers.

TABLE 3—DISTRIBUTIONAL EFFECTS OF THE CHANGES TO THE CMG RELATIVE WEIGHTS

Percentage change in CMG relative weights	Number of cases affected	Percentage of cases affected (%)
Increased by 15% or more	6	0.0
Increased by between 5% and 15%	1,875	0.5
Changed by less than 5%	406,808	99.2
Decreased by between 5% and 15%	1,468	0.4
Decreased by 15% or more	28	0.0

As shown in Table 3, 99.2 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the revisions for FY 2025. The changes in the ALOS values for FY 2025, compared with the FY 2024 ALOS values, are small and do not show any particular trends in IRF length of stay patterns.

We invited public comment on our proposed updates to the CMG relative weights and ALOS values for FY 2025.

The following is a summary of the public comments received on the proposed revisions to update the CMG relative weights and ALOS values for FY 2025 and our responses:

Comment: Public comments generally supported CMS' update to the CMG relative weights and average length of stay values and encouraged CMS to use the latest available data to update these values in the final rule. However, one commenter advocated for meaningful increases to the CMG weights for cases that include the 13 conditions used to identify qualifying facilities under the 60 percent rule in order to help payment increases match the cost of care. Another commenter recommended that CMS consider using an average-cost weighting method, rather than the current hospital-specific relative value method (HSRV), for calculating the CMG relative weights, to improve the relationship between costs and payments and increase the uniformity of profitability across IRF cases.

Response: We appreciate these commenters' support for updating the relative weights and ALOS values for FY 2025. We have updated our data between the FY 2025 IRF PPS proposed and this final rule to ensure that we use the most recent available data in calculating IRF PPS payments.

The methodology that we use to update the CMG relative weights uses the most recent cost data reported by IRFs to compute relative weights that reflect the relative costliness of different IRF cases. We increase or decrease relative weights of the CMGs annually, including for those CMGs associated with the 13 conditions that qualify for the 60 percent rule, under 42 CFR 412.29(b)(2), based only on the cost data reported to us by IRFs each year.

We believe that these data accurately reflect the severity of the IRF patient population and the associated costs of caring for these patients in the IRF setting. The CMG relative weights are updated each year based on the most recent available data for the full population of IRF Medicare fee-for-service beneficiaries. This ensures that the IRF case mix system is as reflective as possible of changes in the IRF patient populations and the associated coding practices and ensures that IRF payments appropriately reflect the relative costs of caring for all types of IRF patients.

We appreciate commenters' feedback and suggestions for refinements to current methodologies. We recognize commenters' desire for increased weights for cases that include the 13 qualifying conditions. However, the 13 qualifying conditions reflect those conditions that were treated in IRFs when IRFs were first excluded from payment under the IPPS in 1983. These conditions have been used to define IRFs as distinct from IPPS hospitals in terms of the types of patients treated and the types of services provided to these patients. They are not necessarily supposed to be more costly in the IRF to treat than other conditions, just more likely to make up the bulk of patients in the IRF setting.

Also, as stated in section V. of this final rule, the weight calculated for each CMG is proportional to the resources needed for an average case in that CMG. These weights are relative to one another, for example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. The weights are empirically derived, based entirely on the data that IRFs report to us on their claims and cost reports, and we do not believe it would be appropriate for us to manipulate these data to increase certain relative weights.

Furthermore, we did not propose any changes to the current HSRV method used to assign payment weights for FY 2025 and believe that a careful evaluation of the advantages and disadvantages of moving to an average-cost weighting method is essential, given the major distributional shifts that would be associated with such a change. The purpose of the HSRV method is, in part, to place a greater emphasis on more efficient IRF providers (that treat complex IRF patients at lower costs). Moving to an average-cost weighting method places more emphasis on high cost IRF providers, which could have higher costs because they are operating less efficiently. We will continue evaluating the effects of changing from HSRV weighting to average-cost weighting. The results of this analysis will inform future rulemaking.

After consideration of the comments we received, we are finalizing our proposal to update the CMG relative weights and ALOS values for FY 2025 using the same methodologies that we have used to update the CMG relative weights and ALOS values each FY since we implemented an update to the methodology in FY 2009, as shown in Table 2 of this final rule. These updates are effective for FY 2025, that is, for discharges occurring on or after October 1, 2024, and on or before September 30, 2025.

VI. FY 2025 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over

time in the prices of an appropriate mix of goods and services for which payment is made under the IRF PPS. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Thus, in this final rule, we are updating the IRF PPS payments for FY 2025 by a market basket increase factor as required by section 1886(j)(3)(C) of the Act based upon the most current data available, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We have utilized various market baskets through the years in the IRF PPS. For a discussion of these market baskets, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47046).

In FY 2016, we finalized the use of a 2012-based IRF market basket, using Medicare cost report data for both freestanding and hospital-based IRFs (80 FR 47049 through 47068). In FY 2020, we finalized a rebased and revised IRF market basket to reflect a 2016 base year. The FY 2020 IRF PPS final rule (84 FR 39071 through 39086) contains a complete discussion of the development of the 2016-based IRF market basket. Beginning with FY 2024, we finalized a rebased and revised IRF market basket to reflect a 2021 base year. The FY 2024 IRF PPS final rule (88 FR 50966 through 50988) contains a complete discussion of the development of the 2021-based IRF market basket.

B. FY 2025 Market Basket Update and Productivity Adjustment

1. FY 2025 Market Basket Update

For FY 2025 (that is, beginning October 1, 2024, and ending September 30, 2025), we proposed to update the IRF PPS payments by a market basket increase factor as required by section 1886(j)(3)(C) of the Act, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. For FY 2025, we proposed to use the same methodology described in the FY 2024 IRF PPS final rule (88 FR 50982 through 50984).

Consistent with historical practice, we proposed to estimate the market basket update for the IRF PPS for FY 2025 based on IHS Global Inc.'s (IGI's) forecast using the most recent available data. Based on IGI's fourth quarter 2023 forecast with historical data through the third quarter of 2023, the proposed 2021-based IRF market basket increase factor for FY 2025 was projected to be 3.2 percent. We also proposed that if more recent data became 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 percentage increase or productivity adjustment), we would use such data, if appropriate, to determine the FY 2025 market basket update in this final rule.

Based on IGI's second quarter 2024 forecast with historical data through the first quarter of 2024, the 2021-based IRF market basket percentage increase for FY 2025 is 3.5 percent.

2. FY 2025 Productivity Adjustment

According to section 1886(j)(3)(C)(i) of the Act, the Secretary shall establish an increase factor based on an appropriate percentage increase in a market basket of goods and services. Section 1886(j)(3)(C)(ii) of the Act requires that, after establishing the increase factor for a FY, the Secretary shall reduce such increase factor for FY 2012 and each subsequent FY, 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 sets forth the definition of this productivity adjustment. 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 U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the U.S. economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act, was referred to 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 this change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) is now published by BLS as private nonfarm business total factor productivity. However, as mentioned above, the data and methods are unchanged. Please see *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/data-research/statistics-trends-and-reports/medicare-program-rates-statistics/market-basket-research-and-information.* In addition, in the FY 2022 IRF final rule (86 FR 42374), 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 2023 forecast, the 10-year moving average growth of TFP for FY 2025 was projected to be 0.4 percent. In accordance with section 1886(j)(3)(C) of the Act, we proposed to base the FY 2025 market basket update, which is used to determine the applicable percentage increase for the IRF payments, on IGI's fourth quarter 2023 forecast of the 2021-based IRF market basket. We proposed to then reduce the market basket percentage increase by the estimated productivity adjustment for FY 2025 of 0.4 percentage point (the 10-year moving average growth of TFP for the period ending FY 2025 based on IGI's fourth quarter 2023 forecast). Therefore, the proposed FY 2025 IRF update was equal to 2.8 percent (3.2 percent market basket percentage increase reduced by the 0.4 percentage point productivity adjustment). Furthermore, we proposed that if more recent data became 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 percentage increase and/or productivity adjustment), we would use such data, if appropriate, to determine the FY 2025 market basket percentage increase and productivity adjustment in the final rule.

Using IGI's second quarter 2024 forecast, the 10-year moving average growth of TFP for FY 2025 is projected to be 0.5 percent. Thus, in accordance with section 1886(j)(3)(C) of the Act, the FY 2025 market basket percentage increase, which is used to determine the applicable percentage increase for the IRF payments, is equal to 3.5 percent using IGI's second quarter 2024 forecast of the 2021-based IRF market basket. We then reduce this percentage increase by the estimated productivity adjustment for FY 2025 of 0.5 percentage point (the 10-year moving average growth of TFP for the period ending FY 2025 based on IGI's second quarter 2024 forecast). Therefore, the FY 2025 IRF update is equal to 3.0 percent (3.5 percent market basket percentage increase reduced by the 0.5 percentage point productivity adjustment).

CMS recognizes that the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent for

FY 2025.[3] As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, the Secretary proposed to update the IRF PPS payment rates for FY 2025 by the proposed productivity-adjusted IRF market basket increase factor of 2.8 percent.

Based on more recent data, the current estimate of the productivity-adjusted IRF market basket increase factor for FY 2025 is 3.0 percent. Section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2025.

We invited public comment on the proposed FY 2025 market basket percentage increase and productivity adjustment. The following is a summary of the public comments received and our responses:

Comment: Several commenters agreed with the general approach of increasing the standard payment conversion factor, but many commenters stated concerns that the proposed increase is inadequate. Commenters cited that the proposed payment increase does not keep pace with the higher increases in costs faced by IRFs such as labor, drug, medical supplies, personal protective equipment, and capital investment costs. Commenters also stated other challenges that could impact costs such as staffing shortages, supply chain disruptions, rising need for cybersecurity investment, higher administrative costs due to MA and commercial plan practices, high patient volumes and rising acuity, and unprecedented high inflation.

Some commenters argued that the increased discrepancy between payment inflation and cost inflation is causing a material financial hardship on hospitals and that increases in hospital costs have dramatically decreased hospital profit margins. One commenter stated that in calendar year 2022, half of U.S. hospitals reported negative profit margins and through the first 10 months of 2023, IRF operating margins were down by 12 percent compared to 2022 and down by 25 percent compared to 2021.

Several commenters stated that labor shortages and higher than typical cost inflation are expected to continue and must be met with correspondingly higher payment rates, especially as some public health emergency resources have concluded. Other commenters stated that the proposed increase factor was too small and called on CMS to increase its proposed market basket percentage in the final rule, with some stating that this increase should be higher than the increase in FY 2024. Some commenters requested that CMS account for the effects of the true inflationary cost using the latest available data in the final rule and other commenters requested that CMS recalculate the market basket update using data that more accurately reflects the growth in input prices. In the absence of such data, some commenters urged CMS to consider an alternative approach to better align the market basket increases with the rising cost of treating patients.

Several commenters expressed concern that CMS' market basket forecast process relies on generalized hospital goods and services, which would not recognize the specialized training and experience IRFs require of their therapists, nurses, and other clinicians. The commenter also noted that IRFs typically pay higher costs for advanced rehabilitation technologies and specialized drugs that are likely not properly captured in the market basket.

Many commenters requested that CMS reexamine the current forecasting approach for determining the IRF PPS market basket update as well as the underlying construction of the market basket. Some commenters urged CMS to consider whether adjustments are necessary in its approach to annual market basket updates. Specifically, the commenters claimed that since the COVID–19 public health emergency, IGI's forecasted growth for the IRF market basket has shown a consistent trend of under-forecasting actual market basket growth. The commenters noted that while they are cognizant of the fact that forecasts will always be imperfect, in the past, they have been more balanced. However, the commenters argued that with four straight years of under-forecasts, they were concerned that there is a more systemic issue with IGI's forecasting. Therefore, the commenters stated that absent action from CMS, these missed forecasts are permanently established in the standard payment rate for IRFs and will continue to compound. In addition, the commenters claimed that these underpayments also influence other payments, including the growing Medicare Advantage patient population, as well as commercial insurer payment rates. The commenters further stated that in addition to inaccurate forecasts, the underlying market basket itself may have shortcomings that fail to properly capture growth. The commenters stated that it is confounding how hospitals, and especially labor-intensive IRFs, could have a change in the market basket that is significantly below general inflation. The commenters provided an example of one such factor may be CMS' use of the Employment Cost Index (ECI) to measure changes in labor compensation in the market basket. The commenters stated that the ECI may not be adequately capturing growth in the costs of employment and labor. However, the commenters claimed that this is just one example of a potential issue and encouraged CMS to thoroughly reexamine the market basket and its recent shortcomings to identify other potential areas for refinement. The commenters stated their support to work with CMS to assist with such an endeavor.

Response: We acknowledge and appreciate commenters' concerns regarding recent trends in inflation. We are required to update IRF PPS payments by the market basket update adjusted for productivity, as directed by section 1886(j)(3)(C) of the Act. Specifically, section 1886(j)(3)(C)(i) states that the increase factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made. In the FY 2024 IRF PPS final rule, we rebased the IRF market basket to reflect a 2021 base year (88 FR 50966 through 50982). We believe the increase in the 2021-based IRF market basket adequately reflects the average change in the price of goods and services hospitals purchase in order to provide IRF medical services and is technically appropriate to use as the IRF payment update factor.

The IRF market basket is a fixed-weight, Laspeyres-type index that measures the change in price over time of the same mix of goods and services purchased by IRFs in the base period. As we discussed in response to similar comments in the FY 2024 IRF PPS final rule (88 FR 50983), the IRF market basket update would reflect the prospective price pressures described by the commenters as increasing during a high inflation period but would inherently not reflect other factors that might increase the level of costs, such as the quantity of labor used. We note that cost changes (that is, the product of price and quantities) would only be reflected when a market basket is rebased, and the base year weights are updated to a more recent time period. Therefore, we believe the 2021-based IRF market basket appropriately reflects IRF cost structures.

To reflect expected price growth for each of the cost categories in the IRF market basket, we rely on impartial economic forecasts of the price proxies

[3] *https://www.medpac.gov/wp-content/uploads/2025/03/Mar25_MedPAC_ReportToCongress_SEC.pdf.*

used in the market basket from IGI. We have consistently used the IGI economic price proxy forecasts in the market baskets used to update the IRF PPS payments since the implementation of the IRF PPS. For example, to measure price growth for IRF wages and salaries costs in the IRF market basket, since IRF-specific information is unavailable, we use the ECI for Wages and Salaries for All Civilian workers in Hospitals. As stated in the FY 2024 IRF final rule (88 FR 50978), we believe that this ECI is the best available price proxy to account for the occupational skill mix within IRFs and in the absence of an IRF-specific ECI, we believe that the highly skilled hospital workforce captured by the ECI for Wages and Salaries for All Civilian workers in Hospitals (inclusive of therapists, nurses, other clinicians, etc.) is a reasonable proxy for the compensation component of the IRF market basket.

IGI is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets. At the time of the FY 2025 IRF PPS proposed rule, based on IGI's fourth quarter 2023 forecast with historical data through the third quarter of 2023, the 2021-based IRF market basket update was forecasted to be 3.2 percent for FY 2025, reflecting forecasted compensation price growth of 3.7 percent (by comparison, compensation price growth in the IRF market basket averaged 2.8 percent from 2014 through 2023). We also note that when developing its forecast for labor prices, IHS Global Inc. considers overall labor market conditions (including rise in contract labor employment due to tight labor market conditions) as well as trends in contract labor wages, which both have an impact on wage pressures for workers employed directly by the hospital.

As is our general practice, in the FY 2025 IRF PPS proposed rule, we proposed that if more recent data became available, we would use such data, if appropriate, to derive the final FY 2025 IRF market basket update for the final rule. For this final rule, we now have an updated forecast of the price proxies underlying the market basket that incorporates more recent historical data and reflects a revised outlook regarding the U.S. economy and expected price inflation for FY 2025. Based on IGI's second quarter 2024 forecast with historical data through the first quarter of 2024, we are projecting a FY 2025 IRF market basket update of 3.5 percent (reflecting forecasted compensation price growth of 4.0 percent) and a productivity adjustment of 0.5 percentage point. Therefore, for FY 2025 a final IRF productivity-adjusted market basket update of 3.0 percent (3.5 percent less 0.5 percentage point) will be applicable, compared to the 2.8 percent market basket update that was proposed.

Furthermore, we acknowledge that while the projected IRF hospital market basket updates for FY 2021 through FY 2023 were under forecast (actual increases less forecasted increases were positive), this was largely due to unanticipated inflationary and labor market pressures as the economy emerged from the COVID–19 PHE. In addition, forecast errors have been both positive and negative. Only considering the forecast error for years when the IRF market basket update was lower than the actual market basket update does not consider the full experience and impact of forecast error.

Finally, we acknowledge the commenter's recommendation that we thoroughly reexamine the market basket to identify other potential areas for refinement. We continue to monitor any recent data on IRF cost structures, historical price growth, as well as updated forecasts of price pressures faced by IRFs. Any changes to the IRF market basket would be proposed in future rulemaking.

Comment: Many commenters expressed concern about the continued application of the productivity adjustment to IRFs. Commenters requested that CMS temporarily suspend the productivity adjustment to the IRF market basket due to recent declines in hospital productivity. One commenter urged CMS to use its ''special exceptions and adjustments'' authority to eliminate the productivity cut for FY 2025 and another commenter urged CMS to consider its regulatory authority to modify the productivity adjustment or make a PHE and inflation related exception in its application for the FY 2025 update. One commenter stated that due to the imbalance between the economy-wide productivity measure and IRFs, they encouraged CMS to explore all available avenues to provide additional financial relief for IRFs, working within the agency's existing authority under the statute. Other commenters respectfully requested CMS to carefully monitor the impact that these productivity adjustments will have on the rehabilitation hospital sector, provide feedback to Congress as appropriate, and reduce the productivity adjustment.

Response: Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity adjustment, described in section 1886(b)(3)(xi)(II) of the Act, to the IRF PPS market basket increase factor. As required by statute, the FY 2025 productivity adjustment is derived based on the 10-year moving average growth in economy-wide productivity for the period ending FY 2025. We recognize the concerns of the commenters regarding the appropriateness of the productivity adjustment; however, we are required pursuant to section 1886(j)(3)(C)(ii)(I) of the Act to apply the specific productivity adjustment described here.

Comment: Many commenters urged CMS to explore all available options to update IRF PPS payments to ensure there are no disruptions in access to IRF services for Medicare beneficiaries. One commenter encouraged CMS to consider additional funding opportunities in the final rule either through an updated market basket or other allowable means.

One commenter requested CMS consider other methods and data sources to calculate the final rule ''base'' (before additional adjustments) market basket update that better reflects the rapidly increasing input prices facing IRFs. Specifically, the commenter requested that CMS consider using the average growth rate in allowable Medicare costs per risk adjusted discharge for IRF hospitals from IRF cost reports (both freestanding and sub-providers of an acute care hospital) for FY 2022 to calculate the FY 2025 final rule market basket update. The commenter stated that this growth rate will capture the increased cost of contract labor, unlike the proxy for labor cost growth currently used in the proposed market basket update. Based on their analysis, the commenter claimed that this would yield an unadjusted market basket update of 4.08 percent. The commenter stated that a net market basket update of 3.68 percent for FY 2025 better reflects the actual input price inflation hospitals anticipate facing in the coming year, rather than the 2.8 percent net market basket update proposed by CMS.

Another commenter requested that CMS apply a retrospective payment adjustment to account for the differences between the FY 2022 through 2024 market basket updates and the actual market basket. They stated that CMS is not required to use IHS Global Inc. data, or solely such data, as the basis for the IRF PPS increase factor and stated that CMS has the discretion to adjust the market basket update in order to account for any increased labor costs incurred by providers not currently reflected in a market basket data source(s). The commenter stated that CMS incorrectly dismissed the option of applying a special payment

adjustment for IRFs in the FY 2023 IRF PPS Final Rule and the FY 2024 IRF PPS Final Rule. The commenter claimed that CMS' position is essentially that because the forecast was relatively accurate prior to the COVID–19 pandemic, it is acceptable to penalize IRFs with a less accurate payment update for the periods during and after the pandemic. However, the commenter claimed that the FY 2024 IRF final rule did not discuss the difference between the forecast and actual market basket update for periods after FY 2020, when the forecasted market basket update used for rate setting has consistently fallen far short of the actual market basket update.

A few commenters stated that considering this once-in-a-generation convergence of inflationary pressures and pandemic forces, they respectfully urged CMS to consider a one-time adjustment to the market basket update to account for forecast errors made during and after the PHE to ensure that the FY 2025 annual rate update is applied to a base rate that more accurately reflects the cost of IRF care and actual inflation experienced since the beginning of the pandemic. Specifically, a few commenters requested CMS adopt a one-time forecast error adjustment of 3.7 percentage point to the FY 2025 update based on the difference in the IRF PPS market basket percentage increase in FYs 2021, 2022, and 2023. Another commenter requested that CMS make a one-time 3.5 percentage points adjustment to the IRF market basket percentage increase in FY 2025 to account for the underpayments that occurred in FYs 2022 through 2024. One commenter requested an adjustment similar to the forecast error adjustments proposed in the FY 2025 SNF and IPPS Capital Input Price Index rules and requested that CMS apply this adjustment to a proposed FY 2025 IRF market basket update of 4.08 percent to result in a 7.78 percent update, prior to application of the 0.4 percent ACA productivity adjustment. The commenter claimed that nothing in Section 1886(j)(3) of the Act, that specifically precludes the use of a forecast error adjustment and that the word ''prospective'' is not used in Section 1886(j)(3)(C)(i) of the Act, to describe or modify the IRF ''increase factor'', just that it is noted that the section requires that the factor be based on an ''appropriate percentage increase.'' One commenter also urged CMS to increase the market basket percentage increase when CMS determines actual market basket exceeds the forecasted market basket.

Response: As most recently discussed in the FY 2024 IRF PPS final rule, the IRF PPS market basket updates are set prospectively, which means that the market basket update relies on a mix of both historical data for part of the period for which the update is calculated and forecasted data for the remainder. For instance, the FY 2025 market basket update in this final rule reflects historical data through the first quarter of CY 2024 and forecasted data through the third quarter of CY 2025. While there is no precedent to adjust for market basket forecast error in the IRF payment update, a forecast error can be calculated by comparing the actual market basket increase for a given year less the forecasted market basket increase. Due to the uncertainty regarding future price trends, forecast errors can be both positive and negative. The cumulative forecast error since IRF PPS inception (FY 2003 to FY 2023) for the years where the payment update was not mandated by statute is 0.5 percent (cumulative forecasted increase was slightly lower than actual increase) and over the last ten years the cumulative forecast error is −0.1 percent (cumulative forecasted increase was slightly higher than actual increase). Though it is still too soon to know what the final IRF market basket forecast error is for FY 2024, so far it is 0.3 percent. Only considering the forecast error for years when the IRF market basket update was lower than the actual market basket update does not consider the full experience and impact of forecast error.

After careful consideration of public comments, we are finalizing a FY 2025 IRF productivity-adjusted market basket increase of 3.0 percent based on the most recent data available.

C. Labor-Related Share for FY 2025

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of IRFs' costs that are attributable to wages and wage-related costs, of the prospective payment rates computed under section 1886(j)(3) of the Act, for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. 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 proposed to continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2021-based IRF market basket, we proposed to calculate the labor-related share for FY 2025 as the sum of the FY 2025 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 relative importance from the 2021-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2021-based IRF labor-related share, see the FY 2024 IRF PPS final rule (88 FR 50985 through 50988).

The relative importance reflects the different rates of price change for these cost categories between the base year (2021) and FY 2025. We proposed to calculate the labor-related relative importance from the IRF 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 2025. 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. Based on IGI's fourth quarter 2023 forecast of the 2021-based IRF market basket, the sum of the FY 2025 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 was 70.5 percent. We proposed that the portion of Capital-Related costs that are influenced by the local labor market is 46 percent. Since the relative importance for Capital-Related costs was 8.1 percent of the 2021-based IRF market basket for FY 2025, we proposed to take 46 percent of 8.1 percent to determine the labor-related share of Capital-Related costs for FY 2025 of 3.7 percent. Therefore, we proposed a total labor-related share for FY 2025 of 74.2 percent (the sum of 70.5 percent for the proposed labor-related share of operating costs and 3.7 percent for the proposed labor-related share of Capital-Related costs). We also proposed that if more recent data became available after publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the labor-related share), we would use such

data, if appropriate, to determine the FY 2025 IRF labor-related share in the final rule.

Based on IGI's second quarter 2024 forecast for the 2021-based IRF market basket, the sum of the FY 2025 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 70.7 percent. The portion of Capital-Related 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 IRF market basket (84 FR 39088 through 39089). Since the relative importance for Capital is 8.1 percent of the 2021-based IRF market basket in FY 2025, we took 46 percent of 8.1 percent to determine the labor-related share of Capital-Related costs for FY 2025 of 3.7 percent. Therefore, the total labor-related share for FY 2025 based on more recent data is 74.4 percent (the sum of 70.7 percent for the operating costs and 3.7 percent for the labor-related share of Capital-Related costs).

We invited public comment on the proposed labor-related share for FY 2025. The following is a summary of the public comments received and our responses:

Comment: One commenter appreciated that CMS only proposed to increase the labor-related share from 74.1 percent in FY 2024 to 74.2 percent in FY 2025. The commenter stated that although there is not a material increase in the wage percentage each increase to the labor-related share percentage penalizes any facility that has a wage index less than 1.0. The commenter stated that across the country, there is a growing disparity between high-wage and low-wage States that harms hospitals in many rural and underserved communities; limiting the increase in the labor-related share helps mitigate that growing disparity. However, another commenter believed that the 0.1 percentage point increase in the labor-related share update is inadequate and does not reflect the many challenges faced by health care facilities.

Response: We proposed to use the FY 2025 relative importance values for the labor-related cost categories from the 2021-based IRF market basket because it accounts for more recent data regarding price pressures and cost structure of IRFs. This methodology is consistent with the determination of the labor-related share since the implementation of the IRF PPS. As stated in the FY 2025 IRF proposed rule, we also proposed that if more recent data became available, we would use such data, if appropriate, to determine the FY 2025 labor-related share for the final rule. Based on IHS Global Inc.'s second quarter 2024 forecast with historical data through the first quarter of 2024, the FY 2025 labor-related share for the final rule is 74.4 percent.

After consideration of the public comments, we are finalizing a FY 2025 labor-related share of 74.4 percent. Table 4 shows the current estimate of the FY 2025 labor-related share and the FY 2024 final labor-related share using the 2021-based IRF market basket relative importance.

TABLE 4—FY 2025 IRF LABOR-RELATED SHARE AND FY 2024 IRF LABOR-RELATED SHARE

	FY 2025 Labor-related share [1]	FY 2024 Final labor-related share [2]
Wages and Salaries	49.4	49.0
Employee Benefits	11.8	11.8
Professional Fees: Labor-Related [3]	5.5	5.5
Administrative and Facilities Support Services	0.7	0.7
Installation, Maintenance, and Repair Services	1.5	1.5
All Other: Labor-Related Services	1.8	1.8
Subtotal	70.7	70.3
Labor-related portion of Capital-Related (46%)	3.7	3.8
Total Labor-Related Share	74.4	74.1

[1] Based on the 2021-based IRF market basket relative importance, IGI 2nd quarter 2024 forecast.
[2] Based on the 2021-based IRF market basket relative importance as published in the **Federal Register** (88 FR 50987).
[3] Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

D. Wage Adjustment for FY 2025

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

In the FY 2023 IRF PPS final rule (87 FR 47054 through 47056) we finalized a policy to apply a 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. We amended IRF PPS regulations at § 412.624(e)(1)(ii) to reflect this permanent cap on wage index decreases. Additionally, we finalized a policy that a new IRF 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 IRF would not have a wage index in the prior FY. A full discussion of the adoption of this policy is found in the FY 2023 IRF PPS final rule.

For FY 2025, we maintained the policies and methodologies described in the FY 2024 IRF PPS final rule (88 FR 50956) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we use the core based statistical

areas (CBSAs) labor market area definitions and the FY 2025 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2025 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2020, and before October 1, 2021 (that is, FY 2021 cost report data).

The labor market designations made by the Office of Management and Budget (OMB) include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2025 IRF PPS wage index. For FY 2025, the only rural area without wage index data available is in North Dakota. We have determined that the borders of 18 rural counties are local and contiguous with 8 urban counties. Therefore, under this methodology, the wage indexes for the counties of Burleigh/Morton/Oliver (CBSA 13900: 0.9020), Cass (CBSA 22020: 0.8763), Grand Forks (CBSA 24220: 0.7865), and McHenry/Renville/Ward (CBSA 33500: 0.7686) are averaged, resulting in an imputed rural wage index of 0.8334 for rural North Dakota for FY 2025. In past years for rural Puerto Rico, we did not apply this methodology due to the distinct economic circumstances there; due to the proximity of almost all of Puerto Rico's various urban and nonurban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas. However, because rural Puerto Rico now has hospital wage index data on which to base an area wage adjustment, we will not apply this policy for FY 2025. For urban areas without specific hospital wage index data, we will 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 as proposed and finalized in FY 2006 (70 FR 47927). For FY 2025, the only urban area without wage index data available is CBSA 25980, Hinesville Fort Stewart, GA.

We invited public comment on the proposed Wage Adjustment for FY 2025. The following is a summary of the public comments received on the proposed revisions to the Wage Adjustment for FY 2025:

Comment: Several commenters suggested changes to the wage index methodology. Generally, commenters recommended that CMS use the same wage index adjustments for providers paid under the IPPS and under the IRF PPS in the same area. These recommendations were aimed at increasing parity between IPPS and IRF PPS hospitals. Most comments on this topic expressed concern over comparisons of shared labor markets. One commenter also voiced concerns that IPPS hospitals that have benefited from IPPS-specific geographic reclassification or other wage adjustments no longer put the same resources into the completion of Occupational Mix Surveys.

Several commenters specifically expressed support for the IPPS low wage index hospital policy, wherein wage index values are increased for the lowest quartile of the wage index values across all hospitals. These commenters urged CMS to develop and apply a corresponding low wage index hospital policy for IRFs. Commentors expressed concerns that the disparity in policy puts IRFs at a competitive disadvantage within shared labor markets and believed that extending the low wage index policy to IRFs would help maintain parity and ensure that low wage index and rural IRFs would have adequate resources to continue to provide access to care. Several commentors argued that this low wage index hospital policy to IRFs should be implemented without applying a budget neutrality adjustment.

Additionally, several commenters found the continued use of the pre-reclassification and pre-floor IPPS wage index unreasonable and urged CMS to revise its policy and apply the post-classification and post-floor hospital IPPS wage index to all IRFs, but especially the hospital-based distinct part units (DPUs). Like others, these commentors expressed concerns related to shared labor markets. Commenters believed that the current policy places inpatient hospital-based IRFs and other DPUs at a disadvantage in the labor markets in which they must compete with acute-care hospitals for staff. Additionally, several commenters suggested that CMS could leverage existing data to evaluate the policy change using the CMS Form 2552–96, Worksheet S–3, which captures ''excluded area'' salaries and wage-related costs.

Response: We appreciate the commenters' suggestion to adopt the IPPS low wage index hospital policy, post-classification and post-floor hospital IPPS wage index, and other IPPS wage index adjustments for the IRF wage index. We also acknowledge and appreciate the commenters' concerns regarding competition for labor resulting from different applicable wage index policies across different settings of care. While CMS and other interested parties have explored potential alternatives to the current wage index system in the past, no consensus has been achieved regarding how best to implement a replacement system that is evidence-based and data-driven. These concerns will be taken into consideration while we continue to explore potential wage index reforms and monitor IRF wage index policies.

As most recently discussed in the FY 2024 IRF PPS final rule (88 FR 50956), we would like to note that the IRF wage index is derived from IPPS wage data, that is, the pre-reclassification and pre-floor inpatient PPS (IPPS) wage index discussed in section D. of this final rule. Thus, to the extent that increasing wage index values under the IPPS for low wage index hospitals results in those hospitals increasing employee compensation, this increase would be reflected in the IPPS wage data that the IRF wage index is derived from and likely would result in higher wage indices for these areas under the IRF PPS. As such, any effects of this policy on the wage data of IPPS hospitals would be extended to the IRF setting, as this data would be used to establish the wage index for IRFs in the future. We note that IPPS wage index values are based on historical data and typically lag by four years.

As stated in prior years, as we do not have an IRF-specific wage index, we are unable to determine the degree, if any, to which these IPPS policies under the IRF PPS would be appropriate. However, CMS acknowledges that commenters have suggested that such data may be available in CMS Form 2552–96, Worksheet S–3 and will take this under consideration. Data pertaining to any IPPS policies that are applied to the pre-reclassification/pre-floor wage index is available in the FY 2024 IPPS proposed rule at *https://www.cms.gov/medicare/medicare-fee-for-service-payment/acuteinpatientpps.* The rationale for our current wage index policies was most recently published in the FY 2022 IRF PPS final rule (86 FR 42377 through 42378) and fully described in the FY 2006 IRF PPS final rule (70 FR 47880, 47926 through 47928).

Comment: Several commenters voiced specific concerns about rising reliance on contract labor. The commenters stated that, as contract labor is generally not tied to the local economy, the local

wage index is less and less reflective of the actual costs incurred by hospitals as the use of contract labor grows. Concerns about the rising use of contract labor were tied to concerns about workforce shortages, increasingly competitive labor markets, and the lack of parity between IRFs and IPPS hospitals in shared labor markets.

To address these challenges, several commentors encouraged CMS to explore how geographic differences in market wide labor costs and the increased use of contract labor impacts costs, and to make corresponding adjustments in policy.

Response: CMS acknowledges commenters' concerns that the current wage index policies may not capture or keep up with actual costs of care as well as specific concerns related to the cost of contract labor. As noted in the FY 2024 IRF PPS final rule (42 CFR 412), an analysis of Medicare cost report data for IPPS hospitals shows that contract labor hours accounted for about 4 percent of total compensation hours (reflecting employed and contract labor staff) in 2021. We will continue to monitor the trends in the increased use of contract labor.

Comment: Many commenters supported the existing 5 percent wage index cap and expressed appreciation of having a policy to cap and phase in the wage index changes that a provider can experience in a given year. However, at least one commenter remarked that, while they appreciate the cap policy, they believe that it does not do enough to correct the widening range in wage index amounts. Another commenter expressed frustration that the wage index values of the hospitals subject to the cap differ from the currently published tables and urged CMS to release wage index tables in the final rule that incorporate the cap on CBSAs that meet the 5 percent decrease criteria.

Response: We appreciate the commenters' support of the permanent cap on wage index decreases. We realize that the 5-percent cap on annual decreases in the wage index values does not entirely eliminate the effects of annual changes in the wage index, but we believe that it does substantially reduce the financial impact on IRFs of these annual changes. The wage index tables for IRF PPS are provided at the CBSA level. The 5-percent cap policy is applied at the provider level. Hence, when the 5-percent cap is applicable, each IRF should work directly with its MAC to understand how the 5-percent cap is applied. MACs have more detailed information about the location of each IRF and the applicability of the 5-percent cap to each IRFs situation, and CMS has provided careful instructions to the MACs on applying the 5-percent cap policy (see publication 100–04 Medicare Claims Processing Manual, Chapter 3).

After consideration of the comments we received, we are finalizing our proposals regarding the wage adjustment for FY 2025.

2. Core-Based Statistical Areas (CBSAs) for the FY 2025 IRF Wage Index

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. The CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. 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). We refer readers to the FY 2016 IRF PPS final rule (80 FR 47068 through 47076) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. Additionally, OMB occasionally issues updates and revisions to the statistical areas in between decennial censuses to reflect the recognition of new areas or the addition of counties to existing areas. In some instances, these updates merge formerly separate areas, transfer components of an area from one area to another or drop components from an area. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are 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.

In the FY 2018 IRF PPS final rule (82 FR 36250 through 36251), we adopted the updates set forth in OMB Bulletin No. 15–01 effective October 1, 2017, beginning with the FY 2018 IRF wage index. For a complete discussion of the adoption of the updates set forth in OMB Bulletin No. 15–01, we refer readers to the FY 2018 IRF PPS final rule. In the FY 2019 IRF PPS final rule (83 FR 38527), we continued to use the OMB delineations that were adopted beginning with FY 2016 to calculate the area wage indexes, with updates set forth in OMB Bulletin No. 15–01 that we adopted beginning with the FY 2018 wage index.

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014, and July 1, 2015. In the FY 2020 IRF PPS final rule (84 FR 39090 through 39091), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IRF wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017, OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.*

To this end, as discussed in the FY 2021 IRF PPS proposed (85 FR 22075 through 22079) and final (85 FR 48434 through 48440) 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*) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5-percent cap on any decrease in an IRF'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 IRF PPS. 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, we did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022 through FY 2024.

On July 21, 2023, OMB issued OMB Bulletin No. 23–01 (available at *https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf*) which updates and supersedes OMB Bulletin No. 20–01 based upon the 2020 Standards for Delineating Core Based Statistical Areas (''the 2020 Standards'') published by OMB on July 16, 2021 (86 FR 37770). OMB Bulletin No. 23–01 revised CBSA delineations which are comprised of counties and equivalent entities (for example, boroughs, a city and borough, and a municipality in Alaska, planning regions in Connecticut, parishes in Louisiana, municipios in Puerto Rico, and independent cities in Maryland, Missouri, Nevada, and Virginia). For FY 2025, we proposed to adopt the revised OMB delineations identified in OMB Bulletin No. 23–01.

a. Urban Counties Becoming Rural

As previously discussed, we are implementing the new OMB statistical area delineations (based upon the 2020 decennial Census data) beginning in FY 2025 for the IRF PPS wage index. Our analysis shows that a total of 54 counties (and county equivalents) that are currently considered part of an urban CBSA would be considered located in a rural area, for IRF PPS payment beginning in FY 2025, if we adopt the new OMB delineations. Table 5 lists the 54 urban counties that will be rural now that we are finalizing our proposal to implement the new OMB delineations.

TABLE 5: Counties That Would Transition from Urban to Rural Status

Federal Information Processing Standard (FIPS) County Code	County Name	State	Current CBSA	Current CBSA Name
01129	WASHINGTON	AL	33660	Mobile, AL
05025	CLEVELAND	AR	38220	Pine Bluff, AR
05047	FRANKLIN	AR	22900	Fort Smith, AR-OK
05069	JEFFERSON	AR	38220	Pine Bluff, AR
05079	LINCOLN	AR	38220	Pine Bluff, AR
09015	WINDHAM	CT	49340	Worcester, MA-CT
10005	SUSSEX	DE	41540	Salisbury, MD-DE
13171	LAMAR	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
16077	POWER	ID	38540	Pocatello, ID
17057	FULTON	IL	37900	Peoria, IL
17077	JACKSON	IL	16060	Carbondale-Marion, IL
17087	JOHNSON	IL	16060	Carbondale-Marion, IL
17183	VERMILION	IL	19180	Danville, IL
17199	WILLIAMSON	IL	16060	Carbondale-Marion, IL
18121	PARKE	IN	45460	Terre Haute, IN
18133	PUTNAM	IN	26900	Indianapolis-Carmel-Anderson, IN
18161	UNION	IN	17140	Cincinnati, OH-KY-IN
21091	HANCOCK	KY	36980	Owensboro, KY
21101	HENDERSON	KY	21780	Evansville, IN-KY
22045	IBERIA	LA	29180	Lafayette, LA
24001	ALLEGANY	MD	19060	Cumberland, MD-WV
24047	WORCESTER	MD	41540	Salisbury, MD-DE
25011	FRANKLIN	MA	44140	Springfield, MA
26155	SHIAWASSEE	MI	29620	Lansing-East Lansing, MI
27075	LAKE	MN	20260	Duluth, MN-WI
28031	COVINGTON	MS	25620	Hattiesburg, MS
31051	DIXON	NE	43580	Sioux City, IA-NE-SD
36123	YATES	NY	40380	Rochester, NY
37049	CRAVEN	NC	35100	New Bern, NC
37077	GRANVILLE	NC	20500	Durham-Chapel Hill, NC
37085	HARNETT	NC	22180	Fayetteville, NC
37087	HAYWOOD	NC	11700	Asheville, NC
37103	JONES	NC	35100	New Bern, NC
37137	PAMLICO	NC	35100	New Bern, NC
42037	COLUMBIA	PA	14100	Bloomsburg-Berwick, PA
42085	MERCER	PA	49660	Youngstown-Warren-Boardman, OH-PA
42089	MONROE	PA	20700	East Stroudsburg, PA
42093	MONTOUR	PA	14100	Bloomsburg-Berwick, PA
42103	PIKE	PA	35084	Newark, NJ-PA
45027	CLARENDON	SC	44940	Sumter, SC
48431	STERLING	TX	41660	San Angelo, TX
49003	BOX ELDER	UT	36260	Ogden-Clearfield, UT
51113	MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC

Federal Information Processing Standard (FIPS) County Code	County Name	State	Current CBSA	Current CBSA Name
51620	FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	JACKSON	WV	16620	Charleston, WV
54043	LINCOLN	WV	16620	Charleston, WV
54057	MINERAL	WV	19060	Cumberland, MD-WV
55069	LINCOLN	WI	48140	Wausau-Weston, WI
72001	ADJUNTAS	PR	38660	Ponce, PR
72055	GUANICA	PR	49500	Yauco, PR
72081	LARES	PR	10380	Aguadilla-Isabela, PR
72083	LAS MARIAS	PR	32420	Mayagüez, PR
72141	UTUADO	PR	10380	Aguadilla-Isabela, PR

We are finalizing our proposal that the wage data for all hospitals located in the counties listed in Table 5 now be considered rural when their respective State's rural wage index value is calculated. This rural wage index value would be used under the IRF PPS.

b. Rural Counties Becoming Urban

Analysis of the new OMB delineations (based upon the 2020 decennial Census data) shows that a total of 54 counties (and county equivalents) that are currently located in rural areas would be in urban areas based on finalizing our proposal to implement the new OMB delineations. Table 6 lists the 54 rural counties that will be urban after we finalize this proposal.

TABLE 6: Counties That Would Transition from Rural to Urban Status

FIPS County Code	County	State	CBSA	CBSA Name
01087	MACON	AL	12220	Auburn-Opelika, AL
01127	WALKER	AL	13820	Birmingham, AL
12133	WASHINGTON	FL	37460	Panama City-Panama City Beach, FL
13187	LUMPKIN	GA	12054	Atlanta-Sandy Springs-Roswell, GA
15005	KALAWAO	HI	27980	Kahului-Wailuku, HI
17053	FORD	IL	16580	Champaign-Urbana, IL
17127	MASSAC	IL	37140	Paducah, KY-IL
18159	TIPTON	IN	26900	Indianapolis-Carmel-Greenwood, IN
18179	WELLS	IN	23060	Fort Wayne, IN
20021	CHEROKEE	KS	27900	Joplin, MO-KS
21007	BALLARD	KY	37140	Paducah, KY-IL
21039	CARLISLE	KY	37140	Paducah, KY-IL
21127	LAWRENCE	KY	26580	Huntington-Ashland, WV-KY-OH
21139	LIVINGSTON	KY	37140	Paducah, KY-IL
21145	MC CRACKEN	KY	37140	Paducah, KY-IL
21179	NELSON	KY	31140	Louisville/Jefferson County, KY-IN
22053	JEFFERSON DAVIS	LA	29340	Lake Charles, LA
22083	RICHLAND	LA	33740	Monroe, LA
26015	BARRY	MI	24340	Grand Rapids-Wyoming-Kentwood, MI
26019	BENZIE	MI	45900	Traverse City, MI
26055	GRAND TRAVERSE	MI	45900	Traverse City, MI
26079	KALKASKA	MI	45900	Traverse City, MI
26089	LEELANAU	MI	45900	Traverse City, MI
27133	ROCK	MN	43620	Sioux Falls, SD-MN
28009	BENTON	MS	32820	Memphis, TN-MS-AR
28123	SCOTT	MS	27140	Jackson, MS
30007	BROADWATER	MT	25740	Helena, MT
30031	GALLATIN	MT	14580	Bozeman, MT
30043	JEFFERSON	MT	25740	Helena, MT
30049	LEWIS AND CLARK	MT	25740	Helena, MT
30061	MINERAL	MT	33540	Missoula, MT
32019	LYON	NV	39900	Reno, NV
37125	MOORE	NC	38240	Pinehurst-Southern Pines, NC
38049	MCHENRY	ND	33500	Minot, ND
38075	RENVILLE	ND	33500	Minot, ND
38101	WARD	ND	33500	Minot, ND
39007	ASHTABULA	OH	17410	Cleveland, OH
39043	ERIE	OH	41780	Sandusky, OH
41013	CROOK	OR	13460	Bend, OR
41031	JEFFERSON	OR	13460	Bend, OR
42073	LAWRENCE	PA	38300	Pittsburgh, PA
45087	UNION	SC	43900	Spartanburg, SC
46033	CUSTER	SD	39660	Rapid City, SD
47081	HICKMAN	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	ARANSAS	TX	18580	Corpus Christi, TX
48035	BOSQUE	TX	47380	Waco, TX
48079	COCHRAN	TX	31180	Lubbock, TX
48169	GARZA	TX	31180	Lubbock, TX

FIPS County Code	County	State	CBSA	CBSA Name
48219	HOCKLEY	TX	31180	Lubbock, TX
48323	MAVERICK	TX	20580	Eagle Pass, TX
48407	SAN JACINTO	TX	26420	Houston-Pasadena-The Woodlands, TX
51063	FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA
51181	SURRY	VA	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
55123	VERNON	WI	29100	La Crosse-Onalaska, WI-MN

We proposed and are finalizing that when calculating the area wage index, the wage data for hospitals located in these counties would be included in their new respective urban CBSAs.

c. Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA after we adopt the new OMB delineations. In other cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs.

In one type of change, an entire CBSA would be subsumed by another CBSA. For example, CBSA 31460 (Madera, CA) currently is a single county (Madera, CA) CBSA. Madera County would be a part of CBSA 23420 (Fresno, CA) under the new OMB delineations.

In another type of change, some CBSAs have counties that would split off to become part of, or to form, entirely new labor market areas. For example, CBSA 29404 (Lake County-Kenosha County, IL–WI) currently is comprised of two counties (Lake County, IL and Kenosha County, WI). Under the new OMB delineations, Kenosha County would split off and form the new CBSA 28450 (Kenosha, WI), while Lake County would remain in CBSA 29404.

Finally, in some cases, a CBSA would lose counties to another existing CBSA if we adopt the new OMB delineations. For example, Meade County, KY, would move from CBSA 21060 (Elizabethtown-Fort Knox, KY) to CBSA 31140 (Louisville/Jefferson County, KY–IN). CBSA 21060 would still exist in the new labor market delineations with fewer constituent counties. Table 7 lists the urban counties that would move from one urban CBSA to another urban CBSA under the new OMB delineations.

TABLE 7: Counties That Would Change to a Different CBSA

FIPS County Code	County Name	State	Current CBSA	CBSA
06039	MADERA	CA	31460	23420
11001	THE DISTRICT	DC	47894	47764
12053	HERNANDO	FL	45300	45294
12057	HILLSBOROUGH	FL	45300	45294
12101	PASCO	FL	45300	45294
12103	PINELLAS	FL	45300	41304
12119	SUMTER	FL	45540	48680
13013	BARROW	GA	12060	12054
13015	BARTOW	GA	12060	31924
13035	BUTTS	GA	12060	12054
13045	CARROLL	GA	12060	12054
13057	CHEROKEE	GA	12060	31924
13063	CLAYTON	GA	12060	12054
13067	COBB	GA	12060	31924
13077	COWETA	GA	12060	12054
13085	DAWSON	GA	12060	12054
13089	DE KALB	GA	12060	12054
13097	DOUGLAS	GA	12060	12054
13113	FAYETTE	GA	12060	12054
13117	FORSYTH	GA	12060	12054
13121	FULTON	GA	12060	12054
13135	GWINNETT	GA	12060	12054
13143	HARALSON	GA	12060	31924
13149	HEARD	GA	12060	12054
13151	HENRY	GA	12060	12054
13159	JASPER	GA	12060	12054
13199	MERIWETHER	GA	12060	12054
13211	MORGAN	GA	12060	12054
13217	NEWTON	GA	12060	12054
13223	PAULDING	GA	12060	31924
13227	PICKENS	GA	12060	12054
13231	PIKE	GA	12060	12054
13247	ROCKDALE	GA	12060	12054
13255	SPALDING	GA	12060	12054
13297	WALTON	GA	12060	12054
18073	JASPER	IN	23844	29414
18089	LAKE	IN	23844	29414
18111	NEWTON	IN	23844	29414
18127	PORTER	IN	23844	29414
21163	MEADE	KY	21060	31140
22103	ST. TAMMANY	LA	35380	43640
24009	CALVERT	MD	47894	30500
24017	CHARLES	MD	47894	47764
24033	PRINCE GEORGES	MD	47894	47764
24037	ST. MARYS	MD	15680	30500

FIPS County Code	County Name	State	Current CBSA	CBSA
25015	HAMPSHIRE	MA	44140	11200
34009	CAPE MAY	NJ	36140	12100
34023	MIDDLESEX	NJ	35154	29484
34025	MONMOUTH	NJ	35154	29484
34029	OCEAN	NJ	35154	29484
34035	SOMERSET	NJ	35154	29484
36027	DUTCHESS	NY	39100	28880
36071	ORANGE	NY	39100	28880
37019	BRUNSWICK	NC	34820	48900
39035	CUYAHOGA	OH	17460	17410
39055	GEAUGA	OH	17460	17410
39085	LAKE	OH	17460	17410
39093	LORAIN	OH	17460	17410
39103	MEDINA	OH	17460	17410
39123	OTTAWA	OH	45780	41780
47057	GRAINGER	TN	34100	28940
51013	ARLINGTON	VA	47894	11694
51043	CLARKE	VA	47894	11694
51047	CULPEPER	VA	47894	11694
51059	FAIRFAX	VA	47894	11694
51061	FAUQUIER	VA	47894	11694
51107	LOUDOUN	VA	47894	11694
51153	PRINCE WILLIAM	VA	47894	11694
51157	RAPPAHANNOCK	VA	47894	11694
51177	SPOTSYLVANIA	VA	47894	11694
51179	STAFFORD	VA	47894	11694
51187	WARREN	VA	47894	11694
51510	ALEXANDRIA CITY	VA	47894	11694
51600	FAIRFAX CITY	VA	47894	11694
51610	FALLS CHURCH CITY	VA	47894	11694
51630	FREDERICKSBURG CITY	VA	47894	11694
51683	MANASSAS CITY	VA	47894	11694
51685	MANASSAS PARK CITY	VA	47894	11694
53061	SNOHOMISH	WA	42644	21794
54037	JEFFERSON	WV	47894	11694
55059	KENOSHA	WI	29404	28450
72023	CABO ROJO	PR	41900	32420
72059	GUAYANILLA	PR	49500	38660
72079	LAJAS	PR	41900	32420
72111	PENUELAS	PR	49500	38660
72121	SABANA GRANDE	PR	41900	32420
72125	SAN GERMAN	PR	41900	32420
72153	YAUCO	PR	49500	38660

If providers located in these counties move from one CBSA to another under the new OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values.

In other cases, adopting the revised OMB delineations would involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19430 (Dayton-Kettering, OH) would experience a change to its name and become CBSA 19430 (Dayton-Kettering-Beavercreek, OH), while all of its three constituent counties would remain the same. We consider these changes (where only the CBSA name and/or number would change) to be inconsequential changes with respect to the IRF PPS wage index. Table 8 sets forth a list of such CBSAs where there would be a change in CBSA name and/or number only if we adopt the revised OMB delineations.

TABLE 8: Urban CBSAs With Change to Name and/or Number

Current CBSA	Current CBSA Name	New CBSA	CBSA Name
10380	Aguadilla-Isabela, PR	10380	Aguadilla, PR
10540	Albany-Lebanon, OR	10540	Albany, OR
12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock-San Marcos, TX
12540	Bakersfield, CA	12540	Bakersfield-Delano, CA
13820	Birmingham-Hoover, AL	13820	Birmingham, AL
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14860	Bridgeport-Stamford-Norwalk, CT	14860	Bridgeport-Stamford-Danbury, CT
15260	Brunswick, GA	15260	Brunswick-St. Simons, GA
15680	California-Lexington Park, MD	30500	Lexington Park, MD
16540	Chambersburg-Waynesboro, PA	16540	Chambersburg, PA
16984	Chicago-Naperville-Evanston, IL	16984	Chicago-Naperville-Schaumburg, IL
17460	Cleveland-Elyria, OH	17410	Cleveland, OH
19430	Dayton-Kettering, OH	19430	Dayton-Kettering-Beavercreek, OH
19740	Denver-Aurora-Lakewood, CO	19740	Denver-Aurora-Centennial, CO
21060	Elizabethtown-Fort Knox, KY	21060	Elizabethtown, KY
21060	Elizabethtown-Fort Knox, KY	31140	Louisville/Jefferson County, KY-IN
21780	Evansville, IN-KY	21780	Evansville, IN
21820	Fairbanks, AK	21820	Fairbanks-College, AK
22660	Fort Collins, CO	22660	Fort Collins-Loveland, CO
23224	Frederick-Gaithersburg-Rockville, MD	23224	Frederick-Gaithersburg-Bethesda, MD
23844	Gary, IN	29414	Lake County-Porter County-Jasper County, IN
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming-Kentwood, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Greer, SC
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Port Royal, SC
26380	Houma-Thibodaux, LA	26380	Houma-Bayou Cane-Thibodaux, LA
26420	Houston-The Woodlands-Sugar Land, TX	26420	Houston-Pasadena-The Woodlands, TX
26900	Indianapolis-Carmel-Anderson, IN	26900	Indianapolis-Carmel-Greenwood, IN
27900	Joplin, MO	27900	Joplin, MO-KS
27980	Kahului-Wailuku-Lahaina, HI	27980	Kahului-Wailuku, HI
29404	Lake County-Kenosha County, IL-WI	28450	Kenosha, WI
29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL
29820	Las Vegas-Henderson-Paradise, NV	29820	Las Vegas-Henderson-North Las Vegas, NV
31020	Longview, WA	31020	Longview-Kelso, WA
31460	Madera, CA	23420	Fresno, CA
34100	Morristown, TN	28940	Knoxville, TN
34740	Muskegon, MI	34740	Muskegon-Norton Shores, MI
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	48900	Wilmington, NC

Current CBSA	Current CBSA Name	New CBSA	CBSA Name
35084	Newark, NJ-PA	35084	Newark, NJ
35154	New Brunswick-Lakewood, NJ	29484	Lakewood-New Brunswick, NJ
35300	New Haven-Milford, CT	35300	New Haven, CT
35380	New Orleans-Metairie, LA	43640	Slidell-Mandeville-Covington, LA
35840	North Port-Sarasota-Bradenton, FL	35840	North Port-Bradenton-Sarasota, FL
35980	Norwich-New London, CT	35980	Norwich-New London-Willimantic, CT
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Fremont-Berkeley, CA
36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ
36260	Ogden-Clearfield, UT	36260	Ogden, UT
36540	Omaha-Council Bluffs, NE-IA	36540	Omaha, NE-IA
37460	Panama City, FL	37460	Panama City-Panama City Beach, FL
39100	Poughkeepsie-Newburgh-Middletown, NY	28880	Kiryas Joel-Poughkeepsie-Newburgh, NY
39340	Provo-Orem, UT	39340	Provo-Orem-Lehi, UT
39540	Racine, WI	39540	Racine-Mount Pleasant, WI
41540	Salisbury, MD-DE	41540	Salisbury, MD
41620	Salt Lake City, UT	41620	Salt Lake City-Murray, UT
41900	San Germán, PR	32420	Mayagüez, PR
42644	Seattle-Bellevue-Kent, WA	21794	Everett, WA
42680	Sebastian-Vero Beach, FL	42680	Sebastian-Vero Beach-West Vero Corridor, FL
42700	Sebring-Avon Park, FL	42700	Sebring, FL
43620	Sioux Falls, SD	43620	Sioux Falls, SD-MN
44140	Springfield, MA	11200	Amherst Town-Northampton, MA
44420	Staunton, VA	44420	Staunton-Stuarts Draft, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45300	Tampa-St. Petersburg-Clearwater, FL	41304	St. Petersburg-Clearwater-Largo, FL
45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
45540	The Villages, FL	48680	Wildwood-The Villages, FL
45780	Toledo, OH	41780	Sandusky, OH
47220	Vineland-Bridgeton, NJ	47220	Vineland, NJ
47260	Virginia Beach-Norfolk-Newport News, VA-NC	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
48140	Wausau-Weston, WI	48140	Wausau, WI
48300	Wenatchee, WA	48300	Wenatchee-East Wenatchee, WA
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL
49340	Worcester, MA-CT	49340	Worcester, MA
49500	Yauco, PR	38660	Ponce, PR
49660	Youngstown-Warren-Boardman, OH-PA	49660	Youngstown-Warren, OH

TABLE 9: Connecticut Counties to Planning Regions

FIPS	Current County	Current CBSA	FIPS	Proposed Planning Region Area (County Equivalent)	CBSA
9003	Hartford	25540	9110	Capitol	25540
9015	Windham	49340	9150	Northeastern Connecticut	7
9005	Litchfield	7	9160	Northwest Hills	7
9001	Fairfield	14860	9190	Western Connecticut	14860
9011	New London	35980	9180	Southeastern Connecticut	35980
9013	Tolland	25540	9110	Capitol	25540
9009	New Haven	35300	9170	South Central Connecticut	35300
9007	Middlesex	25540	9130	Lower Connecticut River Valley	25540

d. Change to County-Equivalents in the State of Connecticut

The June 6, 2022, Census Bureau Notice (87 FR 34235–34240), OMB Bulletin No. 23–01 replaced the 8 counties in Connecticut with 9 new ''Planning Regions.'' Planning regions now serve as county-equivalents within the CBSA system. We are adopting the planning regions as county equivalents for wage index purposes. We believe it is necessary to adopt this migration from counties to planning region county-equivalents in order to maintain consistency with OMB updates. We are providing the following crosswalk with the current and as finalized FIPS county and county-equivalent codes and CBSA assignments.

TABLE 9—CONNECTICUT COUNTIES TO PLANNING REGIONS

FIPS	Current County	Current CBSA	FIPS	Proposed planning region area (County Equivalent)	CBSA
9003	Hartford	25540	9110	Capitol	25540
9015	Windham	49340	9150	Northeastern Connecticut	7
9005	Litchfield	7	9160	Northwest Hills	7
9001	Fairfield	14860	9190	Western Connecticut	14860
9011	New London	35980	9180	Southeastern Connecticut	35980
9013	Tolland	25540	9110	Capitol	25540
9009	New Haven	35300	9170	South Central Connecticut	35300
9007	Middlesex	25540	9130	Lower Connecticut River Valley	25540

3. Transition Policy for FY 2025 Wage Index Changes

Overall, we believe that implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. We recognize that some providers (10 percent) would have a higher wage index due to our implementation of the new labor market area delineations. However, we also recognize that more providers (16 percent) would experience decreases in wage index values as a result of our implementation of the new labor market area delineations. Our analysis for the FY 2025 final rule indicates that 16 IRFs will experience a change in either rural or urban designations. Of these, 8 facilities designated as rural in FY 2024 would be designated as urban in FY 2025. Based upon the CBSA delineations, those rural IRFs that change from rural to urban would lose the 14.9 percent rural adjustment. To mitigate the financial impacts of this loss, we proposed a transition for these facilities, as discussed further below.

CMS recognizes that IRFs in certain areas may experience reduced payments due to the adoption of the revised OMB delineations and is finalizing transition policies to mitigate negative financial impacts and provide stability to year-to-year wage index variations. In the FY 2021 final rule (85 FR 48434), CMS finalized a wage index transition policy to apply a 5-percent cap for IRFs that may experience decreases in their final wage index from the prior fiscal year. In FY 2023, the 5-percent cap policy was made permanent. This 5-percent cap on reductions policy is discussed in further detail in FY 2023 final rule at 87 FR 47054 through 47056. It is CMS' long held opinion that revised labor market delineations should be adopted as soon as is possible to maintain the integrity of the wage index system. We believe the 5-percent cap policy will sufficiently mitigate significant disruptive financial impacts on hospitals negatively affected by the adoption of the revised OMB delineations. Besides the rural adjustment transition discussed immediately below, we do not believe any additional transition is necessary considering that the current cap on wage index decreases, which was not in place when implementing prior decennial census updates in FY 2006 and FY 2015, ensures that an IRFs wage index would not be less than 95 percent of its final wage index for the prior year.

Consistent with the transition policy adopted in FY 2006 (70 FR 47923 [4] through 47927 [5]), we considered the appropriateness of applying a 3-year phase-out of the rural adjustment for IRFs located in rural counties that would become urban under the new OMB delineations, given the potentially significant payment impacts for these facilities. We continue to believe, as discussed in the FY 2006 IRF final rule (70 FR 47880 [6]), that the phase-out of the rural adjustment transition period for these facilities specifically is appropriate because, as a group, we expect these IRFs would experience a steeper and more abrupt reduction in their payments compared to other IRFs. Therefore, we are finalizing a budget

[4] *https://www.federalregister.gov/citation/70-FR-47923.*

[5] *https://www.federalregister.gov/citation/70-FR-47927.*

[6] *https://www.federalregister.gov/citation/70-FR-47880.*

neutral three-year phase-out of the rural adjustment for existing FY 2024 rural IRFs that will become urban in FY 2025 and that experience a loss in payments due to changes from the new CBSA delineations. Accordingly, the incremental steps needed to reduce the impact of the loss of the FY 2024 rural adjustment of 14.9 percent will be phased out over FYs 2025, 2026, and 2027. This policy will allow rural IRFs which would be classified as urban in FY 2025 to receive two-thirds of the 2024 rural adjustment for FY 2025. For FY 2026, these IRFs will receive the full FY 2026 wage index and one-third of the FY 2024 rural adjustment. For FY 2027, these IRFs will receive the full FY 2027 wage index without a rural adjustment. We believe a three-year budget-neutral phase-out of the rural adjustment for IRFs that transition from rural to urban status under the new CBSA delineations would best accomplish the goals of mitigating the loss of the rural adjustment for existing FY 2024 rural IRFs. The purpose of the gradual phase-out of the rural adjustment for these facilities is to alleviate the significant payment implications for existing rural IRFs that may need time to adjust to the loss of their FY 2024 rural payment adjustment or that experience a reduction in payments solely because of this redesignation. As stated, this policy is specifically for rural IRFs that become urban in FY 2025 and that experience a loss in payments due to changes from the new CBSA delineations. Thus, we are not implementing a transition policy for urban facilities that become rural in FY 2025 because these IRFs will receive the full rural adjustment of 14.9 percent beginning October 1, 2024.

We invited public comment on the proposed implementation of revised labor market area delineations and on the proposed transition policy for rural IRFs that would be designated as urban under the new CBSA delineations.

The following is a summary of the public comments received on the proposed implementation of the revised labor market area delineations and the proposed transition policy:

Comment: Overall, many commenters supported the adoption of OMB's CBSA delineation revisions. Several others voiced appreciation for CMS' inclusion of a transition policy to reduce the impact of the CBSA delineation changes, without voicing any opposition to the adoption of the new delineations. However, some commenters specifically opposed the adoption of OMB's CBSA delineation revisions. The commenters stated that both OMB guidance and the Metropolitan Areas Protection and Standardization Act (MAPS) (Public Law 117–219) support that, if CMS chooses to adopt new OMB delineations, CMS must fully explain why reliance on the updated CBSAs as set forth by OMB is appropriate for purposes of the FY 2025 wage index adjustments. The commenters stated that CMS has not provided any rationale or explanation for why relying on the updated CBSAs is appropriate. Rather than simply adopting the OMB CBSAs by default, the commenters stated that CMS must make a fact-specific determination of those CBSAs' suitability for Medicare reimbursement purposes, including whether it would be appropriate to use additional data to modify OMB's delineation to ensure that such changes are appropriate for purposes of defining regional labor markets for IRF workers.

Response: We appreciate the majority of commenters' support for the adoption of OMB's CBSA delineation revisions and recognize others' opposition. We do not agree with the commenters' assessment that CMS has not provided a rationale for the proposed adoption of the revised CBSA delineations for FY 2025. The MAPS Act specifically states that ''this act limits the automatic application of, and directs the Office of Management and Budget (OMB) to provide information about, changes to the standards for designating a core-based statistical area (CBSA) . . .'' We believe that our proposed rule meets the requirements of the MAPS Act because we have not automatically applied the revised CBSAs outlined in OMB Bulletin 23–01. Rather, as we noted in the proposed rule, we proposed the adoption of the revised CBSA delineations because we believe it is important for the IRF PPS to use, as soon as is reasonably possible, the latest available labor market area delineations to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We also believe that using the most current delineations increase the integrity of the IRF PPS wage index system by creating a more accurate representation of geographic variations in wage levels.

With respect to the suggestion that CMS consider whether it would be appropriate to use additional data to modify OMB's delineation to ensure that such changes are appropriate for purposes of defining regional labor markets for IRF workers, we do not believe that the use of such additional data is appropriate. As we have previously discussed in the FY 2016 final rule (80 FR 47069) and as we noted earlier in this final rule, we believe that the labor market area in which the IRF is geographically located is most appropriate for determining the wage adjustment. Accordingly, we do not believe it would be appropriate to use additional data to modify OMB's delineations, for the same reasons we previously stated with regard to floors or reclassifications. For example, using additional data to modify OMB's CBSA delineations would significantly increase administrative burden, both for IRFs and for CMS, associated with particular geographical areas or even individual IRFs moving from one CBSA to another, and it would significantly increase the complexity of the methodology.

Furthermore, because all CBSA delineation changes would be applied budget-neutrally under the wage index, these policies would increase the wage index for some IRFs while reducing IRF PPS payments for all other IRFs, which would be a departure from our longstanding policies that IRFs have relied on for many years. For these reasons, we continue to believe it is important for the IRF PPS to use the latest available labor market area delineations, based on the latest available CBSA delineations established by OMB as soon as is reasonably possible in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We further believe that using the delineations reflected in OMB Bulletin No. 23–01 would increase the integrity of the IRF PPS wage index system by creating a more accurate representation of geographic variations in wage levels. Therefore, we believe that it is appropriate to implement the new OMB delineations without delay.

Comment: Public comments generally all supported the phase-out policy for IRFs being reclassified from rural to urban CBSAs. Commenters expressed that this phase-out policy for loss of the rural adjustment is a reasonable way to ensure that no IRF faces a dramatic cut to its reimbursement as a result of the new CBSA delineation. A few commentors specifically noted that while they appreciate the existing permanent 5-percent cap policy, they do not believe that it is sufficient to mitigate the impact of the CBSA change, and therefore supported the implementation of a 3-year wage index transition period to allow for a wage index transition consistent with prior updates to the CBSA categorization.

Response: We appreciate the commenters' support for a 3-year phase-out of the rural adjustment for FY 2024 rural IRFs that will be considered urban

in FY 2025 and for supporting the CBSA change in conjunction with applying the existing permanent 5-percent cap policy. We believe that the existing permanent 5-percent cap policy substantially mitigates the financial impact on IRFs of the updated CBSA market area delineations, and we believe that phasing in these new CBSA market area delineations over 3 years would be overly complex to administer and is therefore not the best approach. We will continue monitoring the effects of the wage index updates to ensure that the permanent 5-percent cap policy is adequately mitigating any substantial decreases in wage index values.

After consideration of the comments we received, we are finalizing our proposal to adopt the revised OMB delineations contained in OMB Bulletin No. 23–01 as well as our proposal to implement a budget neutral three-year phase-out of the rural adjustment for existing FY 2024 rural IRFs that will become urban in FY 2025.

The proposed wage index applicable to FY 2025 is set forth in Table A and Table B available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html.*

4. IRF Budget-Neutral Wage Adjustment Factor Methodology

To calculate the wage-adjusted facility payment for the payment rates set forth in this final rule, we multiply the unadjusted Federal payment rate for IRFs by the FY 2025 labor-related share based on the 2021-based IRF market basket relative importance (74.4 percent) to determine the labor-related portion of the standard payment amount. (A full discussion of the calculation of the labor-related share appears in section VI.E. of this final rule.) We then multiply the labor-related portion by the applicable IRF wage index. The wage index tables are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html.*

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689) and codified at § 412.624(e)(1), as described in the steps below. We use the listed steps to ensure that the FY 2025 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2021 hospital cost report data) and the update to the labor-related share, in a budget-neutral manner:

Step 1. Calculate the total amount of estimated IRF PPS payments using the labor-related share and the wage indexes from FY 2024 (as published in the FY 2024 IRF PPS final rule (88 FR 50956)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the FY 2025 wage index values (based on updated hospital wage data and considering the permanent cap on wage index decreases policy) and the FY 2025 labor-related share of 74.4 percent.

Step 3. Divide the amount calculated in Step 1 by the amount calculated in Step 2. The resulting quotient is the FY 2025 budget-neutral wage adjustment factor of 0.9924.

Step 4. Apply the budget neutrality factor from Step 3 to the FY 2025 IRF PPS standard payment amount after the application of the increase factor to determine the FY 2025 standard payment conversion factor.

We discuss the calculation of the standard payment conversion factor for FY 2025 in section VI.G. of this final rule.

We invited public comment on our proposals regarding the Wage Adjustment for FY 2025.

Comment: Several commentors specified that the wage index cap policy should be implemented without applying a budget neutrality adjustment.

Response: We do not believe that the permanent 5-percent cap policy for the IRF wage index should be applied in a non-budget-neutral manner. As a matter of fact, the statute at section 1886(j)(6) of the Act requires that adjustments for geographic variations in labor costs for a FY be made in a budget-neutral manner. We refer readers to the FY 2023 IRF PPS final rule (87 FR 47054 through 47056) for a detailed discussion on the wage index cap policy.

As a result of the public comments, we are finalizing our proposals regarding the IRF budget neutral wage adjustment factor methodology for FY 2025.

G. Description of the IRF Standard Payment Conversion Factor and Payment Rates for FY 2025

To calculate the standard payment conversion factor for FY 2025, as illustrated in Table 10, we begin by applying the finalized increase factor for FY 2025, as adjusted in accordance with sections 1886(j)(3)(C) of the Act, to the standard payment conversion factor for FY 2024 ($18,541). Applying the 3.0 productivity-adjusted market basket increase factor for FY 2025 to the standard payment conversion factor for FY 2024 of $18,541 yields a standard payment amount of $19,097. Then, we apply the budget neutrality factor for the FY 2025 wage index (taking into account the policy placing a permanent cap on decreases in the wage index), and labor-related share of 0.9924, which results in a standard payment amount of $18,592. We next apply the budget neutrality factor for the CMG relative weights of 0.9976, which results in the standard payment conversion factor of $18,907 for FY 2025.

We invited public comment on the proposed FY 2025 standard payment conversion factor.

We did not receive any comments on our proposed FY 2025 standard payment conversion factor, and therefore, we are finalizing the revisions as proposed.

TABLE 10—CALCULATIONS TO DETERMINE THE FY 2025 STANDARD PAYMENT CONVERSION FACTOR

Explanation for Adjustment	Calculations
FY 2024 Standard Payment Conversion Factor	$18,541
Market Basket Increase Factor for FY 2025 (3.5%), reduced by 0.5 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act	× 1.030
Budget Neutrality Factor for the Updates to the Wage Index and Labor-Related Share	× 0.9924
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9976
FY 2025 Standard Payment Conversion Factor	= $18,907

We then apply the CMG relative weights described in section IV. of this final rule to the FY 2025 standard payment conversion factor ($18,907), to determine the unadjusted IRF prospective payment rates for FY 2025. The unadjusted prospective payment rates for FY 2025 are shown in Table 11.

TABLE 11: FY 2025 IRF PPS Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$18,509.95	$16,053.93	$14,669.94	$13,979.84
0102	$23,488.17	$20,370.40	$18,613.94	$17,740.44
0103	$30,273.89	$26,256.15	$23,992.98	$22,864.24
0104	$38,636.45	$33,506.99	$30,619.89	$29,181.06
0105	$48,313.06	$41,899.80	$38,288.57	$36,490.51
0106	$54,951.30	$47,656.98	$43,550.38	$41,502.76
0201	$19,281.36	$15,879.99	$14,424.15	$13,579.01
0202	$25,214.38	$20,767.45	$18,861.62	$17,759.35
0203	$31,400.75	$25,862.89	$23,490.06	$22,115.52
0204	$38,944.64	$32,077.62	$29,133.80	$27,430.28
0205	$49,886.12	$41,086.80	$37,318.64	$35,134.88
0301	$22,663.82	$18,131.81	$16,657.07	$15,698.48
0302	$29,302.07	$23,444.68	$21,535.07	$20,296.66
0303	$35,257.77	$28,207.35	$25,912.04	$24,422.17
0304	$40,878.82	$32,705.33	$30,043.22	$28,317.01
0305	$45,083.74	$36,068.88	$33,132.63	$31,228.69
0401	$22,801.84	$20,277.76	$19,684.08	$17,886.02
0402	$29,407.95	$26,152.16	$25,386.43	$23,068.43
0403	$36,904.57	$32,818.77	$31,858.30	$28,948.51
0404	$57,620.97	$51,241.75	$49,742.43	$45,199.07
0405	$45,823.01	$40,750.26	$39,557.23	$35,944.10
0406	$58,469.90	$51,996.14	$50,474.13	$45,864.60
0407	$79,935.01	$71,084.65	$69,004.88	$62,701.28
0501	$24,010.00	$18,678.23	$17,645.90	$16,260.02
0502	$30,120.74	$23,431.45	$22,138.21	$20,398.76
0503	$34,526.07	$26,859.28	$25,375.08	$23,384.18
0504	$41,041.42	$31,928.25	$30,164.23	$27,797.07
0505	$57,029.18	$44,367.17	$41,914.93	$38,625.11
0601	$25,121.73	$18,808.68	$17,558.93	$15,836.50
0602	$31,863.97	$23,856.85	$22,270.56	$20,084.91
0603	$37,545.52	$28,109.04	$26,241.03	$23,665.89
0604	$47,085.99	$35,252.10	$32,909.52	$29,680.21
0701	$23,713.16	$18,343.57	$17,377.42	$16,055.82
0702	$29,290.72	$22,658.15	$21,463.23	$19,829.66
0703	$36,019.73	$27,863.25	$26,394.17	$24,386.25
0704	$44,002.26	$34,038.27	$32,244.00	$29,789.87
0801	$22,985.24	$18,443.78	$16,815.89	$15,683.36
0802	$26,059.52	$20,911.14	$19,063.93	$17,780.14
0803	$29,005.23	$23,274.52	$21,219.33	$19,791.85
0804	$32,495.46	$26,074.64	$23,773.66	$22,172.24
0805	$38,973.00	$31,272.18	$28,511.76	$26,592.70
0901	$22,720.54	$18,197.99	$16,961.47	$15,518.87
0902	$28,298.11	$22,665.71	$21,124.79	$19,328.63
0903	$33,792.48	$27,065.37	$25,227.61	$23,081.67
0904	$40,491.23	$32,431.18	$30,228.51	$27,657.16
1001	$22,896.38	$18,935.36	$17,298.01	$15,496.18
1002	$29,005.23	$23,987.31	$21,913.21	$19,631.14
1003	$33,983.44	$28,105.26	$25,673.82	$23,002.26
1004	$43,506.90	$35,981.91	$32,867.93	$29,447.65
1101	$23,917.36	$19,226.53	$19,226.53	$18,838.93
1102	$30,408.13	$24,442.97	$24,442.97	$23,949.50
1103	$37,919.88	$30,481.87	$30,481.87	$29,865.50
1201	$25,102.82	$19,084.73	$17,893.58	$16,358.34
1202	$30,391.11	$23,104.35	$21,663.64	$19,805.08
1203	$39,371.94	$29,931.67	$28,065.55	$25,656.80

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1204	$41,287.22	$31,389.40	$29,430.64	$26,906.55
1301	$20,618.08	$17,046.55	$16,271.36	$15,136.94
1302	$28,182.77	$23,302.88	$22,244.09	$20,691.82
1303	$32,062.49	$26,511.40	$25,305.13	$23,541.11
1304	$40,491.23	$33,478.62	$31,956.61	$29,729.37
1305	$38,776.37	$32,060.60	$30,602.87	$28,470.16
1401	$21,336.55	$16,808.32	$15,628.53	$14,380.66
1402	$27,059.70	$21,317.64	$19,820.21	$18,237.69
1403	$33,109.94	$26,084.10	$24,252.01	$22,315.93
1404	$40,570.64	$31,960.39	$29,716.13	$27,343.30
1501	$24,085.63	$19,547.95	$18,385.17	$17,197.81
1502	$30,553.71	$24,798.42	$23,321.78	$21,816.79
1503	$34,724.60	$28,182.77	$26,505.72	$24,794.64
1504	$43,002.08	$34,902.32	$32,824.44	$30,704.97
1601	$24,753.04	$18,387.06	$16,619.25	$15,384.63
1602	$28,366.17	$21,069.96	$19,043.13	$17,628.89
1603	$35,823.09	$26,607.82	$24,049.70	$22,262.99
1604	$44,384.18	$32,966.25	$29,797.43	$27,583.42
1701	$25,280.55	$19,650.05	$18,199.88	$16,511.48
1702	$31,408.31	$24,414.61	$22,610.88	$20,514.10
1703	$37,322.42	$29,010.90	$26,868.74	$24,376.80
1704	$42,243.91	$32,835.79	$30,410.02	$27,589.09
1705	$49,574.15	$38,534.36	$35,686.96	$32,376.35
1801	$20,047.09	$15,991.54	$15,182.32	$14,076.26
1802	$26,895.21	$21,455.66	$20,370.40	$18,886.20
1803	$34,554.43	$27,566.41	$26,171.07	$24,265.24
1804	$37,787.53	$30,145.32	$28,617.64	$26,534.08
1805	$45,813.55	$36,547.23	$34,696.24	$32,170.26
1806	$65,062.77	$51,903.50	$49,275.42	$45,686.87
1901	$19,667.06	$15,119.93	$14,108.40	$13,864.50
1902	$31,470.70	$24,195.29	$22,576.85	$22,185.47
1903	$47,483.04	$36,503.74	$34,062.85	$33,472.95
1904	$69,167.48	$53,175.94	$49,619.53	$48,761.15
2001	$22,317.82	$17,827.41	$16,653.29	$15,157.74
2002	$27,827.32	$22,227.07	$20,763.67	$18,899.44
2003	$33,323.59	$26,617.27	$24,864.60	$22,631.68
2004	$39,842.72	$31,824.26	$29,729.37	$27,059.70
2005	$41,996.23	$33,544.80	$31,336.46	$28,523.10
2101	$28,453.14	$21,620.15	$21,620.15	$18,464.58
2102	$43,818.86	$33,297.12	$33,297.12	$28,436.13
5001	$ -	$ -	$ -	$3,233.10
5101	$ -	$ -	$ -	$14,221.85
5102	$ -	$ -	$ -	$33,892.69
5103	$ -	$ -	$ -	$17,384.99
5104	$ -	$ -	$ -	$45,062.94

H. Example of the Methodology for Adjusting the Prospective Payment Rates

Table 12 illustrates the methodology for adjusting the prospective payments (as described in section V. of this final rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified into CMG 0104 (without comorbidities). The unadjusted prospective payment rate for CMG 0104 (without comorbidities) appears in Table 11.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8657, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.9068, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the prospective

payment, we begin by taking the FY 2025 unadjusted prospective payment rate for CMG 0104 (without comorbidities) from Table 11. Then, we multiply the labor-related share for FY 2025 (74.4 percent) described in section VI. of this final rule by the unadjusted prospective payment rate. To determine the non-labor portion of the prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted prospective payment.

To compute the wage-adjusted prospective payment, we multiply the labor portion of the Federal payment by the appropriate wage index located in the applicable wage index table. This table is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html.*

The resulting figure is the wage-adjusted labor amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion of the Federal payment.

Adjusting the wage-adjusted Federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 12 illustrates the components of the adjusted payment calculation.

TABLE 12: Example of Computing the FY 2025 IRF Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
1	Unadjusted Payment		$29,181.06		$29,181.06
2	Labor-Related Share	X	0.744	X	0.744
3	Labor Portion of Payment	=	$21,710.71	=	$21,710.71
4	CBSA-Based Wage Index	X	0.8657	X	0.9068
5	Wage-Adjusted Amount	=	$18,794.96	=	$19,687.27
6	Non-Labor Amount	+	$7,470.35	+	$7,470.35
7	Wage-Adjusted Payment	=	$26,265.31	=	$27,157.62
8	Rural Adjustment	X	1.149	X	1.000
9	Wage- and Rural-Adjusted Payment	=	$30,178.84	=	$27,157.62
10	LIP Adjustment	X	1.0156	X	1.0454
11	Wage-, Rural- and LIP-Adjusted Payment	=	$30,649.63	=	$28,390.58
12	Wage- and Rural-Adjusted Payment		$30,178.84		$27,157.62
13	Teaching Status Adjustment	X	0	X	0.0784
14	Teaching Status Adjustment Amount	=	$0.00	=	$2,129.16
15	Wage-, Rural-, and LIP-Adjusted Payment	+	$30,649.63	+	$28,390.58
16	Total Adjusted Payment	=	$30,649.63	=	$30,519.74

Thus, the adjusted payment for Facility A would be $30,649.63, and the adjusted payment for Facility B would be $30,519.74.

VII. Update to Payments for High-Cost Outliers under the IRF PPS for FY 2025

A. Update to the Outlier Threshold Amount for FY 2025

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall Cost-to-Charge Ratio (CCR) by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the FY 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high cost- patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2024 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, 82 FR 36238, 83 FR 38514, 84 FR 39054, 85 FR 48444, 86 FR 42362, 87 FR 47038, and 88 FR 50956 respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2025, we proposed to use FY 2023 claims data and the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2024. The outlier threshold is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 3 percent of total payments under the simulation. To determine the outlier threshold for FY 2025, we estimated the amount of FY 2025 IRF PPS aggregate and outlier payments using the most recent claims available (FY 2023) and the FY 2025 standard payment conversion factor, labor-related share, and wage indexes, incorporating any applicable budget-neutrality adjustment factors. The outlier threshold is adjusted either up or down in this simulation until the estimated outlier payments equal 3 percent of the estimated aggregate payments. Based on an analysis of the preliminary data used for the proposed rule, we estimated that IRF outlier payments as a percentage of total estimated payments would be approximately 3.2 percent in FY 2024. Therefore, we proposed to update the outlier threshold amount from $10,423 for FY 2024 to $12,158 for FY 2025 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2025.

We note that, as we typically do, we will update our data between the FY 2025 IRF PPS proposed and final rules to ensure that we use the most recent available data in calculating IRF PPS payments. This updated data includes a more complete set of claims for FY 2023. Based on our analysis using this updated data, we estimate that IRF outlier payments as a percentage of total estimated payments are approximately 3.2 percent in FY 2024. Therefore, we will update the outlier threshold amount from $10,423 for FY 2024 to $12,043 for FY 2025 to account for the increases in IRF PPS payments and estimated costs and to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2025.

We invited public comment on the proposed update to the IRF outlier threshold for FY 2025. The following is a summary of the public comments received on our proposed update to the IRF outlier threshold:

Comment: Commenters were mixed in their support of the proposed high-cost outlier threshold, although more commentors supported the proposed threshold than opposed it. Those that supported the proposed threshold indicated support of CMS' policy to keep the outlier payments at 3 percent of total payments. However, these supporters also expressed concern over the lack of stability and predictability in the threshold, stating that the lack of stability makes it difficult for facilities to budget and poses challenges to IRFs that treat a large number of complex patients. One commenter expressed concern over the reduction in outlier payments during a time when increasing costs are outside of the hospital's control. Many suggested modifications to the outlier threshold methodology.

Response: We appreciate the commenters' support of the current 3 percent outlier threshold policy and recognize the commenters' concern regarding a reduction in outlier payments this year, and the commenters' desire for increased stability and predictability in the threshold from year-to-year. It has been our long-standing practice to utilize the most recent full fiscal year of data to update the prospective payment rates and determine the outlier threshold amount, as this data is generally considered to be the best overall predictor of experience in the upcoming fiscal year. Additionally, we continue to believe that maintaining the outlier pool at 3 percent of aggregate IRF payments optimizes the extent to which we can reduce financial risk to IRFs of caring for highest-cost patients, while still providing for adequate payments for all other non-outlier cases.

Although we recognize commenters' concerns about increasing IRF costs, we do not believe that it would be appropriate to address these concerns through the outlier payment policy. The outlier payment policy is designed to compensate IRFs for treating unusually high-cost patients, not for addressing overall inflationary pressures that increase the costs of caring for all IRF patients.

We will continue to examine ways of enhancing the stability and predictability of the outlier threshold from year to year. However, since 3 percent was deducted from IRF payments in the beginning of the IRF PPS to fund the outlier pool, we do not believe that it would be appropriate to deliberately pay more than 3 percent in outlier payments to IRFs in a given year, as that additional funding would increase overall payments to IRFs. Thus, we believe that any changes to the outlier threshold methodology to make it more stable and predictable would still need to maintain the integrity of the outlier pool, which is currently set at 3 percent. CMS will continue to monitor year-to-year changes in the outlier threshold and the impact of these changes on payment.

Comment: Several commenters expressed concerns that outlier payments may not be consistently targeted towards patients who require more intensive or complex services with related higher costs. Some of the commenters believed that factors other than patient complexity and case mix may be driving these payments. One commenter presented analysis to support their claim that inefficient cost structures, rather than highly complex patients, appear to be driving the distribution of overall IRF outlier payments, potentially resulting in patients at IRFs that warrant an outlier payment not receiving one. Moreover, many commenters expressed concern that outlier payments are being concentrated among an increasingly small number of providers. Several of these comments urged CMS to analyze the increasing concentration of outlier payments and make such analysis publicly accessible.

Response: We acknowledge commenters' concerns that outlier payments may be concentrated among a small subset of providers and may not be consistently targeted towards patients with intensive or complex needs. As most recently discussed in the FY 2024 IRF PPS Final Rule (88 FR 68494), our outlier policy is intended to reimburse IRFs for treating extraordinarily costly cases. Any future consideration given to imposing a limit on outlier payments or adjusting the outlier threshold to account for historical outlier reconciliation dollars would need to be carefully assessed and take into consideration the effect on access to IRF care for certain high-cost populations. We continue to believe that maintaining the outlier pool at 3 percent of aggregate IRF payments optimizes the extent to which we can reduce financial risk to IRFs caring for highest-cost patients, while still providing for adequate payments for all other non-outlier cases. We appreciate the commenters' suggestions for additional analysis on our methodology and will take them into consideration as we continue to assess our outlier threshold.

Comment: Many commenters provided suggestions to improve the high-cost outlier threshold methodology. By far the most frequent suggestion was for CMS to consider

implementing a 3-year rolling average as a stabilizing factor for the outlier threshold, similar to the method used for the facility-level adjustments in the past. Commenters suggested that this methodology could reduce the annual outlier changes and provide greater predictability for the field. Several comments also suggested that CMS consider developing and implementing an outlier reconciliation policy for the IRF PPS, similar to the one used in IPPS. Other, less frequent suggestions that commenters offered were the following: establishing an outlier baseline and then increasing the outlier threshold each year by the approved market basket percentage increase, capping the overall outlier payments an IRF can receive, and reducing the overall 3 percent outlier pool.

Response: We thank the commenters for their suggestions regarding the outlier threshold. We appreciate the suggestion to modify the outlier threshold methodology to use a 3-year average; however, it has been our practice to utilize the most recent full fiscal year of data to update the prospective payment rates and determine the outlier threshold amount, as this data is generally considered to be the best overall predictor of experience in the upcoming fiscal year. Additionally, utilizing a 3-year rolling average approach would not be setting outlier payments at the 3 percent target and could potentially exceed or reduce the 3 percent outlier pool objective. We appreciate the commenters' suggestions and will take them into consideration as we continue to consider revisions to our outlier threshold methodology in future rulemaking.

As most recently discussed in the FY 2023 IRF PPS final rule (87 FR 47038), our outlier policy is intended to reimburse IRFs for treating extraordinarily costly cases. Any future consideration given to adjusting the outlier threshold to account for historical outlier reconciliation dollars or imposing a limit on outlier payments would need to be carefully assessed and take into consideration the effect on access to IRF care for certain high-cost populations. We continue to believe that maintaining the outlier pool at 3 percent of aggregate IRF payments optimizes the extent to which we can reduce financial risk to IRFs of caring for highest-cost patients, while still providing for adequate payments for all other non-outlier cases.

Additionally, we do not believe it would be appropriate to limit changes in the outlier threshold to changes in the market basket percentage as constraining adjustments to the outlier threshold may result in a threshold that generates outlier payments above or below the 3 percent target.

We appreciate the commenters' suggestions for refinements to the outlier methodology as well as the suggested areas of analysis and will take them into consideration as we continue to assess our outlier threshold methodology. We will continue to monitor our outlier policy to ensure it continues to compensate IRFs appropriately.

After consideration of the comments received and considering the most recent available data, we are finalizing the outlier threshold amount of $12,043 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2025.

B. Update to the IRF Cost-to-Charge Ratio (CCR) Ceiling and Urban/Rural Averages for FY 2025

CCRs are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from MCRs. IRF-specific CCRs are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF PPS. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR45692 through 45694), we proposed to apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we proposed to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2025, based on analysis of the most recent data available. We apply the national urban and rural CCRs to:

- New IRFs that have not yet submitted their first MCR.
- IRFs with an overall CCR that exceeds the national CCR ceiling for FY 2025, as discussed below in this section.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2025, we proposed to estimate a national average CCR of 0.492 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we proposed to estimate a national average CCR of 0.406 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this final rule, we have used the most recent available cost report data (FY 2022). This includes all IRFs whose cost reporting periods begin on or after October 1, 2021, and before October 1, 2022. If, for any IRF, the FY 2022 cost report was missing or had an ''as submitted'' status, we used data from a previous FY's (that is, FY 2004 through FY 2021) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2022 cost report data for this final rule, we estimate a national average CCR of 0.485 for rural IRFs, and a national average CCR of 0.405 for urban IRFs.

In accordance with past practice, we proposed to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we proposed a national CCR ceiling of 1.52 for FY 2025. This means that, if an individual IRF's CCR were to exceed this ceiling of 1.52 for FY 2025, we will replace the IRF's CCR with the appropriate national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in Step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in Step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from Step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from Step 1.

We also proposed that if more recent data become available after the publication of the proposed rule and before the publication of this final rule, we would use such data to determine the FY 2025 national average rural and urban CCRs and the national CCR ceiling in the final rule. Using the FY 2022 cost report data for this final rule, we estimate a national average CCR ceiling of 1.50, using the same methodology.

We invited public comment on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2025.

We did not receive any comments on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2025. Consistent with the methodology outlined in the proposed rule, and using the most recent cost report data, we are finalizing a national average urban CCR at 0.405, the national average rural CCR at 0.485, and the national average CCR ceiling at 1.50 for FY 2025.

VIII. Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

A. Background and Statutory Authority

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) is authorized by section 1886(j)(7) of the Act, and it applies to freestanding IRFs, as well as inpatient rehabilitation units of hospitals or Critical Access Hospitals (CAHs) paid by Medicare under the IRF PPS. Section 1886(j)(7)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual increase factor for discharges occurring during a FY for any IRF that does not submit data in accordance with the IRF QRP requirements set forth in subparagraphs (C) and (F) of section 1886(j)(7) of the Act. We have codified our program requirements in our regulations at § 412.634.

We proposed to require IRFs to report four new items to the IRF-Patient Assessment Instrument (PAI) and modify one item on the IRF–PAI as described in section VII.C. of the proposed rule. We also proposed to remove an item from the IRF–PAI as described in section VII.F.3 of the proposed rule. Finally, we also sought information on future measure concepts for the IRF QRP and on an IRF star rating system in sections VII.D. and VII.E. of the proposed rule, respectively.

B. General Considerations Used for the Selection of Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality, resource use, or other measures, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47083 and 47084).

1. Quality Measures Currently Adopted for the IRF QRP

The IRF QRP currently has 18 adopted measures, which are listed in Table 13. For a discussion of the factors used to evaluate whether a measure should be removed from the IRF QRP, we refer readers to § 412.634(b)(2).

TABLE 13—QUALITY MEASURES CURRENTLY ADOPTED FOR THE IRF QRP

Short name	Measure name & data source
Inpatient Rehabilitation Facility—Patient Assessment Instrument (IRF–PAI) Assessment-Based Measures	
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).
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients.
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients.
DRR	Drug Regimen Review Conducted with Follow-Up for Identified Issues—Post Acute Care (PAC) Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP).
TOH-Provider	Transfer of Health Information to the Provider—Post-Acute Care (PAC).
TOH-Patient	Transfer of Health Information to the Patient—Post-Acute Care (PAC).
DC Function	Discharge Function Score.
Patient/Resident COVID–19 Vaccine.	COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date.
National Healthcare Safety Network	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection Outcome Measure.
CDI	National Healthcare Safety Network (NHSN) Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection (CDI) Outcome Measure.
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel.
HCP COVID–19 Vaccine	COVID–19 Vaccination Coverage among Healthcare Personnel (HCP).
Claims-Based	
MSPB IRF	Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) IRF QRP.
DTC	Discharge to Community—PAC IRF QRP.
PPR 30 day	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP.
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs.

We did not propose to adopt any new measures for the IRF QRP.

C. Collection of Four New Items as Standardized Patient Assessment Data Elements and Modification of One Item Collected as a Standardized Patient Assessment Data Element Beginning With the FY 2028 IRF QRP

In the proposed rule, we proposed to require IRFs to report the following four new items [7] as standardized patient assessment data elements under the social determinants of health (SDOH) category: one item for Living Situation; two items for Food; and one item for Utilities. We also proposed to modify one of the current items collected as standardized patient assessment data under the SDOH category (the Transportation item), as described in section VII.C.5. of the proposed rule.[8]

1. Definition of Standardized Patient Assessment Data

Section 1886(j)(7)(F)(ii) of the Act requires IRFs to submit standardized patient assessment data required under section 1899B(b)(1) of the Act. Section 1899B(b)(1)(A) of the Act requires post-acute care (PAC) providers to submit standardized patient assessment data under applicable reporting provisions (which, for IRFs, is the IRF QRP) with

[7] Items may also be referred to as ''data elements.''

[8] As noted in section VII.C of the proposed rule and section VIII.C of this final rule, hospitals are required to report whether they have screened patients for five standardized SDOH categories: housing instability, food insecurity, utility difficulties, transportation needs, and interpersonal safety.

respect to the admission and discharge of an individual (and more frequently as the Secretary deems appropriate) using a standardized patient assessment instrument. Section 1899B(a)(1)(C) of the Act requires, in part, the Secretary to modify the PAC assessment instruments in order for PAC providers, including IRFs, to submit standardized patient assessment data under the Medicare program. IRFs are currently required to report standardized patient assessment data through the patient assessment instrument, referred to as the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI). Section 1899B(b)(1)(B) of the Act describes standardized patient assessment data as data required for at least the quality measures described in section 1899B(c)(1) of the Act and that is with respect to the following categories: (1) functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider; (2) cognitive function, such as ability to express ideas and to understand, and mental status, such as depression and dementia; (3) special services, treatments, and interventions, such as need for ventilator use, dialysis, chemotherapy, central line placement, and total parenteral nutrition; (4) medical conditions and comorbidities, such as diabetes, congestive heart failure, and pressure ulcers; (5) impairments, such as incontinence and an impaired ability to hear, see, or swallow; and (6) other categories deemed necessary and appropriate by the Secretary.

2. Social Determinants of Health Collected as Standardized Patient Assessment Data Elements

Section 1899B(b)(1)(B)(vi) of the Act authorizes the Secretary to collect standardized patient assessment data elements with respect to other categories deemed necessary and appropriate. Accordingly, we finalized the creation of the SDOH category of standardized patient assessment data elements in the FY 2020 IRF PPS final rule (84 FR 39149 through 39161), and defined SDOH as the socioeconomic, cultural, and environmental circumstances in which individuals live that impact their health.[9] According to the World Health Organization, research shows that the SDOH can be more important than health care or lifestyle choices in influencing health, accounting for between 30–55% of health outcomes.[10] This is a part of a growing body of research that highlights the importance of SDOH on health outcomes. Subsequent to the FY 2020 IRF PPS final rule, we expanded our definition of SDOH: SDOH 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.[11] [12] [13] This update will align our definition of SDOH with the definition used by HHS agencies, including OASH, the Centers for Disease Control and Prevention (CDC), and the White House Office of Science and Technology Policy.[14] [15] We currently collect seven items in this SDOH category of standardized patient assessment data elements: ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 39149 through 39161).[16]

In accordance with our authority under section 1899B(b)(1)(B)(vi) of the Act, we similarly finalized the creation of the SDOH category of standardized patient assessment data elements for Skilled Nursing Facilities (SNFs) in the FY 2020 SNF PPS final rule (84 FR 38805 through 38817), for Long-Term Care Hospitals (LTCHs) in the FY 2020 Inpatient Prospective Payment System (IPPS)/LTCH PPS final rule (84 FR 42577 through 42588), and for Home Health Agencies (HHAs) in the Calendar Year (CY) 2020 HH PPS final rule (84 FR 60597 through 60608). We also collect the same seven SDOH items in these PAC providers' respective patient/resident assessment instruments (84 FR 38817, 84 FR 42590, and 84 FR 60610, respectively).

Access to standardized data relating to SDOH on a national level permits us to conduct periodic analyses, and to assess their appropriateness as risk adjustors or in future quality measures. Our ability to perform these analyses and to make adjustments relies on existing data collection of SDOH items from PAC settings. We adopted these SDOH items using common standards and definitions across the four PAC providers to promote interoperable exchange of longitudinal information among these PAC providers, including IRFs, and other providers. We believe this information may facilitate coordinated care, continuity in care planning, and the discharge planning process from PAC settings.

We noted in the FY 2020 IRF PPS final rule that each of the items was identified in the 2016 National Academies of Sciences, Engineering, and Medicine (NASEM) report as impacting care use, cost, and outcomes for Medicare beneficiaries (84 FR 39150 through 39151). At that time, we acknowledged that other items may also be useful to understand. The SDOH items we proposed to adopt as standardized patient assessment data elements under the SDOH category in this proposed rule were also identified in the 2016 NASEM report [17] or the 2020 NASEM report [18] as impacting care use, cost, and outcomes for Medicare beneficiaries. The items have the capacity to take into account treatment preferences and care goals of patients and their caregivers, to inform our understanding of patient complexity and SDOH that may affect care outcomes and ensure that IRFs are in a position to impact through the provision of services and supports, such as connecting patients and their caregivers with identified needs with social support programs.

Health-related social needs (HRSNs) are the resulting effects of SDOH, which are individual-level, adverse social conditions that negatively impact a person's health or health care.[19]

[9] Office of the Assistant Secretary for Planning and Evaluation (ASPE). Second Report to Congress on Social Risk and Medicare's Value-Based Purchasing Programs. June 28, 2020. Available at: *https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicares-value-based-purchasing-programs.*

[10] World Health Organization. Social determinants of health. Available at: *https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.*

[11] Using Z Codes: The Social Determinants of Health (SDOH). Data Journey to Better Outcomes. *https://www.cms.gov/files/document/zcodes-infographic.pdf.*

[12] Improving the Collection of Social Determinants of Health (SDOH) Data with ICD–10–CM Z Codes. *https://www.cms.gov/files/document/cms-2023-omh-z-code-resource.pdf.*

[13] CMS.gov. Measures Management System (MMS). CMS Focus on Health Equity. Health Equity Terminology and Quality Measures. *https://mmshub.cms.gov/about-quality/quality-at-CMS/goals/cms-focus-on-health-equity/health-equity-terminology.*

[14] Centers for Disease Control and Prevention. Social Determinants of Health (SDOH) and PLACES Data. *https://www.cdc.gov/places/social-determinants-of-health-and-places-data/.*

[15] ''U.S. Playbook To Address Social Determinants Of Health'' from the White House Office Of Science And Technology Policy (November 2023).

[16] These SDOH data are also collected for purposes outlined in section 2(d)(2)(B) of the Improving Medicare Post-Acute Care Transitions Act (IMPACT Act). For a detailed discussion on SDOH data collection under section 2(d)(2)(B) of the IMPACT Act, see the FY 2020 IRF PPS final rule (84 FR 39149 through 39161).

[17] Social Determinants of Health. Healthy People 2020. *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health.* (February 2019).

[18] National Academies of Sciences, Engineering, and Medicine. 2020. Leading Health Indicators 2030: Advancing Health, Equity, and Well-Being. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25682.*

[19] Centers for Medicare & Medicaid Services. ''A Guide to Using the Accountable Health

Continued

Examples of HRSNs include lack of access to food, housing, or transportation, and have been associated with poorer health outcomes, greater use of emergency departments and hospitals, and higher health care costs.[20] Certain HRSNs can lead to unmet social needs that directly influence an individual's physical, psychosocial, and functional status. This is particularly true for food security, housing stability, utilities security, and access to transportation.[21]

We proposed to require IRFs to collect and submit four new items in the IRF–PAI as standardized patient assessment data elements under the SDOH category because these items would collect information not already captured by the current SDOH items. Specifically, we believe the ongoing identification of SDOH would have three significant benefits. First, promoting screening for SDOH could serve as evidence-based building blocks for supporting healthcare providers in actualizing their commitment to address disparities that disproportionately impact underserved communities. Second, screening for SDOH improves health equity through identifying potential social needs so the IRF may address those with the patient, their caregivers, and community partners during the discharge planning process, if indicated.[22] Third, these SDOH items could support our ongoing IRF QRP initiatives by providing data with which to stratify IRFs' performance on measures and in future quality measures.

Collection of additional SDOH items would permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries. For example, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to IRFs on whether differences in quality measure outcomes are present for their patients by dual-enrollment status and race and ethnicity.[23] We note that advancing health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars[24] and a Biden-Harris Administration priority.[25]

3. Collection of Four New Items as Standardized Patient Assessment Data Elements Beginning With the FY 2028 IRF QRP

We proposed to require IRFs to collect and submit four new items as standardized patient assessment data elements under the SDOH category using the IRF–PAI: one item for Living Situation, as described in section VIII.3.(a) of this final rule; two items for Food, as described in section VIII.3.(b) of this final rule; and one item for Utilities, as described in VIII.3.(c) of this final rule.

We selected the SDOH items from the Accountable Health Communities (AHC) Health-Related Social Needs (HRSN) Screening Tool developed for the AHC Model.[26] The AHC HRSN Screening Tool is a universal, comprehensive screening for HRSNs that addresses five core domains as follows: (1) housing instability (for example, homelessness, poor housing quality), (2) food insecurity, (3) transportation difficulties, (4) utility assistance needs, and (5) interpersonal safety concerns (for example, intimate-partner violence, elder abuse, child maltreatment).[27]

We believe that requiring IRFs to report new items that are included in the AHC HRSN Screening Tool will further standardize the screening of SDOH across quality programs. For example, as outlined in the proposed rule, our proposal will align, in part, with the requirements of the Hospital Inpatient Quality Reporting (IQR) Program and the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program. As of January 2024, hospitals are required to report whether they have screened patients for the standardized SDOH categories of housing instability, food insecurity, utility difficulties, transportation needs, and interpersonal safety to meet the Hospital IQR Program requirements.[28] Additionally, beginning January 2025, IPFs will also be required to report whether they have screened patients for the same set of SDOH categories.[29] As we continue to standardize data collection across settings, we believe using common standards and definitions for new items is important to promote interoperable exchange of longitudinal information between IRFs and other providers to facilitate coordinated care, continuity in care planning, and the discharge planning process.

Below we describe each of the four proposed items in more detail.

(a) Living Situation

Healthy People 2030 prioritizes economic stability as a key SDOH, of which housing stability is a component.[30] [31] Lack of housing stability encompasses several challenges, such as having trouble paying rent, overcrowding, moving frequently, or spending the bulk of household income on housing.[32] These experiences may negatively affect one's physical health and access to health

Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights.'' August 2022. Available at: *https://www.cms.gov/priorities/innovation/media/document/ahcm-screeningtool-companion.*

[20] Berkowitz, S.A., T.P. Baggett, and S.T. Edwards, ''Addressing Health-Related Social Needs: Value-Based Care or Values-Based Care?'' Journal of General Internal Medicine, vol. 34, no. 9, 2019, pp. 1916–1918, *https://doi.org/10.1007/s11606-019-05087-3.*

[21] Hugh Alderwick and Laura M. Gottlieb, ''Meanings and Misunderstandings: A Social Determinants of Health Lexicon for Health Care Systems: Milbank Quarterly,'' Milbank Memorial Fund, November 18, 2019, *https://www.milbank.org/quarterly/articles/meanings-and-misunderstandings-a-social-determinants-of-health-lexicon-for-health-care-systems/.*

[22] American Hospital Association. (2020). Health Equity, Diversity & Inclusion Measures for Hospitals and Health System Dashboards. December 2020. Accessed: January 18, 2022. Available at: *https://ifdhe.aha.org/system/files/media/file/2020/12/ifdhe_inclusion_dashboard.pdf.*

[23] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to IRFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the IRF QRP Training web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-quality-reporting-training.*

[24] 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.*

[25] The Biden-Harris Administration's strategic approach to addressing health related social needs can be found in The U.S. Playbook to Address Social Determinants of Health (SDOH) (2023): *https://www.whitehouse.gov/wp-content/uploads/2023/11/SDOH-Playbook-3.pdf.*

[26] The AHC Model was a five-year demonstration project run by the Centers for Medicare & Medicaid Innovation between May 1, 2017 and April 30, 2023. For more information go to *https://www.cms.gov/priorities/innovation/innovation-models/ahcm.*

[27] More information about the AHC HRSN Screening Tool is available on the website at *https://innovation.cms.gov/Files/worksheets/ahcm-screeningtool.pdf.*

[28] Centers for Medicare & Medicaid Services, FY2023 IPPS/LTCH PPS final rule (87 FR 49191 *through* 49194).

[29] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[30] *https://health.gov/healthypeople/priority-areas/social-determinants-health.*

[31] Healthy People 2030 is a long-term, evidence-based effort led by the U.S. Department of Health and Human Services (HHS) that aims to identify nationwide health improvement priorities and improve the health of all Americans.

[32] Kushel, M.B., Gupta, R., Gee, L., & Haas, J.S. (2006). Housing instability and food insecurity as barriers to health care among low-income Americans. *Journal of General Internal Medicine, 21*(1), 71–77. doi: *https://doi.org/10.1111/j.1525-1497.2005.00278.x.*

care. Housing instability can also lead to homelessness, which is housing deprivation in its most severe form.[33] On a single night in 2023, roughly 653,100 people, or 20 out of every 10,000 people in the United States, were experiencing homelessness.[34] Studies also found that people who are homeless have an increased risk of premature death and experience chronic disease more often than among the general population.[35]

We believe that IRFs can use information obtained from the Living Situation item during a patient's discharge planning. For example, IRFs could work in partnership with community care hubs and community-based organizations to establish new care transition workflows, including referral pathways, contracting mechanisms, data sharing strategies, and implementation training that can track HRSNs to ensure unmet needs, such as housing, are successfully addressed through closed loop referrals and follow-up.[36] IRFs could also take action to help alleviate a patient's other related costs of living, like food, by referring the patient to community-based organizations that would allow the patient's additional resources to be allocated towards housing without sacrificing other needs.[37] Finally, IRFs could use the information obtained from the Living Situation item to better coordinate with other healthcare providers, facilities, and agencies during transitions of care, so that referrals to address a patient's housing stability are not lost during vulnerable transition periods.

Due to the potential negative impacts housing instability can have on a patient's health, we proposed to adopt the Living Situation item as a new standardized patient assessment data element under the SDOH category. This proposed Living Situation item is based on the Living Situation item collected in the AHC HRSN Screening Tool,[38] [39] and was adapted from the Protocol for Responding to and Assessing Patients' Assets, Risks, and Experiences (PRAPARE) tool.[40] The proposed Living Situation item asks, ''What is your living situation today?'' The proposed response options are: (1) I have a steady place to live; (2) I have a place to live today, but I am worried about losing it in the future; (3) I do not have a steady place to live; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the Living Situation item proposed to be adopted as a standardized patient assessment data element under the SDOH category can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

(b) Food

The U.S. Department of Agriculture, Economic Research Service defines a lack of food security as a household-level economic and social condition of limited or uncertain access to adequate food.[41] Adults who are food insecure may be at an increased risk for a variety of negative health outcomes and health disparities. For example, a study found that food-insecure adults may be at an increased risk for obesity.[42] Another study found that food-insecure adults have a significantly higher probability of death from any cause or cardiovascular disease in long-term follow-up care, in comparison to adults that are food secure.[43]

While having enough food is one of many predictors for health outcomes, a diet low in nutritious foods is also a factor.[44] The United States Department of Agriculture (USDA) defines nutrition security as ''consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.'' [45] Nutrition security builds on and complements long standing efforts to advance food security. Studies have shown that older adults struggling with food insecurity consume fewer calories and nutrients and have lower overall dietary quality than those who are food secure, which can put them at nutritional risk.[46] Older adults are also at a higher risk of developing malnutrition, which is considered a state of deficit, excess, or imbalance in protein, energy, or other nutrients that adversely impacts an individual's own body form, function, and clinical outcomes.[47] Up to 50 percent of older adults are affected by or at risk for malnutrition, which is further aggravated by a lack of food security and poverty.[48] These facts highlight why the Biden-Harris Administration launched the White House Challenge to End

[33] Homelessness is defined as ''lacking a regular nighttime residence or having a primary nighttime residence that is a temporary shelter or other place not designed for sleeping.'' Crowley, S. (2003). The affordable housing crisis: Residential mobility of poor families and school mobility of poor children. Journal of Negro Education, *72*(1), 22–38. doi: *https://doi.org/10.2307/3211288.*

[34] The 2023 Annual Homeless Assessment Report (AHAR) to Congress. The U.S. Department of Housing and Urban Development 2023. *https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf.*

[35] Baggett, T.P., Hwang, S.W., O'Connell, J.J., Porneala, B.C., Stringfellow, E.J., Orav, E.J., Singer, D.E., & Rigotti, N.A. (2013). Mortality among homeless adults in Boston: Shifts in causes of death over a 15-year period. JAMA Internal Medicine, 173(3), 189–195. doi: *https://doi.org/10.1001/jamainternmed.2013.1604.* Schanzer, B., Dominguez, B., Shrout, P.E., & Caton, C.L. (2007). Homelessness, health status, and health care use. American Journal of Public Health, 97(3), 464–469. doi: *https://doi.org/10.2105/ajph.2005.076190.*

[36] U.S. Department of Health & Human Services (HHS), Call to Action, ''Addressing Health Related Social Needs in Communities Across the Nation.'' November 2023. *https://aspe.hhs.gov/sites/default/files/documents/3e2f6140d0087435cc6832bf8cf32618/hhs-call-to-action-health-related-social-needs.pdf.*

[37] Henderson, K.A., Manian, N., Rog, D.J., Robison, E., Jorge, E., AlAbdulmunem, M. ''Addressing Homelessness Among Older Adults'' (Final Report). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. October 26, 2023.

[38] More information about the AHC HRSN Screening Tool is available on the website at *https://innovation.cms.gov/Files/worksheets/ahcm-screeningtool.pdf.*

[39] The AHC HRSN Screening Tool Living Situation item includes two questions. In an effort to limit IRF burden, we are only proposing the first question.

[40] National Association of Community Health Centers and Partners, National Association of Community Health Centers, Association of Asian Pacific Community Health Organizations, Association OPC, Institute for Alternative Futures. ''PRAPARE.'' 2017. *https://prapare.org/the-prapare-screening-tool/.*

[41] U.S. Department of Agriculture, Economic Research Service. (n.d.). *Definitions of food security.* Retrieved March 10, 2022, from *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/.*

[42] Hernandez, D.C., Reesor, L.M., & Murillo, R. (2017). Food insecurity and adult overweight/obesity: Gender and race/ethnic disparities. *Appetite, 117,* 373–378.

[43] Banerjee, S., Radak, T., Khubchandani, J., & Dunn, P. (2021). Food Insecurity and Mortality in American Adults: Results From the NHANES-Linked Mortality Study. Health promotion practice, 22(2), 204–214. *https://doi.org/10.1177/1524839920945927.*

[44] National Center for Health Statistics. (2022, September 6). Exercise or Physical Activity. Retrieved from Centers for Disease Control and Prevention: *https://www.cdc.gov/nchs/fastats/exercise.htm.*

[45] Ziliak, J.P., & Gundersen, C. (2019). The State of Senior Hunger in America 2017: An Annual Report. Prepared for Feeding America. Available at *https://www.feedingamerica.org/research/senior-hunger-research/senior.*

[46] Ziliak, J.P., & Gundersen, C. (2019). The State of Senior Hunger in America 2017: An Annual Report. Prepared for Feeding America. Available at: *https://www.feedingamerica.org/research/senior-hunger-research/senior.*

[47] The Malnutrition Quality Collaborative. (2020). National Blueprint: Achieving Quality Malnutrition Care for Older Adults, 2020 Update. Washington, DC: Avalere Health and Defeat Malnutrition Today. Available at: *https://defeatmalnutrition.today/advocacy/blueprint/.*

[48] Food Research & Action Center (FRAC). ''Hunger is a Health Issue for Older Adults: Food Security, Health, and the Federal Nutrition Programs.'' December 2019. *https://frac.org/wp-content/uploads/hunger-is-a-health-issue-for-older-adults-1.pdf.*

Hunger and Build Healthy Communities.[49]

We believe that adopting items to collect and analyze information about a patient's food security at home could provide additional insight to their health complexity and help facilitate coordination with other healthcare providers, facilities, and agencies during transitions of care, so that referrals to address a patient's food security are not lost during vulnerable transition periods. For example, an IRF's dietitian or other clinically qualified nutrition professional could work with the patient and their caregiver to plan healthy, affordable food choices prior to discharge.[50] IRFs could also refer a patient that indicates lack of food security to government initiatives such as the Supplemental Nutrition Assistance Program (SNAP) and food pharmacies (programs to increase access to healthful foods by making them affordable), two initiatives that have been associated with lower health care costs and reduced hospitalization and emergency department visits.[51]

We proposed to adopt two Food items as new standardized patient assessment data elements under the SDOH Category. These proposed items are based on the Food items collected in the AHC HRSN Screening Tool and were adapted from the USDA 18-item Household Food Security Survey (HFSS).[52] The first proposed Food item states, ''Within the past 12 months, you worried that your food would run out before you got money to buy more.'' The second proposed Food item states, ''Within the past 12 months, the food you bought just didn't last and you didn't have money to get more.'' We proposed the same response options for both items: (1) Often true; (2) Sometimes true; (3) Never True; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed Food items proposed to be adopted as standardized patient assessment data elements under the SDOH category can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

(c) Utilities

A lack of energy (utility) security can be defined as an inability to adequately meet basic household energy needs.[53] According to the United States Department of Energy, one in three households in the U.S. are unable to adequately meet basic household energy needs.[54] The consequences associated with a lack of utility security are represented by three primary dimensions: economic, physical, and behavioral. Patients with low incomes are disproportionately affected by high energy costs, and they may be forced to prioritize paying for housing and food over utilities.[55] Some patients may face limited housing options and therefore are at increased risk of living in lower-quality physical conditions with malfunctioning heating and cooling systems, poor lighting, and outdated plumbing and electrical systems.[56] Patients with a lack of utility security may use negative behavioral approaches to cope, such as using stoves and space heaters for heat.[57] In addition, data from the Department of Energy's U.S. Energy Information Administration confirm that a lack of energy security disproportionately affects certain populations, such as low-income and African American households.[58] The effects of a lack of utility security include vulnerability to environmental exposures such as dampness, mold, and thermal discomfort in the home, which have a direct impact on a person's health.[59] For example, research has shown associations between a lack of energy security and respiratory conditions as well as mental health-related disparities and poor sleep quality in vulnerable populations such as the elderly, children, the socioeconomically disadvantaged, and the medically vulnerable.[60]

We believe adopting an item to collect information upon a patient's admission to an IRF about their utility security would facilitate the identification of patients who may not have utility security and who may benefit from engagement efforts. For example, IRFs may be able to use the information on utility security to help connect some patients in need to programs that can help older adults pay for their home energy (heating/cooling) costs, like the Low-Income Home Energy Assistance Program (LIHEAP).[61] IRFs may also be able to partner with community care hubs and community-based organizations to assist the patient in applying for these and other local utility assistance programs, as well as helping them navigate the enrollment process.[62]

We proposed to adopt a new item, Utilities, as a new standardized patient assessment data element under the SDOH category. This proposed item is based on the Utilities item collected in the AHC HRSN Screening Tool and was adapted from the Children's Sentinel Nutrition Assessment Program (C–SNAP) survey.[63] The proposed Utilities

[49] The White House Challenge to End Hunger and Build Health Communities (Challenge) was a nationwide call-to-action released on March 24, 2023, to stakeholders across all of society to make commitments to advance President Biden's goal to end hunger and reduce diet-related diseases by 2030—all while reducing disparities. More information on the White House Challenge to End Hunger and Build Health Communities can be found: *https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/24/fact-sheet-biden-harris-administration-launches-the-white-house-challenge-to-end-hunger-and-build-healthy-communities-announces-new-public-private-sector-actions-to-continue-momentum-from-hist/.*

[50] Schroeder K, Smaldone A. Food Insecurity: A Concept Analysis. Nurse Forum. 2015 Oct-Dec;50(4):274–84. doi: 10.1111/nuf.12118. Epub 2015 Jan 21. PMID: 25612146; PMCID: PMC4510041.

[51] Tsega M, Lewis C, McCarthy D, Shah T, Coutts K. Review of Evidence for Health-Related Social Needs Interventions. July 2019. The Commonwealth Fund. *https://www.commonwealthfund.org/sites/default/files/2019-07/COMBINED_ROI_EVIDENCE_REVIEW_7.15.19.pdf.*

[52] More information about the HFSS tool can be found at *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/survey-tools/.*

[53] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. Doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[54] US Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[55] Hernández D. ''Understanding 'energy insecurity' and why it matters to health.'' Soc Sci Med. 2016; 167:1–10.

[56] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[57] Hernández D. ''What 'Merle' Taught Me About Energy Insecurity and Health.'' Health Affairs, VOL.37, NO.3: Advancing Health Equity Narrative Matters. March 2018. *https://doi.org/10.1377/hlthaff.2017.1413.*

[58] US Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[59] Hernández D. Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[60] Hernández D, Siegel E. Energy insecurity and its ill health effects: A community perspective on the energy-health nexus in New York City. Energy Res Soc Sci. 2019 Jan; 47:78–83. doi: 10.1016/j.erss.2018.08.011. Epub 2018 Sep 8. PMID: 32280598; PMCID: PMC7147484.

[61] *https://www.fcc.gov/broadbandbenefit.*

[62] National Council on Aging (NCOA). ''How to Make It Easier for Older Adults to Get Energy and Utility Assistance.'' Promising Practices Clearinghouse for Professionals. Jan 13, 2022. *https://www.ncoa.org/article/how-to-make-it-easier-for-older-adults-to-get-energy-and-utility-assistance.*

[63] This validated survey was developed as a clinical indicator of household energy security among pediatric caregivers. Cook, J.T., D.A. Frank., P.H. Casey, R. Rose-Jacobs, M.M. Black, M. Chilton, S. Ettinger de Cuba, et al. ''A Brief Indicator of Household Energy Security: Associations with Food

item asks, ''In the past 12 months, has the electric, gas, oil, or water company threatened to shut off services in your home?'' The proposed response options are: (1) Yes; (2) No; (3) Already shut off; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed Utilities item to be adopted as a standardized patient assessment data element under the SDOH category can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

4. Interested Party Input

We developed our updates to add these items after considering feedback we received in response to our Health Equity Update in the FY 2024 IRF PPS final rule. While there were commenters who urged CMS to balance reporting requirements so as not to create undue administrative burden and avoid making generalizations about differences in health and health care on certain data elements, it was also suggested CMS incentivize collection of data on SDOH such as housing stability and food security. Two commenters emphasized that any additional stratification of quality measures, including social risk factors and SDOH, would be of value to PAC providers, including IRFs. The FY 2024 IRF PPS final rule (88 FR 51037 through 51039) includes a summary of the public comments that we received in response to the Health Equity Update and our responses to those comments.

Additionally, we considered feedback we received when we proposed the creation of the SDOH category of standardized patient assessment data elements in the FY 2020 IRF PPS proposed rule (84 FR 17319 through 17326). Commenters were generally in favor of the concept of collecting SDOH items and stated that if implemented appropriately the data could be useful in identifying and addressing health care disparities, as well as refining the risk adjustment of outcome measures. One commenter specifically recommended CMS consider including data collection of housing status, since unmet housing needs can put patients at higher risk for readmission. The FY 2020 IRF PPS final rule (84 FR 39149 through 39161) includes a summary of the public comments that we received and our responses to those comments. We incorporated this input into the development of this proposal.

We solicited comment on the proposal to adopt four new items as standardized patient assessment data elements in the IRF–PAI under the SDOH category beginning with the FY 2028 IRF QRP: one Living Situation item; two Food items; and one Utilities item (89 FR 22279).

The following is a summary of the public comments received on the proposal and our responses:

Comment: Many commenters expressed support for the proposed new SDOH assessment items, viewing this as an important step towards identifying health disparities, improving health outcomes, understanding diverse patient needs, improving discharge planning and care coordination, and fostering continuous quality improvement. One of these commenters also emphasized the importance of collecting SDOH data in helping recognize areas of need and enhancing efforts to improve patient outcomes across healthcare settings, and another commenter emphasized the importance of identifying, documenting, and addressing SDOH in order to provide equitable, high-quality, holistic, patient-centered care.

Several commenters noted the importance of the proposed new SDOH assessment items in facilitating discharge planning strategies that can account for a person's housing, food, utilities, and transportation needs. Three of these commenters noted that the information obtained from these proposed new SDOH assessment items will provide data that can be used to better address identified needs with the patient, their caregivers, and community partners during the discharge planning process. These commenters also mentioned that addressing non-medical factors during patient visits can help connect patients to the resources they need and lead to successful discharges to the community or improved health outcomes. Another one of these commenters noted that the direct value to providers in the inpatient rehabilitation space is the insight into the home life and resources available to the patient once discharged. Finally, one of these commenters noted that these proposed SDOH assessment items support a culture of engaging with and advancing equity in IRFs by reflecting a proactive approach towards addressing the multifaceted determinants of health.

Response: We appreciate the support. We agree that the collection of the proposed SDOH assessment items will support IRFs that wish to understand the health disparities that affect their populations, facilitate coordinated care, foster continuity in care planning, and assist with the discharge planning process from the IRF setting.

Comment: Several commenters appreciated CMS' efforts at standardizing collection of patient assessment data elements related to SDOH by proposing to adopt the four new assessment items, Living Situation, Food, and Utilities, in the IRF–PAI. One of these commenters supported CMS' decision to align and standardize new SDOH data collection in the IRF QRP with data already being collected in other settings, such as the Hospital Inpatient Quality Reporting (IQR) Program and the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program. Another one of these commenters noted that the utilization of the AHC HRSN Screening Tool will help fill the existing gap of standardized SDOH data collection for CMS programs, which will reduce the administrative burden with collecting SDOH data. In addition, three commenters noted their support of the proposed new SDOH assessment items because they are similar to questions many IRFs already ask for discharge planning purposes, minimizing additional burden.

Response: We thank the commenter for recognizing that our proposal aligns, in part, with the requirements of the Hospital IQR Program and the IPFQR Program. As we continue to standardize data collection across settings, we believe using common standards and definitions for new assessment items is important to promote interoperable exchange of longitudinal information between IRFs and other providers. We heard from many IRFs that they are already collecting similar information and integrating it into their admission and discharge processes in order to facilitate coordinated care and continuity in care planning. We believe collecting this information in all IRFs may facilitate coordinated care, continuity in care planning, and IRFs' discharge planning process in accordance with our regulation at § 482.43(a).

Comment: Several commenters agreed with the importance of collecting SDOH assessment items through the IRF–PAI but also expressed concerns about the additional administrative burden associated with collecting the new SDOH data. Several of these commenters noted that data collection is overburdening the workforce, and one noted that it will take away resources from patient care while another commenter urged CMS to ensure the additional burden on providers provides

Security, Child Health, and Child Development in US Infants and Toddlers.'' Pediatrics, vol. 122, no. 4, 2008, pp. e874–e875. *https://doi.org/10.1542/peds.2008-0286.*

meaningful benefit to rehab patients. One of these commenters requested additional funding for the increased costs associated with what they believe are tasks outside the normal day-to-day operations of the facilities.

Response: Although the addition of four new SDOH assessment items to the IRF–PAI will increase the burden associated with completing the IRF–PAI, we carefully considered this increased burden of collecting new assessment items against the benefits of adopting those assessment items for the IRF–PAI. Collection of additional SDOH assessment items will permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries. As noted in section VII.C.2 of the proposed rule (89 FR 22276) and section VIII.C.2. of this final rule, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to IRFs on whether differences in quality measure outcomes are present for their patients by dual-enrollment status and race and ethnicity.[64] In balancing the reporting burden for IRFs, we prioritized our policy objective to collect additional SDOH standardized patient assessment data elements that will inform care planning and coordination and quality improvement across care settings.

In response to the commenters who believe this policy, if finalized, would take time away from patient care, we believe the proposed assessment items (Living Situation, Food, and Utilities) are all important pieces of information to developing and administering a comprehensive plan of care in accordance with our regulation at § 412.606. A comprehensive plan of care includes the initiation of a discharge plan. Given the relatively short length of stay in IRFs, discharge planning generally begins at the time of admission and this information would inform the comprehensive plan of care. Using this information, IRFs have an opportunity to implement interventions to address these SDOH, if appropriate. For example, IRFs may determine that educating patients about transportation resources, teaching them how to use adaptive transportation if their condition now requires it, educating patients about safe choices for utilities, or begin the process of finding resources for patients is appropriate for the patient's comprehensive plan of care. Rather than taking time away from patient care, providers will be documenting information they are likely already collecting through the course of providing care to the patients.

Regarding the comment requesting additional funding for the increased costs associated with collecting data on these new assessment items, we find the comment unclear. We interpret the commenter to mean that they do not believe that current IRF PPS payments are sufficient to cover the increased burden (specifically, costs) associated with collection of this additional data for the proposed new SDOH assessment items. As discussed previously, we carefully considered the increased burden associated with collection of these four new SDOH assessment items against the benefits of adopting these items for the IRF–PAI. We believe the collection of these items is within the normal day-to-day operations of the facilities. For instance, IRFs are required by regulation at § 482.43(a) to identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning and must provide a discharge planning evaluation for those patients. The proposed new SDOH assessment items were identified in either the 2016 NASEM report [65] or the 2020 NASEM report [66] as impacting care use, cost, and outcomes for Medicare beneficiaries. We believe the proposed new SDOH assessment items have the potential to generate actionable data IRFs can use to implement effective discharge planning processes that can reduce the risk for negative outcomes such as hospital readmissions and admission to a nursing facility for long-term care. Given that IRFs must develop and implement an effective discharge planning process that ensures the discharge needs of each patient are identified, we believe IRFs are likely collecting some of this data already. Collection of these new SDOH items will provide key information to IRFs to support effective discharge planning.

Finally, we also plan to provide training resources in advance of the initial collection of the new SDOH assessment items to ensure that IRFs have the tools necessary to administer these new items and reduce the burden to IRFs having to create their own training resources. These training resources may include online learning modules, tip sheets, questions and answers documents, and recorded webinars and videos. We anticipate that we will make these materials available to IRFs in mid-2025, which will give IRFs several months prior to required collection and reporting to take advantage of the learning opportunities.

Comment: One commenter who supported the proposal to collect the new and modified SDOH assessment items also encouraged CMS to ensure the new assessment items are valid and reliable. Several commenters who did not support the proposal noted concerns with the validity and reliability of the proposed new and modified SDOH assessment items, and several of these commenters recommended further testing of these assessment items for the IRF population. In addition, one commenter noted that most hospitals in their network reported they do not use the AHC tool for screening for social services as they find the tool suboptimal for its ability to gather accurate information and get patients the services they need.

Response: We disagree that the proposed new and modified SDOH assessment items require further testing prior to collecting them on the IRF–PAI for the IRF QRP. The AHC HRSN Screening Tool is evidence-based and informed by practical experience. With input from a panel of national experts convened by our contractor, we developed the tool under the Center for Medicare and Medicaid Innovation (CMMI) by conducting a review of existing screening tools and questions focused on core and supplemental HRSN domains, including housing instability, food insecurity, transportation difficulties, utility assistance needs, and interpersonal safety concerns.[67] 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

[64] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to IRFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the IRF QRP Training web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-quality-reporting-training.*

[65] National Academies of Sciences, Engineering, and Medicine. 2016. Accounting for Social Risk Factors in Medicare Payment: Identifying Social Risk Factors. Washington, DC: The National Academies Press. *https://doi.org/10.17226/21858.*

[66] National Academies of Sciences, Engineering, and Medicine. 2020. Leading Health Indicators 2030: Advancing Health, Equity, and Well-Being. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25682.*

[67] *https://nam.edu/standardized-screening-for-health-related-social-needs-in-clinical-settings-the-accountable-health-communities-screening-tool/.*

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.[68] In addition to established evidence of their association with health status, risk, and outcomes, these domains were selected because they can be assessed across the broadest spectrum of individuals in a variety of settings.[69] [70]

Through this process, over 50 screening tools totaling more than 200 questions were compiled. In order to refine this list, CMS' contractor consulted a technical expert panel (TEP) consisting of a diverse group of tool developers, public health and clinical researchers, clinicians, population health and health systems executives, community-based organization leaders, and Federal partners. Over the course of several meetings, this TEP met to discuss opportunities and challenges involved in screening for HRSNs; consider and pare down CMS' list of evidence-based screening questions; and recommend a short list of questions for inclusion in the final tool. The AHC HRSN 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 predictive validity. Moreover, the AHC HRSN Screening Tool can be implemented in a variety of places where individuals seek healthcare, including IRFs.

We selected these proposed assessment items for the IRF QRP from the AHC HRSN Screening Tool because we believe that collecting information on living situation, food, utilities, and transportation could have a direct and positive impact on patient care in IRFs. Specifically, collecting the information provides an opportunity for the IRF to identify patients' potential HRSNs, and if indicated, to those with the patient, their caregivers, and community partners during the discharge planning process, potentially resulting in improvements in patient outcomes.

Comment: Three of these commenters referenced CMS' second evaluation of the AHC model from 2018 through 2021.[71] These commenters interpret the Findings at a Glance to conclude that the AHC HRSN Screening Tool ''did not appear to increase beneficiaries' connection to community services or HRSN resolution.''

Response: This two-page summary of the AHC Model 2018–2021 [72] describes the results of testing whether systematically identifying and connecting beneficiaries to community resources for their HRSNs improved health care utilization outcomes and reduced costs. To ensure consistency in the screening offered to beneficiaries across both an individual community's clinical delivery sites and across all the communities in the model, CMS developed a standardized HRSN screening tool. This AHC HRSN Screening Tool was used to screen Medicare and Medicaid beneficiaries for core HRSNs to determine their eligibility for inclusion in the AHC Model. If a Medicare or Medicaid beneficiary was eligible for the AHC Model, they were randomly assigned to one of two tracks: (1) Assistance; or (2) Alignment. The Assistance Track tested whether navigation assistance that connects navigation-eligible beneficiaries with community services results in increased HRSN resolution, reduced health care expenditures, and unnecessary utilization. The Alignment Track tested whether navigation assistance, combined with engaging key stakeholders in continuous quality improvement (CQI) to align community service capacity with beneficiaries' HRSNs, results in greater increases in HRSN resolution and greater reductions in health expenditures and utilization than navigation assistance alone. Regardless of assigned track, all beneficiaries received HRSN screening, community referrals, and navigation to community services.[73]

We believe the commenter inadvertently misinterpreted the findings, believing these findings were with respect to the effectiveness and scientific validity of the AHC HRSN Screening Tool itself. The findings section of this two-page summary described six key findings from the AHC Model, which examined whether the Assistance Track or the Alignment Track resulted in greater increases in HRSN resolution and greater reductions in health expenditures and utilization. Particularly, the AHC Model reduced emergency department visits among Medicaid and FFS Medicare beneficiaries in the Assistance Track, which was suggestive that navigation may help patients use the health care system more effectively. We acknowledge that navigation alone did not increase beneficiaries' connection to community services or HRSN resolution, and this was attributed to gaps between community resource availability and beneficiary needs. The AHC HRSN Screening Tool used in the AHC Model was limited to identifying Medicare and Medicaid beneficiaries with at least one core HRSN who could be eligible to participate in the AHC Model. Our review of the AHC Model did not identify any issues with the validity and scientific reliability of the AHC HRSN Screening Tool.

Finally, as part of our routine item and measure monitoring work, we continually assess the implementation of new assessment items, including the four new proposed SDOH assessment items.

Comment: Three commenters requested that CMS articulate the vision for how CMS plans to use the data collected from the proposed SDOH standardized patient assessment data elements in quality and payment programs. These commenters noted concern that CMS may use the SDOH assessment data to develop an IRF QRP measure that would hold IRFs solely accountable for social drivers of health that require resources and engagement across an entire community to address.

Response: We proposed the four new SDOH assessment items because collection of additional SDOH items would permit us to continue developing the statistical tools necessary to

[68] 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 June 9, 2024.

[69] 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 June 9, 2024.

[70] 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.

[71] *https://www.cms.gov/priorities/innovation/data-and-reports/2023/ahc-second-eval-rpt-fg.*

[72] *https://www.cms.gov/priorities/innovation/data-and-reports/2023/ahc-second-eval-rpt-fg.*

[73] Accountable Health Communities (AHC) Model Evaluation, Second Evaluation Report. May 2023. This project was funded by the Centers for Medicare & Medicaid Services under contract no. HHSM–500–2014–000371, Task Order75FCMC18F0002. *https://www.cms.gov/priorities/innovation/data-and-reports/2023/ahc-second-eval-rpt.*

maximize the value of Medicare data and improve the quality of care for all beneficiaries. For example, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to IRFs on whether differences in quality measure outcomes are present for their patients by dual-enrollment status and race and ethnicity.[74] We note that advancing health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars [75] and a Biden-Harris Administration priority.[76] Furthermore, any updates to the IRF QRP measure set or payment system would be addressed through future notice-and-comment rulemaking, as necessary.

Comment: Several commenters did not agree with CMS that the proposed SDOH assessment items would produce interoperable data within the CMS quality programs because the proposed requirements for IRF are not standardized with the SDOH collection requirements in the Hospital IQR Program and IPFQR Programs. This commenter noted that the Screening for SDOH measures in the Hospital IQR and IPFQR Programs do not specify when a patient is screened (for example, at admission) and how the screening questions are asked (in other words, specific wording and responses). Instead, providers reporting these measures under the Hospital IQR and IPFQR Programs are only asked to document that a patient was screened for the following domains: housing instability, food insecurity, transportation difficulties, utility assistance needs, and interpersonal safety concerns.

Response: We disagree that the proposed collection of four new SDOH Assessment items and one modified SDOH assessment item for the IRF QRP and the requirements for the Hospital IQR and IPFQR Programs do not promote standardization and interoperability. Although hospitals and IPFs participating in these programs can use a self-selected SDOH screening tool, the Screening for SDOH and Screen Positive Rate for SDOH measures we have adopted for the Hospital IQR and IPFQR Programs address same SDOH domains that we have proposed to collect as standardized patient assessment data under the IRF QRP: housing instability, food insecurity, utility difficulties, transportation needs. We believe that this partial alignment will facilitate longitudinal data collection on the same topics across healthcare settings. As we continue to standardize data collection, we believe using common standards and definitions for new assessment items is important to promote interoperable exchange of longitudinal information between IRFs and other providers to facilitate coordinated care, continuity in care planning, and the discharge planning process. This is evidenced by our recent proposals to add these four SDOH assessment items and one modified SDOH assessment item in the SNF QRP (89 FR 23462 through 23468), LTCH QRP (89 FR 36345 through 36350), and Home Health QRP (89 FR 55383 through 55388).

Comment: One commenter recommended the inclusion of assessment items to improve the overall patient care among those with disabilities, such as: disability-status, caregiver availability, patients' independent living status, and ability to return to work.

Response: We appreciate the comments and suggestions provided by the commenters, and we agree that it is important to understand the needs of patients with disabilities. As we continue to evaluate SDOH standardized patient assessment data elements and future policy options, we will consider this feedback. We note that although we proposed to require the collection of the Living Situation, Food, and Utilities items for the IRF QRP, our proposals would not preclude IRFs from choosing to screen their patients for additional SDOH they believe are relevant to their patient population and the community they serve, including screening for disability-status, caregiver availability, patients' independent living status, and ability to return to work.

(a) Comments on the Living Situation Assessment Item

Comment: Several commenters supported the proposal to adopt the Living Situation assessment item as a standardized patient assessment data element in the IRF–PAI. One of these commenters noted that having information about a patient's living situation enables better care coordination, identifies support gaps, and allows IRFs to develop tailored care plans. Another one of these commenters noted that this information helps them to improve facility operations and develop internal quality improvement efforts and population health initiatives. Finally, another one of these commenters noted that understanding a person's living situation can ensure the appropriate provision of necessary adaptive equipment and engagement with community partners to address patients' needs.

Response: We thank the commenters for their support and agree that information on a person's living situation can be used to develop tailored care plans, assist with quality improvement efforts, and collaborate with partners such as community care hubs and community-based organizations during transitions of care.

Comment: Two commenters recommended that the Living Situation assessment item incorporate information on whether a patient's living situation is suitable for potentially new complex care needs. One of these commenters highlighted the changing nature of IRF patients' needs and noted that some patients may have been housing secure prior to their condition, but that prior living situation may no longer be suitable for their current needs. The other commenter noted that in some cases, a patient's prior living situation may no longer be appropriate for them following their injury or illness, due to requirements such as mobility equipment, ramps, and other accessible modifications.

Response: While we proposed to require the collection of the Living Situation item at admission only, the collection could potentially prompt the IRF to initiate additional conversations with their patients about their living situation needs throughout their stay. As the commenter pointed out, it is important to think about the patient's living situation in the context of their new care needs, and collecting the Living Situation assessment item at admission would be an important first step to that process. Additionally, IRFs may seek to collect any additional information that they believe may be

[74] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to IRFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the IRF QRP Training web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-quality-reporting-training.*

[75] 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.*

[76] The Biden-Harris Administration's strategic approach to addressing health related social needs can be found in The U.S. Playbook to Address Social Determinants of Health (SDOH) (2023): *https://www.whitehouse.gov/wp-content/uploads/2023/11/SDOH-Playbook-3.pdf.*

relevant to their patient population in order to inform their care and discharge planning process.

Comment: Two commenters expressed concerns with the time frame of the response options for the proposed the Living Situation item. One of these commenters suggested that adding a look back period of one year or less to the response options would allow healthcare providers to promptly intervene and mitigate any eminent negative housing situations. This commenter was concerned that, if left open-ended, patients may respond yes, thinking about many possible scenarios that may occur in the distant future. The other commenter encouraged CMS to consider a shorter look back period for the Living Situation assessment item, as a 12-month look back could capture circumstances that are no longer accurate.

Response: We interpret the comments to be suggesting that a time frame be added to two of the Living Situation response options, specifically: (1) I have a place to live today, but I am worried about losing it in the future; and (2) I do not have a steady place to live. We want to clarify that the proposed Living Situation item frames the question as, ''What is your living situation today?'' The question establishes the look back period (the present) the patient should consider in responding to the item.

Comment: Three commenters expressed concerns with utilizing the proposed Living Situation assessment item as currently worded. Specifically, commenters believe that asking about patients' living situation ''today'' may be difficult for IRF patients who are receiving treatment for a traumatic injury or serious medical event to answer accurately.

Response: We acknowledge the complex medical conditions of most IRF patients. However, there are other patient interview assessment items that IRFs currently collect that address this concern, and we believe IRFs have experience in managing these complex scenarios successfully in order to obtain the information required. We would also like to remind the commenter that we proposed response options for patients that are unable to respond or decline to respond.

We also plan to provide training resources in advance of the initial collection of the assessment items to ensure that IRFs have the tools necessary to administer the new SDOH assessment items and reduce the burden to IRFs in creating their own training resources. These training resources may include online learning modules, tip sheets, questions and answers documents, and recorded webinars and videos, and would be available to providers as soon as technically feasible.

Comment: One commenter recommended that CMS simplify the responses for the Living Situation assessment item because they are likely to lead to confusion. This commenter suggested CMS align the responses for the Living Situation assessment item with the proposed Food assessment item that has an ''Often true,'' ''Sometimes true,'' and ''Never true'' response option or with the modified Transportation assessment item that has a ''Yes'' or ''No'' response. They believe this would be simpler for patients to answer and be easier on the IRF staff to collect the information.

Response: We agree that standardized patient assessment data elements should be easy to understand and have clear response options. However, we believe that including the specific distinction in the Living Situation response options is needed. Specifically, we believe that additional response options to indicate whether a patient is worried about their living situation in the future helps reduce ambiguity for patients who may only have temporary housing. For example, having a ''Yes'' and ''No'' response and eliminating an option for ''I have a place to live today, but I am worried about losing it in the future'' would not capture those patients that may be at risk of losing their place to live due to lost income resulting from the traumatic injury or event precipitating their admission to the IRF. Identifying these patients who are worried about losing their housing in the future may help IRFs facilitate discharge planning and make appropriate community referrals.

Comment: One commenter stated they did not support the proposal to add the proposed new Living Situation assessment item to the IRF–PAI because a patient's ability to be discharged to home is a variable IRFs use when considering whether admission to IRF is appropriate. This commenter noted that patients who do not have a location they can be discharged to are not good candidates for IRFs, and as a result, the addition of the proposed Living Situation assessment item will increase burden without providing data to drive outcomes. Two commenters also noted that CMS could collect a patient's living status through assessment items already collected in the IRF–PAI, such as Discharge Living Setting and Discharge Living With.

Response: We disagree with the commenter's suggestions that the collection of the proposed Living Situation assessment item will increase burden without providing data to drive outcomes or that patients who do not have a location they can be discharged to are not good candidates for IRFs. A comprehensive preadmission screening includes anticipated discharge destination, since this information would be important to developing the interdisciplinary plan of care. However, the decision whether a patient is or is not appropriate for IRF admission is generally based on whether the patient requires the interdisciplinary services offered by IRFs. Specifically IRF admission is based on whether: the patient requires the active and ongoing therapeutic intervention of multiple therapy disciplines, one of which must be physical or occupational therapy; the patient generally requires and can reasonably be expected to actively participate in, and benefit from, an intensive rehabilitation therapy program; the patient is sufficiently stable at the time of admission to the IRF to be able to actively participate in the intensive rehabilitation therapy program; and the patient requires physician supervision by a rehabilitation physician.[77] As with all new assessment items, we will monitor all aspects of data collection and submission under the IRF QRP, and should we identify changes in provider behavior, we will take the appropriate administrative action.

Regarding the comment that we ascertain a patient's living status through assessment items already collected in the IRF–PAI, such as item 44D. Patient's Discharge Destination/ Living Setting and item 45. Discharge to Living With, we disagree with the suggestion since these items are not collected until the patient is discharged. As discussed in section VII.C.4(a) of the proposed rule, we proposed the Living Situation assessment item for collection at admission, rather than at discharge. The primary purpose of collecting this information at admission is to facilitate coordinated care, continuity in care planning, and the discharge planning process from IRF settings. As we stated in section VIII.C.2 of this final rule, according to the World Health Organization, research shows that SDOH can be more important than health care or lifestyle choices in influencing health, accounting for between 30 to 55 percent of health

[77] Medicare Benefit Policy Manual (100–2). Chapter 1, Section 110.2. Available at: *https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/bp102c01.pdf.*

outcomes.[78] This is part of a growing body of research that highlights the importance of SDOH on health outcomes. We believe that having information on patients' living situation at admission will help IRFs better understand and address the broader needs of their patients. We also believe this information is essential for comprehensive patient care, potentially leading to improved health outcomes and more effective discharge planning.

(b) Comments on the Food Assessment Items

Comment: We received several comments supporting the collection of the two proposed Food assessment items because of the importance of nutrition and food access to IRF patients' health outcomes, and the usefulness of this information for treatment and discharge planning. Specifically, two commenters highlighted the association between a lack of access to food and low-nutrient diets with negative health outcomes. Moreover, one of these commenters noted that information from the two proposed Food assessment items can give healthcare professionals a greater understanding of a patient's complex needs and improve coordination with other healthcare providers during transitions of care. Further, one commenter noted that the responses to the proposed Food assessment items would help providers incorporate treatment strategies that address patients' food access. Finally, another commenter acknowledged the intersection between these proposed SDOH assessment items, highlighting the important relationship between transportation and a person's ability to access food. This commenter provided the example that a person may have enough funds to purchase food, but not have access to transportation to obtain food.

Response: We agree that a person's access to food affects their health outcomes and risk for adverse events. Understanding the potential needs of patients admitted to IRF through the collection of the two proposed Food assessment items can help IRFs facilitate resources for IRF patients, if indicated, when discharged.

Comment: Two commenters were concerned that the proposed Food assessment items ask patients to rate the frequency of their food shortage using a three-point scale, which is inconsistent with other questions on the IRF–PAI such as the patient mood, behavioral symptoms, and daily preference assessment items, which use a four-point scale to determine frequency. This commenter suggested this inconsistency may lead to confusion for staff and patients.

Response: We clarify that the proposed Food assessment items include three frequency responses in addition to response options in the event the patient declines to respond or is unable to respond: (0) Often true; (1) Sometimes true; (2) Never True; (7) Patient declines to respond; and (8) Patient unable to respond. We acknowledge there are a number of patient interview assessment items on the IRF–PAI that use a four-point scale, but there are also assessment items on the IRF–PAI that do not use a four-point scale. For example, the Health Literacy (B1300) and Social Isolation (D0700) assessment items currently use a five-point scale and the Pain Interference with Therapy Activities (J0520) assessment item currently uses a five-point scale. We chose the proposed Food assessment items from the AHC HRSN Screening Tool, and it was tested and validated using a three-point response scale. Since the IRF–PAI currently includes assessment items that use varying response scales, we do not believe staff and patients will be confused. We plan to develop resources IRF staff can use to ensure patients understand the proposed assessment item questions and response options. For example, CMS developed cue cards to assist IRFs in conducting the Brief Interview for Mental Status (BIMS) in Writing, the Patient Mood Interview (PHQ–2 to 9), the Pain Assessment Interview, and the Interview for Daily and Activity Preference.[79]

Comment: Several commenters were concerned with the 12-month look back period of the proposed Food assessment items, noting that this broad look back period may capture needs that occurred in the past that have already been resolved. These commenters recommended a 3-month look back period instead, to capture true concerns that should inform IRFs' care and discharge planning.

Response: We disagree that the 12-month look back period for the proposed Food assessment items is too long and will not result in reliable responses. We believe the proposed 12-month look back is more appropriate than a shorter, 3-month look back period, because a person's Food situation may fluctuate over time. One study of Medicare Advantage beneficiaries found that approximately half of U.S. adults report one or more HRSNs over four quarters. However, at the individual level, participants had substantial fluctuations: 47.4 percent of the participants fluctuated between zero and one or more HRSNs over the four quarters, and 21.7 percent of participants fluctuated between one, two, three, or four or more HRSNs over the four quarters.[80] The researchers noted that the dynamic nature of individual-level HRSNs requires consideration by healthcare providers screening for HRSNs.

To account for potentially changing Food needs over time, we believe it is important to use a longer lookback window to comprehensively capture any Food needs a person may have had, so that IRFs may consider them in their care and discharge planning. However, as we develop coding guidance for these proposed new assessment items, we will utilize the feedback received in these comments.

Comment: One commenter recognized the importance of collecting patients' food access through a streamlined data collection process but urged CMS to combine the two proposed Food assessment items into a singular comprehensive assessment item to enhance efficiency and reduce respondent burden, while still capturing the nuanced aspects of food insecurity crucial for care planning and recourse allocation.

Response: While we appreciate the commenters' recommendation, past testing of the items found that the item sensitivity was higher when using both Food assessment items, as opposed to just one. Specifically, analyses found that an affirmative response to just one of the questions provided a sensitivity of 93 percent or 82 percent, depending on the item, whereas collecting both items, and evaluating whether there is an affirmative response to the first and/or second item yielded a sensitivity of 97 percent.[81] This means that only 3

[78] World Health Organization. Social determinants of health. Available at *https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.*

[79] These cue cards are currently available on the IRF QRP Training web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-quality-reporting-training.*

[80] Haff, N, Choudhry, N.K., Bhatkhande, G., Li, Y., Antol, D., Renda, A., Laufffenburger, J. Frequency of Quarterly Self-reported Health-Related Social Needs Among Older Adults, 2020. JAMA Network Open. 2022;5(6):e2219645. Doi:101001/jamanetworkopen.2022.19645. Accessed June 9, 2024.

[81] Gundersen C, Engelhard E, Crumbaugh A, Seligman, H.K. Brief assessment of Food insecurity Accurately Identifies High0Risk US Adults. Public Health Nutrition, 2017. Doi: 10.1017/S1368980017000180. *https://childrenshealthwatch.org/wp-content/uploads/brief-assessment-of-food-insecurity-accurately-*

percent of respondents who have food needs were likely to be misclassified. Therefore, we believe it is important to include both proposed Food assessment items.

Comment: One commenter urged CMS to recommend that IRFs complete the proposed Food assessment items in the IRF–PAI as soon as applicable for the patient after admission. This commenter highlighted that timely diagnoses of nutrition insecurity allows for immediate planning of future post-discharge plans. Because referrals and enrollment in public programs like the Supplemental Nutrition Assistance Program (SNAP) often have wait times that delay access to necessary interventions, they suggested CMS encourage IRFs to minimize delays in the delivery of adequate nutrition assistance and malnutrition intervention.

Response: We appreciate the commenter's input on timely collection of the proposed Food assessment items, and we note that in section VIII.C.3.(b) of this final rule, we proposed to collect these assessment items at admission only. Admission information on the IRF–PAI is collected as close to the time of admission as possible. As we develop coding guidance for the proposed new Food assessment item, we will utilize the feedback received in these comments.

(c) Comments on the Utilities Assessment Item

Comment: One commenter supported the proposal to add a new Utilities assessment item to the IRF–PAI and highlighted that a patient's access to utilities, similar to a patient's living situation, is crucial for maintaining good health. Specifically, they pointed out that access to clean water is essential, particularly for patients who are unable to drive or have the funds to purchase bottled water. Additionally, this commenter highlighted that IRF patients are often discharged with equipment requiring constant, consistent electricity (for example, supplemental oxygen, vents, continuous positive airway pressure (CPAP), bilevel positive airway pressure (BiPAP), continuous ambulatory delivery device (CADD) pumps for Dobutamine and left ventricular assist device (LVAD)). If a patient does not have access to a reliable power source for these critical supports, they are at risk of not using the equipment as prescribed or dying.

Response: We thank the commenters for their support and agree that patients' utilities needs can affect IRF patients' health outcomes, and the collection of the proposed Utilities assessment item can equip IRFs with the information to inform care plans and discharge planning.

Comment: A few commenters were concerned with the 12-month look back period of the proposed Utilities assessment item. Two of these commenters noted that the 12-month look back period may not result in reliable responses because patients may have difficulty remembering if a relevant event, such as a utility shut-off threat, occurred within such a long period, especially for patients that may be recovering from a stroke or traumatic brain injury. Three of these commenters recommended a 3-month look back period instead, to provide more reliable, valid, timely, and actionable information as part of the transition of care. These commenters also recommended against the inclusion of all utilities (electric, gas, oil, or water) in the assessment item as well as the use of the term ''threatened'' in the proposed Utilities assessment item because they are concerned these all-encompassing and vague terms may lead to inconsistent, unreliable, or invalid responses.

Response: We disagree that the 12-month look back period for the proposed Utilities assessment item is too long and that it will not result in reliable responses. We believe a 12-month look back is more appropriate than a shorter, 3-month look back period, because a person's Utilities situation may fluctuate over time. One study of Medicare Advantage beneficiaries found that approximately half of U.S. adults report one or more HRSNs over four quarters. However, at the individual level, participants had substantial fluctuations: 47.4 percent of the participants fluctuated between zero and one or more over the four quarters, and 21.7 percent of participants fluctuated between one, two, three, or four or more over the four quarters.[82] The researchers noted that the dynamic nature of individual-level HRSNs requires consideration by healthcare providers screening for HRSNs. In order to account for potentially changing Utilities needs over time, we believe it is important to use a longer lookback window to comprehensively capture any Utilities needs a person may have had, so that IRFs may consider them in their care and discharge planning.

We also acknowledge that IRFs are accustomed to working with patients with very complex medical conditions, including traumatic brain injury, stroke, and others, and we are confident in their ability to collect this data in a consistent manner. There are currently several patient interview assessment items on the IRF–PAI, and IRFs are accustomed to administering these questions to impaired patients. We remind IRFs we proposed response options for the Utilities item that address when a patient declines to respond or when a patient is unable to respond.

We also believe it is important to capture utility needs across electric, gas, oil, and water services, in order to comprehensively understand patients' access to necessary utility services, especially since patients' needs for utilities may vary depending on their equipment needs at discharge. We note that while the IRF–PAI requires the collection of certain HRSNs, IRFs may screen for additional HRSNs that they believe are relevant for their patient population and the community in which they serve. For example, if it is useful to understand patients' access to a specific type of utility service, such as access to water or voltage capacity, IRFs may seek to collect any additional information they believe relevant for their patient population in order to inform their care and discharge planning process. However, as we develop coding guidance for the proposed new Utilities assessment item, we will utilize the feedback received in these comments.

After careful consideration of public comments we received, we are finalizing our proposal to adopt four new items as standardized patient assessment data elements under the SDOH category beginning with the FY 2028 IRF QRP: one Living Situation item; two Food items; and one Utilities item.

5. Modification of the Transportation Item Beginning With the FY 2028 IRF QRP

Beginning October 1, 2022, IRFs began collecting seven items adopted as standardized patient assessment data elements under the SDOH category on the IRF–PAI.[83] One of these items, Item A1250. Transportation collects data on whether a lack of transportation has

identifies-high-risk-us-adults.pdf. Accessed July 2, 2024.

[82] Haff, N, Choudhry, N.K., Bhatkhande, G., Li, Y., Antol, D., Renda, A., Laufffenburger, J. Frequency of Quarterly Self-reported Health-Related Social Needs Among Older Adults, 2020. JAMA Network Open. 2022;5(6):e2219645. Doi:101001/jamanetworkopen.2022.19645. Accessed June 9, 2024.

[83] The seven SDOH items are ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 39149 through 39161).

kept a patient from getting to and from medical appointments, meetings, work, or from getting things they need for daily living. This item was adopted as a standardized patient assessment data element under the SDOH category in the FY 2020 IRF PPS final rule (84 FR 39158 and 39159). As we discussed in the FY 2020 IRF PPS final rule (84 FR 39158), we continue to believe that access to transportation for ongoing health care and medication access needs, particularly for those with chronic diseases, is essential to successful chronic disease management and the collection of a Transportation item would facilitate the connection to programs that can address identified needs.

As part of our routine item and measure monitoring work, we continually assess the implementation of the new SDOH items. We have identified an opportunity to improve the data collection for A1250. Transportation in the IRF–PAI by aligning it with the Transportation category collected in our other programs.[84] [85] Specifically, we proposed to modify the current Transportation item in the IRF–PAI so that it aligns with a Transportation item collected on the AHC HRSN Screening Tool available to the IPFQR and Hospital IQR Programs.

A1250. Transportation collected in the IRF–PAI asks: ''Has lack of transportation kept you from medical appointments, meetings, work, or from getting things needed for daily living?'' The response options are: (A) Yes, it has kept me from medical appointments or from getting my medications; (B) Yes, it has kept me from non-medical meetings, appointments, work, or from getting things that I need; (C) No; (X) Patient unable to respond; and (Y) Patient declines to respond. The Transportation item collected in the AHC HRSN Screening Tool asks, ''In the past 12 months, has lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?'' The two response options are: (1) Yes; and (2) No. Consistent with the AHC HRSN Screening Tool, we proposed to modify the A1250. Transportation item collected in the IRF–PAI in two ways: (1) revise the look back period for when the patient experienced lack of reliable transportation; and (2) simplify the response options.

First, the proposed modification of the Transportation item would use a defined 12-month look back period, while the current Transportation item uses a look back period of six to 12 months. We believe the distinction of a 12-month look back period would reduce ambiguity for both patients and clinicians, and therefore improve the validity of the data collected. Second, we proposed to simplify the response options. Currently, IRFs separately collect information on whether a lack of transportation has kept the patient from medical appointments or from getting medications, and whether a lack of transportation has kept the patient from non-medical meetings, appointments, work, or from getting things they need. Although transportation barriers can directly affect a person's ability to attend medical appointments and obtain medications, a lack of transportation can also affect a person's health in other ways, including accessing goods and services, obtaining adequate food and clothing, and social activities.[86] The proposed modified Transportation item would collect information on whether a lack of reliable transportation has kept the patient from medical appointments, meetings, work, *or* from getting things needed for daily living, rather than collecting the information separately. As discussed previously, we believe reliable transportation services are fundamental to a person's overall health, and as a result, the burden of collecting this information separately outweighs its potential benefit.

For the reasons stated previously, we proposed to modify A1250. Transportation based on the Transportation item adopted for use in the AHC HRSN Screening Tool and adapted from the PRAPARE tool. The proposed Transportation item asks, ''In the past 12 months, has a lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?'' The proposed response options are: (0) Yes; (1) No; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed modified Transportation item can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

We solicited comment on the proposal to modify the current Transportation item previously adopted as a standardized patient assessment data element under the SDOH category beginning with the FY 2028 IRF QRP.

The following is a summary of the public comments received on the proposal and our responses:

Comment: Several commenters supported the proposal to modify the Transportation assessment item. One of these commenters stated that knowing this information will allow the IRF to connect patients, particularly those who are dependent on a wheelchair or other assisted device for mobility, with reliable transportation services. Four of these commenters supported the simplified response options, noting it would make it easier for patients to answer the question and reduce the administrative burden associated with the transportation assessment item. Three of these commenters also expressed support for the new 12-month look back period because it would help clarify the question, improve patient comprehension of the proposed Transportation assessment item, and reduce provider burden. One of these commenters agreed with CMS' proposal to no longer require separate response options for difficulty with transportation to medical appointments and transportation to non-medical appointments.

Response: We thank the commenters for their support of the proposed modification of the Transportation assessment item. We agree that the proposed changes will help streamline the data collection process by simplifying the item for both patients and IRF staff collecting the data. The use of a 12-month look back period will reduce ambiguity for both patients and staff, and therefore, improve the validity of the data collected.

Comment: Several commenters did not support the proposal to modify the Transportation assessment item due to the retention of the 12-month look back period. These commenters noted that the 12-month look back period is too broad and long for effective care coordination and discharge planning, and some of these commenters recommended a three-month look back period instead. Four of these commenters also noted concerns with the response options, suggesting they may not provide reliable and valid information. These commenters explained that the responses do not collect information about the frequency of the patient's concern, the reasons why they do not have reliable transportation, and consideration for patients with a disability that requires special accommodations for transportation, such as wheelchair accessibility. Finally, one commenter

[84] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[85] Centers for Medicare & Medicaid Services, FY2023 IPPS/LTCH PPS final rule (87 FR 49202 through 49215).

[86] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

highlighted their concern about the utility of continuing to collect data on the current Transportation assessment item through September 30, 2025, if finalized.

Response: We disagree that the 12-month look back period for the proposed modification to the Transportation assessment item is too long and that it will not result in reliable responses. We believe a 12-month look back is more appropriate than a shorter, 3-month look back period, because a person's Transportation needs may fluctuate over time. As we have noted in an earlier response, a study of Medicare Advantage beneficiaries found that approximately half of U.S. adults report one or more HRSNs over four quarters. However, at the individual level, participants had substantial fluctuations: 47.4 percent of the participants fluctuated between zero and one or more HRSNs over the four quarters, and 21.7 percent of participants fluctuated between one, two, three, or four or more HRSNs over the four quarters.[87] The researchers noted that the dynamic nature of individual-level HRSNs requires consideration by healthcare providers screening for HRSNs. In order to account for potentially changing Transportation needs over time, we believe it is important to use a longer look back period to comprehensively capture any Transportation needs an IRF patient may have had, so that IRFs may consider them in their care and discharge planning.

Regarding the comment stating the responses do not allow for nuanced understanding of the patient's transportation needs (the frequency of the concern, the reasons why reliable transportation is not available, or the special accommodations a person may need for transportation), we note that although the proposal would require the collection of the Transportation assessment item at admission only, the collection could potentially prompt the IRF to initiate conversations with its patients about their specific Transportation needs. Additionally, IRFs may seek to collect any additional information that they believe may be relevant to their patient population in order to inform their care and discharge planning process. However, as we develop coding guidance for this Transportation assessment item, we will utilize all the feedback received in these comments.

Regarding the comment about the utility of continuing to collect an assessment item that CMS has proposed to replace, we acknowledge the commenter's concern. Although we have proposed to change the assessment item in order to improve standardization across programs, we still believe collecting the information in the interim is necessary for care coordination and discharge planning purposes in accordance with CFR 482.43(a).

After careful consideration of public comments we received, we are finalizing our proposal to modify the current Transportation item previously adopted as a standardized patient assessment data element under the SDOH category beginning with the FY 2028 IRF QRP.

D. IRF QRP Quality Measure Concepts Under Consideration for Future Years—Request for Information (RFI)

In the proposed rule, we sought input on the importance, relevance, appropriateness, and applicability of each of the concepts under consideration listed in Table 14 for future years in the IRF QRP. The FY 2024 IRF PPS proposed rule (88 FR 21000 through 21003) included a request for information (RFI) on a set of principles for selecting and prioritizing IRF QRP measures, identifying measurement gaps, and suitable measures for filling these gaps. Within the FY 2024 IRF PPS proposed rule, we also sought input on data available to develop measures, approaches for data collection, perceived challenges or barriers, and approaches for addressing identified challenges. We refer readers to the FY 2024 IRF PPS final rule (88 FR 51036 and 51037) for a summary of the public comments we received in response to the RFI.

Subsequently, our measure development contractor convened a Technical Expert Panel (TEP) on December 15, 2023, to obtain expert input on the future measure concepts that could fill the measurement gaps identified in our FY 2024 RFI.[88] The TEP discussed the alignment of PAC and Hospice measures with CMS' ''Universal Foundation'' of quality measures.[89]

In consideration of the feedback we have received through these activities, we solicited input on three concepts for the IRF QRP (See Table 14). One is a composite of vaccinations,[90] which could represent overall immunization status of patients such as the Adult Immunization Status (AIS) measure [91] in the Universal Foundation. A second concept on which we sought feedback is the concept of depression for the IRF QRP, which may be similar to the Clinical Screening for Depression and Follow-up measure [92] in the Universal Foundation. Finally, we sought feedback on the concept of pain management.

TABLE 14—FUTURE MEASURE CONCEPTS UNDER CONSIDERATION FOR THE IRF QRP

Quality Measure Concepts
Vaccination Composite.
Pain Management.
Depression.

We received public comments on this RFI. The following is a summary of the comments we received:

1. Vaccination Composite

Comments: Several commenters supported the idea of adding a composite vaccination measure like the AIS measure into the IRF QRP. These commenters noted that a composite vaccination measure could improve vaccination rates for those vaccines recommended by the Advisory Committee on Immunization Practices (ACIP), as well as reduce administrative burden through alignment with the Universal Foundation. One of these commenters noted that immunization rates in PAC settings are suboptimal and believes a measure such as the Adult Immunization Status measure would improve immunization rates in PAC settings, including IRFs.

[87] Haff, N, Choudhry, N.K., Bhatkhande, G., Li, Y., Antol, D., Renda, A., Laufffenburger, J. Frequency of Quarterly Self-reported Health-Related Social Needs Among Older Adults, 2020. JAMA Network Open. 2022;5(6):e2219645. Doi:101001/jamanetworkopen.2022.19645. Accessed June 9, 2024.

[88] The Post-Acute Care (PAC) and Hospice Quality Reporting Program Cross-Setting TEP summary report will be published in early summer or as soon as technically feasible. IRFs can monitor the Partnership for Quality Measurement website at *https://mmshub.cms.gov/get-involved/technical-expert-panel/updates for updates.*

[89] Centers for Medicare & Medicaid Services. Aligning Quality Measures Across CMS—the Universal Foundation. November 17, 2023. *https://www.cms.gov/aligning-quality-measures-across-cms-universal-foundation.*

[90] A composite measure can summarize multiple measures through the use of one value or piece of information. More information can be found at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/mms/downloads/composite-measures.pdf.*

[91] CMS Measures Inventory Tool. Adult immunization status measure found at *https://cmit.cms.gov/cmit/#/FamilyView?familyId=26.*

[92] CMS Measures Inventory Tool. Clinical Depression Screening and Follow-Up measure found at *https://cmit.cms.gov/cmit/#/FamilyView?familyId=672.*

Some commenters, however, did not support the idea of adding a composite vaccination measure into the IRF QRP for a number of reasons. They questioned whether a composite vaccination measure for the IRF QRP would be suitable and whether it would represent the quality of care provided by IRFs, described the administrative challenges a composite vaccination measure would impose on IRFs, and noted reliability and validity concerns associated with a possible vaccination composite measure.

Most commenters suggested IRFs would have difficulty collecting information on patients' vaccination status when a patient may have received care from multiple proximal providers and thought a composite vaccination measure would be better suited for primary care clinicians who usually administer these vaccines as part of their preventative care. Several commenters noted that it may be infeasible or inappropriate for an IRF to offer vaccination for patients due to length of stay, ability to manage side effects and medical contraindications. They also noted that a patient's vaccination status is dependent on many factors outside an IRF's control, including the fact that patients can choose to decline recommended vaccines. Other commenters requested that CMS provide more information on the specific outcomes CMS expects to collect from this information. One of these commenters recommended CMS report on specific vaccination rates, since it would provide more actionable data to IRFs.

Other commenters stated they were concerned about the accuracy and reliability of a composite vaccination measure for the IRF QRP since IRF patients often experience cognitive deficits related to their illness or injury and verification of their vaccination status would be difficult. Commenters noted that vaccines are intended for certain age groups and have multiple doses and medical contraindications, raising questions around data validity. Several commenters also recommended that CMS evaluate the reliability, validity, and effectiveness of existing vaccination measures before developing a composite vaccination measure.

2. Pain Management

Comments: We received several comments supporting the pain management measure concept. One of these commenters stated this was an important concept for the IRF QRP and strongly encouraged CMS to move forward with measure development and testing. Another one of these commenters recommended that these measures reflect the full spectrum of recommended pain management interventions, including nonpharmacologic pain management.

Most commenters noted that pain management is a challenging topic to address in IRFs where patients are undergoing physical rehabilitation for extremely serious conditions or injuries and the experience of pain and discomfort is usually an unavoidable reality of this process. Several of these commenters were concerned that a pain management measure in the IRF QRP focused on an expectation of improvement may be misleading and could inadvertently lead to over prescribing of pain medication, including opioids. Other commenters opposed a patient-reported pain management measure since they believe it would be an unrealistic objective for an IRF to manage a patient's pain to their expectation. These commenters suggested CMS should instead seek feedback from interested parties on the aspects of pain management relevant to IRFs and then determine if there is sufficient information to develop a meaningful quality measure.

Several commenters also noted that we are considering this measure concept for other post-acute care settings as well, including SNF and LTCH, and they believe it would invariably lead to inappropriate comparisons in pain management across PAC settings. These commenters suggested that if CMS is looking to address whether pain is managed adequately, it should seek feedback from multiple interested parties to identify what aspects of pain management are of most interest and relevance to the IRF population, such as staff responsiveness to pain, and determine if there is sufficient available information to develop a meaningful quality measure.

Other commenters stated that a more meaningful pain measure in the IRF setting should be designed to assess whether staff are responsive to and help manage patients' pain, and that such a measure could rely on patient-reported data. These commenters noted that a patient reported outcome measure [93] (PROM) would be significantly more meaningful for quality measurement than a process measure collecting the existence of pain and could be collected directly from the patient without additional measure collection burden to an IRF. Specifically, they pointed to the standardized patient assessment data elements on the IRF–PAI, including items introduced on October 1, 2022, that collect information on the level of pain interference a patient experiences with daily activities, sleep, and participation in therapy activities in section J of the IRF–PAI. These commenters believe these quality indicators in section J of the IRF–PAI could present an opportunity to develop a quality measure with no additional data collection burden to IRFs.

3. Depression

Comments: Many commenters supported the concept of depression for a future IRF QRP measure, and one of these commenters noted that early identification and intervention for a patient's risk of depression can improve outcomes and quality of life, since depression can hinder a patient's progress and treatment. Two commenters supported a depression and follow-up measure, suggesting that the Patient Health Questionnaire (PHQ)–2 to –9 (PHQ–2 to –9) screening tool [94] could be utilized for the development of a measure. These commenters also suggested that, if a depression measure is developed, there should not be an exclusion for patients with a prior depression or bipolar diagnosis since all symptoms of depression should be reassessed when a person is recovering from life-altering events.

Other commenters suggested that, since IRFs are already required to conduct a screening for depression using the PHQ–2 to –9 on the IRF–PAI, this screening can be used to monitor and measure the severity of depression, an additional quality measure regarding depression screening would be redundant. One commenter suggested that a depression screening measure for IRF patients would be misguided, since there are already detailed questions asked on the IRF–PAI related to depression. They also note that most patients admitted to an IRF have experienced a life-altering event(s), such as a severe accident, an act of violence, or a major injury requiring intensive rehabilitation. These events can be extremely distressing and are often accompanied by new chronic conditions

[93] Patient reported outcome measures are tools used to collect patient-reported outcomes (PRO). CMS defines a PRO as any report of the status of a patient's health condition or health behavior coming directly from the patient, without interpretation of the patient's response by a clinician or anyone else. Available at: *https://mmshub.cms.gov/sites/default/files/Patient-Reported-Outcome-Measures.pdf*.

[94] The Patient Health Questionnaire (PHQ)–2 to –9 (PHQ–2 to –9) screening tool is used as the initial screening test for depression. The items were adopted as standardized patient assessment data elements in the FY 2020 IRF PPS final rule (84 FR 39119 through 39121) and are collected on all patients admitted to an IRF.

that are difficult to manage. As a result, many of these patients may have post-traumatic stress disorder, which is fundamentally different from clinical depression.

Several other commenters were concerned that a depression screening measure would result in a requirement for IRFs to have additional resources to treat depression, such as a psychiatrist or psychologist. They note that IRFs already collect information and use physician documentation to identify mental health or other behavioral health issues. These commenters stated that adding another screening requirement would not improve the quality of care, or better equip these facilities to care for rehabilitation needs, and instead was best left to behavioral health and primary care providers to address. At the same time, commenters noted that such a measure could add cost and burden to the IRF clinical team. Two of these commenters recommended CMS not implement a depression measure without first determining the availability of resources to treat depression within IRFs.

4. Other Suggestions for Future Measure Concepts

Comments: In addition to comments received on the three measure concepts of pain, depression and vaccination, we also received comments suggesting other concepts for future measures for the IRF QRP, including management of degenerative cognitive conditions, effectiveness of disposition planning and care transitions, changes in patient function, rates of follow-up care, and patients' access to appropriate treatments and medications, including access to a physical medicine and rehabilitation physician. One commenter suggested we consider measures of cognition and behavior in addition to mobility. Another commenter recommended including food and nutrition security and other social determinants of health (SDOH) as future IRF QRP quality measure concepts. Finally, one commenter recommended the Patient Active Measure (PAM®) [95] instrument be added to the IRF–PAI or required in parallel to the IRF–PAI.

Response: We thank all the commenters for responding to this RFI. We will take this feedback into consideration for future development of measures for the IRF QRP.

[95] The Patient Activation Measure (PAM®) is a 10- or 13-item survey that assesses an individual's knowledge, skills and confidence integral to managing one's own health and healthcare. Available at: *https://www.insigniahealth.com/pam/*.

E. Future IRF Star Rating System: Request for Information (RFI)

In the proposed rule, we sought feedback on the development of a five-star methodology for IRFs that can meaningfully distinguish between quality of care offered by IRFs. Star ratings serve an important function for patients, caregivers, and families, helping them to more quickly comprehend complex information about a health care providers' care quality and to easily assess differences among providers. This transparency serves an important educational function, while also helping to promote competition in health care markets. Informed patients and consumers are more empowered to select among health care providers, fostering continued quality improvement. We refer readers to the RFI in the proposed rule (89 FR 22281) for more information.

Specifically, we invited public comment on the following questions:

1. Are there specific criteria CMS should use to select measures for an IRF star rating system?

2. How should CMS present IRF star ratings information in a way that it is most useful to consumers?

We received several comments in response to this RFI, which are summarized below.

1. Specific Criteria To Use In Measure Selection

Comments: We received many comments in response to this RFI providing feedback on the criteria we should use for selecting measures to include in a potential IRF star ratings system. Many of these commenters stated the importance of including measures that are patient-centered, and several of these commenters also stated that the measures selected for an IRF star rating system should be representative of IRFs' emphasis on functional outcomes and treating pain. Several of these commenters, as well as other commenters, suggested that the IRF star rating system should incorporate measures of clinical relevance and effectiveness, such as prevention of adverse events or readmissions, discharge to home and weaning patients from catheters or other mechanical supports. Other commenters provided more general recommendations, such as selecting measures that allow for meaningful comparisons among IRFs in order to distinguish performance.

Several commenters strongly recommended against inclusion of the Falls with Major Injury measure because of inconsistency with clinical guidelines in the IRF. These commenters also recommended against inclusion of the Catheter-Associated Urinary Tract Infection (CAUTI) measure, stating that there is a lack of meaningful differences in IRF performance.

2. Presentation of IRF Star Ratings Information

Comments: Commenters provided recommendations on how to engage the public in the development and presentation of IRF star ratings. Several of these commenters strongly recommended CMS engage with patients, caregivers, providers, and specialty societies to inform the development and display of the IRF star ratings system. Additionally, three commenters emphasized full transparency of the star ratings methodology. Finally, one commenter recommended that visualizations of the star ratings should be clear, concise, and accompanied with contextual information to empower consumers in making informed healthcare decisions.

Several commenters noted concerns about the variation in IRF volumes across the nation and raised concerns about reportability. Specifically, they believe there will be IRFs that would not have enough publicly reported data to report a star rating. Some of these commenters also suggested that that due to the limited number of IRF quality measures and the fact that many IRFs have low patient volumes, the ability to develop an overall star rating will be challenging.

3. Other Comments Received About an IRF Star Ratings System

Comments: We also received several comments about IRFs' need for feedback additional reports to support their efforts at improving patient outcomes. Most of these commenters noted that the lack of patient-level reports for claims-based measures available to IRFs presents barriers to identifying areas for improvement in care. Several of these commenters, as well as other commenters, urged CMS to provide IRFs timely access to their data submitted for the IRF QRP and especially data submitted for measures that may be included in a star rating system. Three of these commenters noted that IRFs should receive feedback reports for any claims-based measures used in a star rating system on a quarterly basis, noting that CMS currently provides this level of information to hospitals. Two of these commenters recommended shortening the time period between an IRF's data submission on measures and the publicly reporting of IRFs' performance on Care Compare.

Commenters also provided recommendations on additional aspects of care, specific measures to consider, the proposed methodology, and insights from other star ratings to help shape the development of an IRF star ratings system. A few commenters recommended factoring into the star ratings system other indicators of quality such as the presence of physical medicine and rehabilitation doctors, staffing levels, staff turnover, and using the same standards as IRF accreditation bodies, such as the Commission on Accreditation of Rehabilitation Facilities (CARF). Additionally, several commenters recommended accounting for factors that differentiate IRFs such as case mix and payer mix. Another commenter recommended assessing and addressing the appropriateness of social determinants of health in and IRF star ratings system.

Finally, several commenters shared their concerns about other CMS star rating systems. Many of these commenters urged CMS to delay the implementation of an IRF star rating system until these issues with existing star ratings systems have been resolved. Another commenter recommended CMS should apply lessons learned from the development and maintenance of the existing star ratings programs as well as allow sufficient time for the development and implementation of a star rating system.

Response: We thank all the commenters for responding to the RFI on this important CMS priority. We will take these recommendations into consideration in our future star rating development efforts.

F. Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Background

We refer readers to the regulatory text at § 412.634(b)(1) for information regarding the current policies for reporting specified data for the IRF QRP.

2. Reporting Schedule for the Proposed New Standardized Patient Assessment Data Elements and the Modified Transportation Data Element Beginning With the FY 2028 IRF QRP

As discussed in sections VII.C.3. and VII.C.5. of the proposed rule, we proposed to adopt four new items as standardized patient assessment data elements under the SDOH category (one Living Situation item, two Food items, and one Utilities item) and to modify the Transportation standardized patient assessment data element previously adopted under the SDOH category beginning with the FY 2028 IRF QRP.

We proposed that IRFs would be required to report these new items and the transportation item using the IRF–PAI beginning with patients admitted on October 1, 2026, for purposes of the FY 2028 IRF QRP. Starting in CY 2027, IRFs would be required to collect and submit data for the entire calendar year with the FY 2029 IRF QRP.

We also proposed that IRFs that collect and submit the Living Situation, Food, and Utilities items with respect to admission only would be deemed to have collected and submitted those items with respect to both admission and discharge. We proposed that IRFs would be required to collect and submit these four items at admission only (and not at discharge) because it is unlikely that the assessment of those items at admission would differ from the assessment of the same item at discharge. This would align the data collection for these proposed items with other SDOH items (that is, Race, Ethnicity, Preferred Language, and Interpreter Services) which are only collected at admission.[96] A draft of the proposed items is available in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

As we noted in section VIII.C.5. of this final rule, we continually assess the implementation of the new SDOH items, including A1250. Transportation, as part of our routine item and measure monitoring work. We received feedback from interested parties in response to the FY 2020 IRF PPS proposed rule (84 FR 39149 through 39161) noting their concern with the burden of collecting the Transportation item at admission and discharge. Specifically, commenters stated that a patient's access to transportation is unlikely to change between admission and discharge (84 FR 39159). We analyzed the data IRFs reported from October 1, 2022, through June 30, 2023 (Quarter 4 CY 2022 through Quarter 2 CY 2023) and found that patient responses do not significantly change from admission to discharge.[97] Specifically, the proportion of patients [98] who responded ''Yes'' to the Transportation item at admission versus at discharge differed by only 0.19 percentage points during this period. We find these results convincing, and therefore we proposed to require IRFs to collect and submit the proposed modified standardized patient assessment data element, Transportation, at admission only.

We invited public comment on our proposal to collect data on the following items proposed as standardized patient assessment data elements under the SDOH category at admission beginning October 1, 2026 with the FY 2028 IRF QRP: (1) Living Situation as described in section VII.C.3.(a) of the proposed rule; (2) Food as described in section VII.C.3.(b) of the proposed rule; and (3) Utilities as described in section VII.C.3.(c) of the proposed rule. We also invited comment on our proposal to collect and submit the proposed modified standardized patient assessment data element, Transportation, at admission only beginning October 1, 2026, with the FY 2028 IRF QRP as described in section VII.C.5. of the proposed rule.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Several commenters supported the proposed collection of four new SDOH assessment items once, upon admission, noting that this could mitigate the administrative burden of data collection and reduce redundancy. One of these commenters recommended CMS change the collection requirements for all standardized patient assessment data elements in the SDOH category to admission only, because they believe that for most patients, the response is not going to change between admission and discharge.

In addition, several commenters supported the proposal to collect the modified Transportation assessment item at admission only, and one of these commenters agreed with CMS that the response to the Transportation assessment item is unlikely to change during the IRF stay. These commenters noted that removing the Transportation assessment item at discharge will reduce redundancy, improve the patient experience, and improve and align data collection.

Response: We appreciate the commenters' support in requiring the proposed SDOH assessment items at admission only. We continually assess the implementation of the new SDOH assessment items as part of our routine assessment item and measure monitoring work, and when we identify an opportunity to improve data collection, we want to implement it. In the FY 2025 IRF Proposed Rule (89 FR 22281 and 22282), we proposed to collect these new and modified

[96] FY 2020 IRF PPS final rule (84 FR 39161 through 39162).

[97] Due to data availability of IRF SDOH standardized patient assessment data elements, this is based on three quarters of Transportation data.

[98] The analysis is limited to patients who responded to the Transportation item at both admission and discharge.

assessment items at admission only because we believe it is unlikely that the assessment of these items at admission would differ from the assessment of the same items at discharge. We are mindful of provider burden and appreciate the support from several commenters who agreed that collection at admission only, rather than at both admission and discharge, would mitigate the administrative burden of data collection on these new and modified assessment items.

Comment: Two commenters suggested CMS offer flexibility for IRFs on how to collect the proposed SDOH assessment items, and not mandate the assessment items on the AHC HRSN Screening Tool. One of the commenters stated that they believed CMS' focus should be on whether the information is collected and less on the specific vendor or tool used for collection. The other commenter noted that flexibility in gathering screening information would allow IRFs to use their own methods of identifying patients' needs and the best time to collect this information.

Three commenters noted that CMS already collects many of the proposed SDOH assessment items from other health care providers, such as hospitals or other post-acute providers, prior to an IRF stay. These commenters recommended CMS allow IRF–PAI responses to be based upon data already collected in other settings of the hospital or health system when it is available prior to admission at an IRF to avoid unnecessary duplication of screenings and assessments.

Response: We interpret these commenters to be suggesting that CMS should allow IRFs to obtain information collected in previous healthcare settings, rather than requiring IRFs to obtain this information from the patient upon the patient's admission to the IRF. We appreciate that many IRFs may share electronic health record systems with referring hospitals. However, we proposed the collection of these assessment items through patient interview in an effort to increase the patient's voice in the assessment process and the IRF QRP. Obtaining information about the Living Situation, Food, Utilities, and Transportation assessment items directly from the patient, sometimes called ''hearing the patient's voice,'' is more reliable and accurate than obtaining it from a health care provider that previously cared for the patient for several reasons: the IRF would not know whether it was collected from the patient or from a family member or other source; the IRF would not know how the SDOH domain was defined—for example, whether utilities included electricity, gas, oil, or water or only asked about electricity; and the IRF would not be able to determine whether the potential problem had been resolved since then. Most importantly, we believe that by asking the patient these questions at admission, it may prompt further discussion with the patient about their needs and help formulate an appropriate discharge care plan.

We also want to clarify that the proposed SDOH assessment items will not require the use of a new collection tool, because the assessment items will be collected through the IRF–PAI, in the same way other standardized patient assessment data elements are collected. IRFs may use different methods to collect the information from the patient, as long as they are consistent with the coding guidance and defined lookback periods in the IRF–PAI manual. As we develop guidance for these new assessment items, we will utilize the feedback received in these comments.

Comment: Several commenters offered suggestions or recommendations for guidance related to collecting the proposed SDOH assessment items. One commenter recommended that CMS include coding logic to allow skipping the Utilities assessment item if a patient indicated that they do not have a steady place to live, since it would be inappropriate to ask about utilities if a patient has no place to live.

Response: We appreciate all the comments we received about coding these proposed new and modified SDOH assessment items, including the Utilities assessment item. We proposed that IRFs would be required to collect and submit information on the four new assessment items, in order to have complete information. We do not agree that it would be inappropriate to ask about utilities just because a patient does not have a place to live at the time of the assessment. The patient may be living in temporary housing or a shelter, and gathering this information would still be important for their discharge planning.

In response to the commenter who noted that patients may be uncomfortable sharing sensitive personal information with facility staff, we acknowledge that the proposed SDOH assessment items require the patient to be asked potentially sensitive questions. We also note that we proposed additional response options for these new and modified SDOH items for patients that decline to respond or are unable to respond. We encourage IRFs to assess all patients and select the appropriate response options for all SDOH assessment items.

Comment: Some commenters were concerned that the proposed SDOH assessment items are not applicable to certain types of patients receiving care in the IRF setting, including patients younger than 18 years old and patients requiring special accommodations. Many commenters highlighted that beginning October 1, 2024, IRFs will begin collecting IRF–PAI data on all patients regardless of payer and recommended that CMS exclude patients under 18 from these assessments because the proposed assessment items have not been validated or tailored for the pediatric and adolescent populations. One of these commenters stated the PRAPARE website Frequently Asked Questions (FAQs) stated, ''Currently there is no PRAPARE version that is specifically tailored for pediatrics/adolescents. There are health centers who have modified PRAPARE to be used with their pediatric and adolescent populations, which varies based on their staffing model and engagement of family members. The National NACHC team hopes to develop a Pediatric/Adolescent version of PRAPARE in the coming years.'' [99]

Response: We are uncertain what the commenter's concerns are related to collecting the items adapted from the PRAPARE tool, Living Situation and Transportation, from patients younger than 18 years old, but we interpret the commenter to be concerned that these patients would be too young to provide a response or that these patients may be too young to own a house or have a driver's license, so the questions would not be applicable to them.

In response to the potential concern that patients would be too young to provide a response, we highlight that there is growing recognition of the need for effective screening methods for HRSNs in all patient populations, including pediatrics and adolescents. Children are especially vulnerable to HRSNs, as poverty in childhood correlates to poor health outcomes.[100] [101] [102] Although there is no standardized protocol for screening in

[99] *https://prapare.org/faq/.*

[100] Feltner C WI, Berkman N, et al. *Screening for Intimate Partner Violence, Elder Abuse, and Abuse of Vulnerable Adults: An Evidence Review for the U.S. Preventive Services Task Force Agency for Healthcare Research and Quality.* 2018. Available at *https://www.ncbi.nlm.nih.gov/books/NBK533720/.*

[101] National Academy of Science EaM. *A Roadmap to Reducing Child Poverty.* The National Academies; 2019.

[102] Wise PH. Child poverty and the promise of Human Capacity: childhood as a foundation for healthy aging. *Acad Pediatr.* 2016;16(suppl 3):S37–S45.

pediatric settings,[103] organizations like the American Academy of Pediatrics provide toolkits with suggestions for a screening protocol. Housing and transportation have been identified by hospitals and clinics [104] [105] that care for pediatric and adolescent patients as an important area to screen. One hospital system began using the AHC HRSN Screening Tool, including the proposed Living Situation and Transportation item, during selected well child visits at a Federally Qualified Health Center, and found the tool was feasible to administer and identified more than a third of patients with one or more HRSNs.[106]

In response to the potential concern that the question would not be applicable to these patients because they may be too young to own a house or have a driver's license, we believe that even if a patient younger than 18 years old cannot own a house or drive themselves, they may rely on others, or they may live in shelters and use public transportation. As a result, they may still have living situation and transportation access needs that should be identified.

Finally, we interpret the second part of the comment to be recommending that CMS modify the response options to collect information about patients requiring special transportation accommodations. We note that although the proposal would require IRFs to collect the modified Transportation assessment item as described in section VIII.F.2. of this final rule, such collection could potentially prompt the IRF to initiate conversations with its patients about their potential Transportation needs, such as special accommodations a patient may need to access transportation. Additionally, IRFs may seek to collect any additional information that they believe may be relevant to their patient population in order to inform their care and discharge planning process.

[103] Boch S, Keedy H, Chavez L, et al. An integrative review of social determinants of health screenings used in primary care settings. *J Health Care Poor Underserved*. 2020;31:603–622.

[104] Halpin, K, Colvin, JD, Clements, MA, et al. Outcomes of Health-Related Social Needs Screening in a Midwest Pediatric Diabetes Clinic Network. Diabetes. 2023; Vol. 72; Iss: Supplement 1.

[105] Nerlinger, AL, Kopsombut, G. Social determinants of health screening in pediatric healthcare settings. Curr Opin Pediatr. 2023 Feb 1;35(1):14–21. Doi: 10.1097/MOP.0000000000001191.

[106] Gray, T.W., Podewils, L.J., Rasulo, R.M., Weiss, R.P., Tomcho M.M. Examining the Implementation of Health-Related Social Need (HRSN) Screenings at a Pediatric Community Health Center. Journal of Primary Care & Community Health. 2023. Volume 14: 1–8. *https://doi.org/10.1177/21501319231171519.*

Comment: Several commenters were also concerned that the proposed SDOH assessment items will be challenging for IRF patients to respond to, considering that many IRF patients have cognitive deficits as a result of a traumatic injury or are more severely ill than the average Medicare beneficiary for which the screening tool was developed. One of these commenters recommended that CMS reassess the wording and response options for the SDOH assessment items to account for these patients.

Response: We interpret the comments to be recommending that CMS reassess the wording and response options for the proposed SDOH assessment items to account for these patients with cognitive impairment. However, we believe IRFs are accustomed to working with patients with very complex medical conditions, including traumatic brain injury, stroke, and others, and we are confident in their ability to collect this data in a consistent manner. There are currently several patient interview assessment items on the IRF–PAI, and IRFs are accustomed to administering these questions to cognitively impaired patients.

We also plan to provide training resources in advance of the initial collection of the assessment items to ensure that IRFs have the tools necessary to administer the new SDOH assessment items and reduce the burden to IRFs in creating their own training resources. These training resources may include online learning modules, tip sheets, questions and answers documents, and/or recorded webinars and videos, and would be available to providers as soon as technically feasible.

After careful consideration of public comments we received, we are finalizing our proposal to require IRFs to collect and submit data on the following items adopted as standardized patient assessment data elements under the SDOH category at admission only beginning with the FY 2028 IRF QRP: (1) Living Situation as described in section VIII.C.3(a) of this final rule; (2) Food as described in section VIII.C.3(b) of this final rule; and (3) Utilities as described in section VIII.C.3(c) of this final rule. We are also finalizing our proposal to require IRFs to collect and submit the modified standardized patient assessment data element, Transportation, at admission only beginning October 1, 2026, with the FY 2028 IRF QRP as described in section VIII.C.5 and VIII.E.2. of this final rule.

3. Removal of the Admission Class Item From the IRF–PAI Beginning October 1, 2026.

(a) Background

In the CY 2002 PPS for IRFs final rule (66 FR 41324 through 41342), we finalized the use of the IRF–PAI, through which IRFs are now required to collect and electronically submit patient data for all Medicare Part A FFS and Medicare Part C (Medicare Advantage) patients admitted and discharged from an IRF through September 30, 2024 [107] and for all patients regardless of payer beginning October 1, 2024.[108] Item 14–Admission Class has been included on the IRF–PAI since the IRF–PAI was first implemented and is completed only at admission. The most recent version of the IRF–PAI is available for reference on the IRF–PAI and IRF QRP Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.* Item 14–Admission Class, includes the following response options: (i) Initial Rehab; (iii) Readmission; (iv) Unplanned Discharge; and (v) Continuing Rehabilitation.

(b) Removal of Item

We routinely review item sets for redundancies and identify opportunities to simplify data submission requirements. We proposed to remove Item 14–Admission Class entirely from the IRF–PAI, beginning October 1, 2026. We identified this item is currently not used in the calculation of quality measures already adopted in the IRF QRP. It is also not used for previously established purposes unrelated to the IRF QRP, such as payment, survey, or care planning.

We invited public comment on the proposal to remove Item 14–Admission Class from the IRF–PAI, effective October 1, 2026.

The following is a summary of the public comments received on the proposal and our responses:

Comment: Most commenters supported the proposal to remove Item 14–Admission Class from the IRF–PAI, pointing to its lack of value to the assessment process. One of these commenters appreciated CMS' review of the IRF–PAI to identify potential items for removal. The other commenters

[107] In the FY 2010 IRF PPS final rule (74 FR 39798 through 39800), CMS revised the regulation text in §§ 412.604, 412.606, 412.610, 412.614, and 412.618 to require that all IRFs submit IRF–PAI data on all of their Medicare Part C patients.

[108] In the FY 2023 IRF PPS final rule (87 FR 47073 through 47092), CMS revised the regulation text in §§ 412.604, 412.606, 412.610, 412.614, and 412.618 to require that all IRFs submit IRF–PAI data on each patient receiving care in an IRF, regardless of payer.

acknowledged that the proposed removal aligns with CMS' commitment to reducing administrative burden and agreed that it would result in a reduction in administrative burden.

Response: We thank the commenters for their support of the proposed removal of Item 14–Admission Class and agree that the removal of this item will reduce administrative burden for IRFs.

Comment: Four commenters suggested that CMS perform additional analysis of the IRF–PAI and other PAC patient assessment tools to identify additional items that could be removed.

Response: As part of our routine item and measure monitoring work, we continually assess the implementation of items collected on the IRF–PAI. We will continue to look for opportunities to improve data collection using the IRF–PAI, including considering items to remove from the IRF–PAI in order to reduce administrative burden.

Comment: Three commenters expressed concerns about removing the item and its potential impact on data collection requirements. They noted that response option (4) Unplanned Discharges is used to activate a skip pattern for incomplete stays in the IRF–PAI data specifications. These commenters suggested CMS conduct an impact analysis to identify the implications of the item removal. Two commenters suggested CMS modify the item, instead of removing it, to track incomplete stays and use the item to trigger skip patterns across the IRF–PAI in cases of unplanned discharges.

Response: We acknowledge the commenters' concerns about the item's use with triggering skip patterns in the data specifications, but the data specifications currently include a means to identify incomplete stays that does not rely on Item 14–Admission Class. Therefore, this item is not necessary. Additionally, as we noted in the proposed rule and this section of this final rule, we have identified that this item is currently not used in the calculation of quality measures already adopted in the IRF QRP, nor is it used for previously established purposes unrelated to the IRF QRP, such as payment, survey, or care planning. Therefore, its removal will not have an impact in our data, such as activation of a skip pattern for incomplete stays. Additionally, we conduct regular item monitoring and carefully consider the downstream implications of removing any item from the IRF–PAI. Accordingly, prior to proposing removal of this item, we analyzed CY 2023 assessment data and confirmed less than one percent of IRF–PAI admission assessments are coded as incomplete stays using Item 14–Admission Class. CMS will continue to monitor and assess changes resulting from removal of this item to ensure there are no unintended consequences or added burden to providers.

Comment: One commenter suggested that CMS remove the item from the IRF–PAI beginning October 1, 2024, instead of the proposed October 1, 2026 date. This commenter noted that delaying the removal of the Item 14–Admission Class item until October 1, 2026 is unreasonable provided IRFs are still required to collect and submit data for the Admission Class item even though CMS is not utilizing the information.

Response: We appreciate the commenter's suggestion, but we proposed October 1, 2026, to effectuate this change. Removing an item from the IRF–PAI has downstream logistical implications, such as changes to data submission specifications, updates to the assessment instruments, revisions to the IRF–PAI guidance manual, and provider training, if necessary. For example, we finalized and published the IRF–PAI 4.2 item set that will be effective October 1, 2024, almost 12 months before the October 12, 2023, to allow providers adequate time for preparation. The IRF–PAI Manual Version 4.0 was published over 7 months before the October 1, 2024 on February 1, and the IRF data specifications V5.00.1 were published over 4 months before the October 1, 2024 on May 25, 2024. Additionally, to allow for adequate time to draft, test and implement item set changes, we typically follow a 2-year cycle of updates to the item sets. Therefore, IRFs will continue to see Item 14–Admission Class on the IRF–PAI until the next release of the IRF–PAI on October 1, 2026.

However, we acknowledge that there is no longer a need to collect this information at admission. Therefore, we are finalizing our proposal with modification to reflect that IRFs would no longer be required to collect Item 14–Admission Class at admission beginning with patients admitted on October 1, 2024. Item 14–Admission Class is not a standardized patient assessment data element and therefore its completion does not have an impact on an IRF's annual compliance determination for the IRF QRP.

After careful consideration of public comments we received, we are finalizing our proposal to remove Item 14–Admission Class from the IRF–PAI with modification. Specifically, while we are finalizing our proposal to remove Item 14–Admission Class from the IRF–PAI effective October 1, 2026 as proposed, IRFs will no longer be required to collect and submit data on this Item 14–Admission Class beginning with patients admitted on October 1, 2024.

G. Policies Regarding Public Display of Measure Data for the IRF QRP

We did not propose any new policies regarding the public display of measure data in the proposed rule. For a more detailed discussion about our policies regarding public display of IRF QRP measure data and procedures for the opportunity to review and correct data and information, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52125 through 52131).

IX. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, 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. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 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.

This final rule refers to associated information collections that are not discussed in the regulation text contained in this document.

A. Requirements for Updates Related to the IRF QRP Beginning With the FY 2028 IRF QRP

An IRF that does not meet the requirements of the IRF QRP for a fiscal year will receive a 2-percentage point reduction to its otherwise applicable annual increase factor for that fiscal year.

In section VII.C. of the proposed rule, we proposed to adopt four items as standardized patient assessment data elements and modify one item currently collected and submitted as a standardized patient assessment data element beginning with the FY 2028 IRF QRP. In section VII.F.3. of the proposed rule, we proposed to remove one item,

Item 14–Admission Class, from the IRF–PAI.

As stated in sections VIII.C.3. and VIII.C.5. of this final rule, we proposed to adopt four items as standardized patient assessment data elements and modify one item currently collected and submitted as a standardized patient assessment data element beginning with the FY 2028 IRF QRP. The four new and modified items would be collected and submitted using the IRF–PAI. The IRF–PAI, in its current form, has been approved under OMB control number 0938–0842.[109] Four items will need to be added to the IRF–PAI at admission to allow for collection of these data, and one item would be modified. Additionally, as stated in section VIII.F.2. of this final rule, we proposed that IRFs would submit the four new items and one modified item at admission only. The net result of collecting and submitting four new items at admission, modifying the Transportation item (including the modification that this item be collected at admission only, rather than at admission and discharge is an increase of 0.9 minutes or 0.015 hour of clinical staff time at admission [(4 items × 0.005 hour) minus (1 item × 0.005 hour)]. We identified the staff type based on past IRF burden calculations, and our assumptions are based on the categories generally necessary to perform an assessment. We believe that the items would be completed equally by a Registered Nurse (RN) (50 percent of the time) and a Licensed Practical and Licensed Vocational Nurse (LPN/LVN) (50 percent of the time). However, IRFs determine the staffing resources necessary.

For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates.[110] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 15. We established a composite cost estimate using our adjusted wage estimates. The composite estimate of $65.31/hr was calculated by weighting each adjusted hourly wage equally (that is, 50 percent) [($78.10/hr × 0.5) + ($52.52/hr × 0.5) = $65.31].

TABLE 15—U.S. BUREAU OF LABOR AND STATISTICS' MAY 2022 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Median hourly wage ($/hr)	Other indirect costs and fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Registered Nurse (RN)	29–1141	$39.05	$39.05	$78.10
Licensed Practical and Licensed Vocational Nurse (LPN/LVN)	29–2061	26.26	26.26	52.52

We estimated that the burden and cost for IRFs for complying with requirements of the FY 2028 IRF QRP would increase under this proposal. Using FY 2023 data, we estimate a total of 571,151 admissions to and 512,677 planned discharges from 1,160 IRFs annually for an increase of 8,859.64 hours in burden for all IRFs [(571,151 × 0.02 hour) admissions − (512,677 × 0.005 hour) planned discharges]. Given 0.02 hour at $65.31 per hour to complete an average of 492 IRF–PAI admission assessments per IRF per year minus 0.005 at $65.31 per hour to complete an average of 442 IRF–PAI Planned Discharge assessments per IRF per year, we estimate the total cost will be increased by $498.81 per IRF annually, or $578,622.76 for all IRFs annually.

In section VIII.F.3. of this final rule, we proposed to remove one item, Item 14–Admission Class, from the IRF–PAI beginning October 1, 2026. We believe that the removal of Item 14–Admission Class will result in a decrease of 18 seconds (0.3 minutes or 0.005 hours) of clinical staff time at admission beginning with the FY 2028 IRF QRP. We believe the IRF–PAI item, Item 14–Admission Class, is completed equally by a Registered Nurse (RN) and a Licensed Practical and Licensed Vocational Nurse (LPN/LVN). Individual IRFs determine the staffing resources necessary.

We estimated that the burden and cost for IRFs for complying with requirements of the FY 2028 IRF QRP will decrease under this proposal in section VIII.F.3. Specifically, we believe that there will be a 2.46 hour decrease in clinical staff time to report data for each IRF–PAI completed at admission. Using data from FY 2023, we estimated 571,151 admission assessments from 1,160 IRFs annually. This equates to a decrease of 2,855.76 hours in burden at admission for all IRFs (0.005 hour × 571,151 admissions). Given 0.005 hour at $65.31 per hour to complete an average of 492 IRF–PAI admission assessments per IRF per year, we estimated the total cost will be decreased by $160.78 ($186,509.36 total decrease/1,160 IRFs) per IRF annually, or $186,509.36 for all IRFs annually, based on the proposal to remove one item from the IRF–PAI.

In summary, under OMB control number 0938–0842, the changes to the IRF QRP will result in a burden increase of $338.03 per IRF ($392,113.40/1,160 IRFs). The total cost increase related to this proposed information collection is approximately $392,113.40 and is summarized in Table 16.

[109] *https://www.reginfo.gov/public/do/DownloadNOA?requestID=494186.*

[110] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

TABLE 16—ESTIMATED CHANGE IN BURDEN ASSOCIATED WITH OMB CONTROL NUMBER 0938–0842

Requirement	Per IRF		All IRFs	
	Estimated change in annual burden hours	Estimated change in annual cost	Estimated change in annual burden hours	Estimated change in annual cost
Collection of Four New Items as Standardized Patient Assessment Data Elements and Modification of One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2028 IRF QRP	+7.64	+$498.81	+8,859.64	+$578,622.76
Removal of Item 14–Admission Class item effective October 1, 2026	−2.46	−$160.78	−2,855.76	−$186,509.36
Change in burden for the IRF QRP associated with 0938–0842	5.18	$338.03	6,003.88	$392,113.40

We invited public comments on the proposed information collection requirements. The following is a summary of the public comments received on the proposed information collection requirements as well as our responses.

Comment: Three commenters urged CMS to update its estimate of the change in burden resulting from these new IRF QRP changes to account for the costs associated with training and education, time required to administer and reconcile patient assessments, and costs associated with software development and other required technical updates. One of these commenters specifically noted they do not believe the estimate accurately reflects the time to conduct patient interviews and reconcile information from the patient nor does it account for the costs associated with software development and other technology that will make the collection of this information easier and timelier for IRFs and other providers.

Response: We acknowledge that the net effect of our policies finalized in this final rule is an increase of $338.03 per IRF per year.

The burden estimate for the proposed SDOH items is based on past IRF burden calculations and represents the time it takes to encode the IRF–PAI. As the commenter pointed out in their example, the patient must be assessed and information gathered. After the patient assessment is completed, the IRF–PAI is coded with the information and submitted to the internet Quality Improvement and Evaluation System (iQIES), and it is these steps (after the patient assessment) that the estimated burden and cost captures. This method is consistent with past collection of information estimates.[111]

We also note that some IRFs will incur a higher cost than was estimated due to their size and volume of admissions, and some IRFs will incur a lower cost. Regarding the comments about IRFs' costs associated with training and education, time required to administer and reconcile patient assessments, and costs associated with software development and other required technical updates, CMS continually looks for opportunities to minimize burden associated with collection and submission of the IRF–PAI for information users through strategies that simplify collection and submission requirements. This includes standardizing instructions, providing a help desk, hosting a dedicated web page, communication strategies, free data specifications, and free on-demand reports. We describe each of those below and how they will potentially reduce new burden on IRFs collecting and submitting these new and modified SDOH assessment items.

First, we will standardize the collection instructions for the new and modified SDOH assessment items across all IRFs, ensuring that all instructions and notices are written in plain language, and by providing step-by-step examples for completing the IRF–PAI. Second, CMS provides a dedicated help desk to support users and respond to questions about the data collection, and IRFs can utilize this help desk when they have questions about the new and modified SDOH assessment items. Third, a dedicated IRF QRP web page houses multiple modes of tools, such as instructional videos, case studies, user manuals, and frequently asked questions. We plan to update this web page with new resources to support IRFs' understanding of the new SDOH assessment items and the modified assessment item as soon as technically feasible, and these resources will be available to all users of the IRF–PAI. Fourth, CMS utilizes a listserv to facilitate outreach to users, such as communicating timely and important new material(s), and we will use those outreach resources when providing training and information about the new and modified SDOH assessment items. Fifth, CMS creates data collection and submission specifications for IRF electronic health record (EHR) software available free of charge to all IRFs and their technology partners, and these will be updated to incorporate the new and modified SDOH assessment items. Finally, CMS provides IRFs with a free internet-based system through which users can access on-demand reports for feedback about the IRFs' compliance with collection and submission of the new and modified SDOH assessment items associated with their facility.

Comment: One commenter urged CMS to recognize that administrative requirements are already overburdening the IRF workforce and incorporating these new standardized patient assessment data elements would further decrease resources from patient care. This commenter reported that it currently takes an average of 45 minutes per patient to pull information and scores and enter them into the IRF–PAI. This commenter noted that the 45 minutes of time does not include the time it takes their staff to complete their assessments that contribute to the IRF–PAI, and completing assessments for patients with cognitive deficits takes even longer.

Response: As the commenter pointed out in their example, the patient must be assessed, and information gathered. We disagree that this policy, if finalized, will take time away from patient care. The new assessment items (Living Situation, Food, and Utilities) are all important pieces of information to developing and administering a comprehensive plan of care in accordance with § 412.606. Rather than taking time away from patient care, providers will be documenting information they are likely already collecting through the course of providing care to the patients.

After the patient assessment is completed, the IRF–PAI is coded with the information and submitted to the CMS system, and it is these steps (after

[111] FY 2016 IRF PPS proposed rule *https://www.federalregister.gov/citation/80-FR-23390* (80 FR 23390).

the patient assessment) that the estimated burden and cost captures. As we stated in section IX.A. of this final rule, our assumptions for staff type were based on the categories generally necessary to perform an assessment, and subsequently encode it, which is consistent with past collection of information estimates.[112] While we acknowledge that some IRFs may train and utilize other personnel, our estimates are based on the categories of personnel necessary to complete the IRF–PAI.

We also note that the commenter's estimate of the time it takes its members to code the IRF–PAI (45 minutes) is consistent with the total time we report in our Paperwork Reduction Act (PRA) package (0938–0842). We estimate the next version of the IRF–PAI will take an average of 1 hour and 47 minutes per IRF–PAI assessment which includes the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

After considering the public comments received, and for the reasons outlined in this section of the final rule and our comment responses, we are finalizing our proposal to remove Item 14-Admission Class from the IRF–PAI with modification. Specifically, while we are finalizing our proposal to remove Item 14-Admission Class from the IRF–PAI effective October 1, 2026 as proposed, IRFs will no longer be required to collect and submit data on this Item 14-Admission Class beginning with patients admitted on October 1, 2024. We are also finalizing our proposal to collect and submit data on the following items adopted as standardized patient assessment data elements under the SDOH category at admission only beginning with October 1, 2026 IRF admissions: (1) Living Situation as described in section VIII.C.3(a) of this final rule; (2) Food as described in section VIII.C.3(b) of this final rule; and (3) Utilities as described in section VIII.C.3(c) of this final rule. We are also finalizing our proposal to collect and submit the modified standardized patient assessment data element, Transportation, at admission only beginning with October 1, 2026, IRF admissions as described in section VIII.C.5 of this final rule.

X. Regulatory Impact Analysis

A. Statement of Need

This final rule updates the IRF prospective payment rates for FY 2025 as required under section 1886(j)(3)(C) of the Act and in accordance with section 1886(j)(5) of the Act, which requires the Secretary to publish in the **Federal Register** on or before August 1 before each FY, the classification and weighting factors for CMGs used under the IRF PPS for such FY and a description of the methodology and data used in computing the prospective payment rates under the IRF PPS for that FY. This final rule will also implement section 1886(j)(3)(C) of the Act, which requires the Secretary to apply a productivity adjustment to the market basket percentage increase for FY 2012 and subsequent years.

Furthermore, this final rule adopts policy changes to the IRF QRP under the statutory discretion afforded to the Secretary under section 1886(j)(7) of the Act. This rule updates the IRF QRP requirements beginning with the FY 2028 IRF QRP.

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), Executive Order 14094 on Modernizing Regulatory Review (April 6, 2023), 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), and 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). Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended 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 $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, 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) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

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) ($200 million or more in any 1 year). We estimate the total impact of the policy updates described in this final rule by comparing the estimated payments in FY 2025 with those in FY 2024. This analysis results in an estimated $280 million increase for FY 2025 IRF PPS payments. Additionally, we estimated that costs associated with updating the reporting requirements under the IRF QRP result in an estimated $392,113.40 additional cost for IRFs in FY 2026 for purposes of meeting the FY 2028 IRF QRP. Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) as measured by the $200 million or more in any 1 year, and hence also a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Anticipated Effects

1. Effects on IRFs

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 IRFs and most other providers and suppliers are small entities, either by having revenues of $9.0 million to $47.0 million or less in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432 at

[112] FY 2016 IRF PPS proposed rule (80 FR 23390).

https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf, effective January 1, 2017, and updated on August 19, 2019.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,160 IRFs, of which approximately 50 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 17, we estimate that the net revenue impact of the final rule on all IRFs is to increase estimated payments by approximately 2.8 percent. The rates and policies proposed in this rule would not have a significant impact (not greater than 5 percent) on a substantial number of small entities. The estimated impact on small entities is shown in Table 17. MACs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, 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 shown in Table 17, we estimate that the net revenue impact of this final rule on rural IRFs is to increase estimated payments by approximately 4.9 percent based on the data of the 131 rural units and 13 rural hospitals in our database of 1,160 IRFs for which data were available. We estimate an overall impact for rural IRFs in all areas between 1.4 percent and 10.7 percent. As a result, we anticipate that this final rule will not have a significant negative impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted March 22, 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 2024, that threshold is approximately $183 million. This final rule does not mandate any requirements for State, local, or Tribal governments, or for the private sector.

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. As stated, this final rule will not have a substantial effect on State and local governments, preempt State law, or otherwise have a federalism implication.

2. Detailed Economic Analysis

This final rule updates the IRF PPS rates contained in the FY 2024 IRF PPS final rule (88 FR 50956). Specifically, this final rule updates the CMG relative weights and ALOS values, the wage index, and the outlier threshold for high-cost cases. This final rule will apply a productivity adjustment to the FY 2025 IRF market basket percentage increase in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.

We estimate that the impact of the changes and updates described in this final rule will be a net estimated increase of $280 million in payments to IRFs. The impact analysis in Table 17 of this final rule represents the projected effects of the updates to IRF PPS payments for FY 2025 compared with the estimated IRF PPS payments in FY 2024. We determined the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2025, we are implementing the standard annual revisions described in this final rule (for example, the update to the wage index and market basket percentage increase used to adjust the Federal rates). We are also reducing the FY 2025 IRF market basket percentage increase by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. We estimate the total increase in payments to IRFs in FY 2025, relative to FY 2024, will be approximately $280 million.

This estimate is derived from the application of the FY 2025 IRF market basket percentage increase, reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act, which yields an estimated increase in aggregate payments to IRFs of $300 million. However, there is an estimated $20 million decrease in aggregate payments to IRFs due to the update to the outlier threshold amount. Therefore, we estimate that these updates will result in a net increase in estimated payments of $280 million from FY 2024 to FY 2025.

The effects of the updates that impact IRF PPS payment rates are shown in Table 17. The following updates that affect the IRF PPS payment rates are discussed separately below:

- The effects of the update to the outlier threshold amount, from approximately 3.2 percent to 3.0 percent of total estimated payments for FY 2025, consistent with section 1886(j)(4) of the Act.
- The effects of the annual market basket update (using the 2021-based IRF market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and (j)(3)(C) of the Act, including a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.
- The effects of applying the budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act, accounting for the permanent cap on wage index decreases when applicable.
- The effects of the budget-neutral changes to the CMG relative weights and ALOS values under the authority of section 1886(j)(2)(C)(i) of the Act.
- The total change in estimated payments based on the FY 2025 payment changes relative to the estimated FY 2024 payments.

3. Description of Table 17

Table 17 shows the overall impact on the 1,160 IRFs included in the analysis.

The next 12 rows of Table 17 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban

freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 1,016 IRFs located in urban areas included in our analysis. Among these, there are 653 IRF units of hospitals located in urban areas and 363 freestanding IRF hospitals located in urban areas. There are 144 IRFs located in rural areas included in our analysis. Among these, there are 131 IRF units of hospitals located in rural areas and 13 freestanding IRF hospitals located in rural areas. There are 498 for-profit IRFs. Among these, there are 463 IRFs in urban areas and 35 IRFs in rural areas. There are 567 non-profit IRFs. Among these, there are 477 urban IRFs and 90 rural IRFs. There are 95 government-owned IRFs. Among these, there are 76 urban IRFs and 19 rural IRFs.

The remaining five parts of Table 17 show IRFs grouped by their urban or rural status before and after the application of the new CBSA delineations, by geographic location within a region, by teaching status, and by DSH patient percentage (PP). First, IRFs are categorized by their urban or rural designation before and after the updates to the OMB CBSA delineations. Second, IRFs located in urban areas are categorized for their location within a particular one of the nine Census geographic regions. Third, IRFs located in rural areas are categorized for their location within a particular one of the nine Census geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. IRFs are then grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent. Finally, IRFs are grouped by DSH PP, including IRFs with zero DSH PP, IRFs with a DSH PP less than 5 percent, IRFs with a DSH PP between 5 and less than 10 percent, IRFs with a DSH PP between 10 and 20 percent, and IRFs with a DSH PP greater than 20 percent.

The estimated impacts of each policy described in this final rule to the facility categories listed are shown in the columns of Table 17. The description of each column is as follows:

- Column (1) shows the facility classification categories.
- Column (2) shows the number of IRFs in each category in our FY 2025 analysis file.
- Column (3) shows the number of cases in each category in our FY 2025 analysis file.
- Column (4) shows the estimated effect of the adjustment to the outlier threshold amount.
- Column (5a) shows the estimated effect of the FY 2025 update to the IRF labor-related share, FY 2024 CBSA delineations, and FY 2025 wage index with the 5-percent cap, in a budget-neutral manner.
- Column (5b) shows the estimated effect of the FY 2025 update to the IRF labor-related share, FY2025 CBSA delineations and FY 2025 wage index with the 5-percent cap, in a budget-neutral manner. These updates are made without applying the rural adjustment to IRFs transitioning from urban to rural status under the new CBSA delineations or reducing the rural adjustment or IRFs transitioning from rural to urban status.
- Column (5c) shows the estimated effects of the 3-year phase-out of the rural adjustment for IRFs transitioning from rural to urban status under the new CBSA delineations and the application of the standard rural adjustment for IRFs transitioning to rural status.
- Column (6) shows the estimated effect of the update to the CMG relative weights and ALOS values, in a budget-neutral manner.
- Column (7) compares our estimates of the payments per discharge, incorporating all of the policies reflected in this final rule for FY 2025 to our estimates of payments per discharge in FY 2024.

The average estimated increase for all IRFs is approximately 2.8 percent. This estimated net increase includes the effects of the IRF market basket update for FY 2025 of 3.0 percent, which is based on a IRF market basket percentage increase of 3.5 percent, less a 0.5 percentage point productivity adjustment, as required by section 1886(j)(3)(C)(ii)(I) of the Act. It also includes the approximate 0.2 percent overall decrease in estimated IRF outlier payments from the update to the outlier threshold amount. Since we are updating the IRF wage index, labor-related share and the CMG relative weights in a budget-neutral manner, we estimate there is no expected impact to total estimated IRF payments in aggregate. However, as described in more detail in each section, we estimate there will be expected impacts to the estimated distribution of payments among providers.

TABLE 17: IRF Impact for FY 2025 (Columns 4 through 7 in percentage)

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2025 Wage Index (5% cap), FY 2024 CBSA delineations, and Labor-Related Share	FY 2025 Wage Index (5% cap), FY 2025 CBSA delineations, and Labor-Related Share	Change in Rural Adjustment	CMG Weights	Total Percent Change [1]
(1)	(2)	(3)	(4)	(5a)	(5b)	(5c)	(6)	(7)
Total	1,160	414,794	-0.2	0.0	0.0	0.0	0.0	2.8
Urban unit	653	142,167	-0.4	-0.4	0.0	-0.1	0.0	2.1
Rural unit	131	17,959	-0.3	0.5	0.3	1.2	0.0	4.8
Urban hospital	363	248,138	-0.1	0.2	0.0	-0.1	0.0	3.0
Rural hospital	13	6,530	0.0	-0.4	0.4	2.2	-0.1	5.2
Urban For-Profit	463	246,817	-0.1	0.1	0.0	-0.1	0.0	2.9
Rural For-Profit	35	9,773	-0.1	-0.3	0.4	1.5	0.0	4.4
Urban Non-Profit	477	125,648	-0.4	-0.3	0.0	-0.1	0.0	2.2
Rural Non-Profit	90	12,758	-0.3	0.7	0.3	1.6	0.0	5.4
Urban Government	76	17,840	-0.4	0.1	0.0	-0.1	0.0	2.6
Rural Government	19	1,958	-0.2	0.5	0.4	0.9	0.1	4.8
Urban	1,016	390,305	-0.2	0.0	0.0	-0.1	0.0	2.7
Rural	144	24,489	-0.2	0.3	0.3	1.5	0.0	4.9
CBSA Change								
Urban to Urban	1,008	388,890	-0.2	0.0	0.0	-0.1	0.0	2.7
Rural to rural	136	21,620	-0.2	0.0	0.2	-0.1	0.0	2.9
Urban to rural	8	2,869	-0.2	2.6	1.0	13.9	0.0	21.4
Rural to urban	8	1,415	-0.1	-0.2	1.3	-4.1	0.0	-0.3
Urban by region								
Urban New England	30	14,331	-0.1	-1.9	0.1	-0.1	0.0	1.0
Urban Middle Atlantic	116	41,659	-0.3	-0.9	0.0	-0.1	0.0	1.7
Urban South Atlantic	182	90,456	-0.2	0.6	-0.1	-0.1	0.0	3.2
Urban East North Central	165	46,976	-0.2	-0.2	0.1	-0.1	0.0	2.5

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2025 Wage Index (5% cap), FY 2024 CBSA delineations, and Labor-Related Share	FY 2025 Wage Index (5% cap), FY 2025 CBSA delineations, and Labor-Related Share	Change in Rural Adjustment	CMG Weights	Total Percent Change [1]
Urban East South Central	57	27,340	-0.1	1.6	0.0	-0.1	0.0	4.4
Urban West North Central	78	23,270	-0.2	-0.3	0.0	-0.1	0.0	2.4
Urban West South Central	210	90,104	-0.1	0.5	0.0	-0.1	0.0	3.3
Urban Mountain	79	31,197	-0.1	0.1	0.0	-0.1	0.0	2.9
Urban Pacific	99	24,972	-0.4	-1.5	-0.1	-0.1	0.0	0.9
Rural by region								
Rural New England	5	1,110	-0.4	-0.1	0.0	-0.1	-0.1	2.3
Rural Middle Atlantic	11	1,477	-0.2	3.1	-0.5	5.0	0.0	10.7
Rural South Atlantic	17	5,839	-0.1	-0.6	1.4	3.8	0.0	7.5
Rural East North Central	22	2,892	-0.3	0.5	-0.3	1.0	0.0	4.0
Rural East South Central	19	3,310	-0.2	1.3	-0.1	-0.1	0.0	4.0
Rural West North Central	19	2,285	-0.4	1.1	0.0	-0.1	0.0	3.6
Rural West South Central	43	6,842	-0.2	-0.4	0.3	0.7	0.1	3.5
Rural Mountain	6	424	-0.6	2.2	0.2	-0.1	0.1	4.9
Rural Pacific	2	310	-0.9	-0.7	0.0	-0.1	0.2	1.4
Teaching status								
Non-teaching	1,055	366,156	-0.2	0.1	0.0	0.0	0.0	2.9
Resident to ADC less than 10%	55	33,897	-0.2	-0.7	0.1	0.0	0.0	2.3
Resident to ADC 10%-19%	39	13,368	-0.4	-1.4	0.0	-0.1	0.1	1.2
Resident to ADC greater than 19%	11	1,373	-0.4	-1.9	0.0	-0.1	-0.1	0.5
Disproportionate share patient percentage (DSH PP)								
DSH PP = 0%	64	11,104	-0.4	0.4	0.4	0.7	0.0	4.1
DSH PP <5%	140	66,773	-0.1	0.4	0.0	-0.1	0.0	3.2
DSH PP 5%-10%	243	105,016	-0.1	0.3	-0.1	-0.1	0.0	2.9

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2025 Wage Index (5% cap), FY 2024 CBSA delineations, and Labor-Related Share	FY 2025 Wage Index (5% cap), FY 2025 CBSA delineations, and Labor-Related Share	Change in Rural Adjustment	CMG Weights	Total Percent Change [1]
DSH PP 10%-20%	414	149,020	-0.2	-0.3	0.0	0.1	0.0	2.6
DSH PP greater than 20%	299	82,881	-0.3	-0.2	0.1	-0.1	0.0	2.6

[1]This column includes the impact of the updates in columns (4), (5a), (5b), (5c), and (6) above, and of the IRF market basket update for FY 2025 of 3.0 percent, which reflects the FY 2025 IRF market basket percentage increase of 3.5 percent reduced by 0.5 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

4. Impact of the Update to the Outlier Threshold Amount

The estimated effects of the update to the outlier threshold adjustment are presented in column 4 of Table 17.

For the FY 2025 proposed rule, we used preliminary FY 2023 IRF claims data and based on that preliminary analysis, we estimated that IRF outlier payments as a percentage of total estimated IRF payments would be 3.2 percent in FY 2024. As we typically do between the proposed and final rules each year, we updated our FY 2023 IRF claims data to ensure that we are using the most recent available data in setting IRF payments. Therefore, based on an updated analysis of the most recent IRF claims data for this final rule, we estimate that IRF outlier payments as a percentage of total estimated IRF payments are 3.2 percent in FY 2024. Thus, we are adjusting the outlier threshold amount in this final rule to maintain total estimated outlier payments equal to 3 percent of total estimated payments in FY 2025.

The estimated change in total IRF payments for FY 2025, therefore, includes an approximate 0.2 percentage point decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.2 percent to 3.0 percent.

The impact of this update to the outlier threshold amount (as shown in column 4 of Table 17) is to decrease estimated overall payments to IRFs by 0.2 percentage point.

5. Impact of the Wage Index, Labor-Related Share, and Wage Index Cap

In column 5a of Table 17, we present the effects of the budget-neutral update of the wage index and labor-related share, taking into account the permanent 5-percent cap on wage index decreases when applicable, without taking into account the updated FY2025 CBSA delineations, which are presented separately in the next column. The changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the changes in the two have a combined effect on payments to providers. As discussed in section VI.E. of this final rule, we are updating the FY 2025 labor-related share from 74.1 percent in FY 2024 to 74.4 percent in FY 2025.

6. Impact of the Updated CBSA Delineations

In column 5b of Table 17, we present the effects of the revised FY2025 CBSA delineations, without applying the rural adjustment to IRFs transitioning from urban to rural status under the new CBSA delineations or reducing the rural adjustment for IRFs transitioning from rural to urban status. In aggregate, we do not estimate that these updates will affect overall estimated payments to IRFs. However, we do expect these updates to have small distributional effects. We estimate the largest decrease in payment from the update to the FY 2025 CBSA delineation and wage index and labor-related share (column 5b of Table 17) to be a 0.5 percent decrease for IRFs in the Rural Middle Atlantic region and the largest increase in payment to be a 1.4 percent increase for IRFs in the Rural South Atlantic region.

7. Impact of the Phase-Out of the Rural Adjustment for IRFs Transitioning From Rural to Urban Designations

In column 5c of Table 17, we present the effects of the 3-year phase-out of the rural adjustment for IRFs transitioning from rural to urban status under the new CBSA delineations and the application of the standard rural adjustment for IRFs transitioning to rural status. Under the IRF PPS, IRFs located in rural areas receive a 14.9 percent adjustment to their payment rates to account for the higher costs incurred in treating beneficiaries in rural areas. Under the new CBSA delineations, we estimate that 8 IRFs will transition from rural to urban status for purposes of the IRF PPS wage index adjustment in FY 2025. Without the phase-out of the rural adjustment, these 8 IRFs would experience an automatic 14.9 percent decrease in payments as a result of this change from rural to urban status in FY 2025.

To mitigate the effects of this relatively large decrease in payments, we will phase-out the rural adjustment for these providers over a 3-year period, as discussed in more detail in section VI.D.3 of this final rule. Thus, these IRFs would receive two thirds of the rural adjustment in FY 2025, one third of the rural adjustment in FY 2026, and none of the rural adjustment in FY 2027, thus giving these IRFs time to adjust to the reduced payments.

Column 5c shows the effect on providers of this budget-neutral phase-out of the rural adjustment for IRFs transitioning from rural to urban status in FY 2025. Under this policy, these providers would only experience a reduction in payments of one third of the 14.9 percent rural adjustment in FY 2025. While this does not impact aggregate payments, there are small effects on the distribution of payments to IRFs. The largest decrease as a result of this policy change is a 4.1 percent decrease in payments to IRFs that transitioned from rural to urban status since they will receive only two thirds of the rural adjustment in FY 2025. We note that the decrease in payments to these providers is substantially lessened from what it otherwise would have been as a result of the phase-out of the rural adjustment for these IRFs.

8. Impact of the Update to the CMG Relative Weights and ALOS Values

In column 6 of Table 17, we present the effects of the budget-neutral update of the CMG relative weights and ALOS values. In the aggregate, we do not estimate that these updates will affect overall estimated payments of IRFs. However, we do expect these updates to have small distributional effects between −0.1 to 0.2.

9. Effects of Requirements for the IRF QRP Beginning With the FY 2028 IRF QRP

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. In section IX.A. of the final rule, we discussed the method for applying the 2-percentage points reduction to IRFs that fail to meet the IRF QRP requirements.

As discussed in sections VIII.C.3. and VIII.C.5. of this final rule, we are finalizing our proposal to collect four new items as standardized patient assessment data elements under the SDOH category and modify one item collected as a standardized patient assessment data element under the SDOH category on the IRF–PAI beginning with the FY 2028 IRF QRP. Although the increase in burden will be accounted for in a revised information collection request under OMB control number (0938–0842), we are providing impact information. We believe the items would be completed equally by a Registered Nurse (RN) (50 percent of the time) and a Licensed Practical and Vocational Nurses (LPN/LVN) (50 percent of the time). For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates.[113] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 18.

TABLE 18—U.S. BUREAU OF LABOR AND STATISTICS' MAY 2022 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Median hourly wage ($/hr)	Other indirect costs and fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Registered Nurse (RN)	29–1141	$39.05	$39.05	$78.10
Licensed Practical and Licensed Vocational Nurse (LPN/LVN)	29–2061	26.26	26.26	52.52

With 571,151 admissions from 1,160 IRFs annually, we estimated an annual burden increase of 8,859.64 hours [(571,151 × 0.02 hour) admissions—(512,677 × 0.005 hour) planned discharges] and an increase of $578,622.76 [8,859.64 hours × $65.31/hr)]. For each IRF, we estimate an annual burden increase of 7.64 hours (8,859.64 hours/1,160 IRFs) for an annual increase of $498.81 ($578,622.76/1,160 IRFs).

As discussed in section VII.F.3. of this final rule, we are finalizing our proposal to remove Item 14, Admission Class, from the IRF–PAI with modification. Specifically, while we are finalizing our proposal to remove Item 14—Admission Class from the IRF–PAI effective October 1, 2026 as proposed, IRFs will no longer be required to collect and submit data on this Item 14—Admission Class beginning with patients admitted on October 1, 2024. We estimate the removal of this item would result in a decrease of 0.005 hour of clinical staff time beginning with admission assessments completed on October 1, 2026. Although the decrease in burden will be accounted for in a revised information collection request under OMB control number 0938–0842, we are providing impact information. We estimate this item is completed equally by an RN (50 percent of the time) and by an LPN/LVN (50 percent of the time). For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates.[114] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 18. With 571,151 admissions from 1,160 IRFs annually, we estimate an annual burden decrease of 2,855.76 hours (571,151 admissions × 0.005 hour) and a decrease of $186,509.36 [2,855.76 hours × $65.31/hr)]. For each IRF we estimate an annual burden decrease of 2.46 hours (2,855.76 hours/1,160 IRFs) for an annual decrease of $160.78 ($186,509.36/1,160 IRFs).

In summary, under OMB control number 0938–0842, the changes we are finalizing to the IRF QRP would result in an estimated increase in programmatic burden for 1,160 IRFs. The total burden increase is approximately $392,113.40 for all IRFs

[113] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

[114] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

and $338.03 per IRF and is summarized in Table 19.

TABLE 19—ESTIMATED IRF QRP PROGRAM IMPACTS FOR FY 2028

Requirement	Per IRF		All IRFs	
	Estimated change in annual burden hours	Estimated change in annual cost	Estimated change in annual burden hours	Estimated change in annual cost
Collection of Four New Items as Standardized Patient Assessment Data Elements and Modification of One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2028 IRF QRP	+7.64	+$498.81	+8,859.64	+$578,622.76
Removal of the Admission Class item effective October 1, 2026	−2.46	−160.78	−2,855.76	−186,509.36
Increase in burden for the IRF QRP	5.18	338.03	6,003.88	392,113.40

We invited public comments on the overall impact of the IRF QRP proposals for FY 2028. We received several comments on the impact of the IRF QRP proposals and responded to those comments in sections VIII.C.4, VIII.F.2, and IX.A of this final rule.

D. Alternatives Considered

The following is a discussion of the alternatives considered for the IRF PPS updates contained in the final rule.

As noted previously, section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services and section 1886(j)(3)(C)(ii)(I) of the Act requires the Secretary to apply a productivity adjustment to the market basket percentage increase for FY 2025. Thus, in accordance with section 1886(j)(3)(C) of the Act, we updated the IRF prospective payments in this final rule by 3.0 percent (which equals the 3.5 percent IRF market basket percentage increase for FY 2025 reduced by a 0.5 percentage point productivity adjustment as determined under section 1886(b)(3)(B)(xi)(II) of the Act (as required by section 1886(j)(3)(C)(ii)(I) of the Act).

We considered maintaining the existing CMG relative weights and average length of stay values for FY 2025. However, in light of recently available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of recent changes in IRF utilization and case mix, we believe that it is appropriate to update the CMG relative weights and average length of stay values at this time to ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs.

We considered maintaining the existing outlier threshold amount for FY 2025. However, analysis of updated FY 2024 data indicates that estimated outlier payments would be more than 3 percent of total estimated payments for FY 2025, unless we updated the outlier threshold amount. Consequently, we are adjusting the outlier threshold amount to maintain estimated outlier payments at 3 percent of estimated aggregate payments in FY 2025.

With regard to the proposal to collect and submit four new items as standardized patient assessment data elements under the SDOH category and modify one item collected and submitted as a standardized patient assessment data element under the SDOH category beginning with the FY 2028 IRF QRP, we believe these proposals would advance the CMS National Quality Strategy Goals of equity and engagement. We considered the alternative of delaying the proposal to collect and submit these assessment items but given the fact they would encourage meaningful collaboration among healthcare providers, caregivers, and community-based organizations to address SDOH prior to discharge from the IRF, we believe further delay is unwarranted.

With regard to the proposal to remove one item, Item 14-Admission Class, from the IRF–PAI, we routinely review the IRF–PAI for redundancies and opportunities to simplify data submission requirements. We have identified that this item is currently not used in the calculation of quality measures already adopted in the IRF QRP, payment, survey, or care planning, and therefore no alternatives were considered.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the FY 2025 IRF PPS proposed rule will be the number of reviewers of this year's final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this final rule. It is possible that not all commenters reviewed the FY 2025 IRF PPS proposed rule in detail, and it is also possible that some reviewers chose not to comment on the FY 2025 proposed rule. For these reasons, we believe that the number of commenters would be a fair estimate of the number of reviewers of this final rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final 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 2023 BLS for Occupational Employment Statistics (OES) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is $129.28 per hour, including other indirect costs and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed, we estimate that it will take approximately 3 hours for the staff to review half of this final rule. For each reviewer of the rule, the estimated cost is $387.84 (3 hours × $129.28). Therefore, we estimate that the total cost of reviewing this regulation is $17,064.96 ($387.84 × 44 reviewers).

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf*), in Table 20 we have prepared an accounting statement showing the

classification of the expenditures associated with the provisions of this final rule. Table 20 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the updates presented in this final rule based on the data for 1,160 IRFs in our database.

TABLE 20—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURE

	Category	Transfers
Change in Estimated Transfers from FY 2024 IRF PPS to FY 2025 IRF PPS.	Annualized Monetized Transfers From Whom to Whom?	$280 million. Federal Government to IRF Medicare Providers.
Estimated Costs Associated with the FY 2028 IRF QRP.	Annualized monetized cost in FY 2028 due to proposed data collection requirements.	$392,113.40.
Estimated Costs Associated with Review Cost for FY 2025 IRF PPS.	Cost associated with regulatory review cost	17,064.96.

G. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2025 are projected to increase by 2.8 percent, compared with the estimated payments in FY 2024, as reflected in column 7 of Table 17.

IRF payments per discharge are estimated to increase by 2.7 percent in urban areas and 4.9 percent in rural areas, compared with estimated FY 2024 payments. Payments per discharge to rehabilitation units are estimated to increase 2.1 percent in urban areas and 4.8 percent in rural areas. Payments per discharge to freestanding rehabilitation hospitals are estimated to increase 3.0 percent in urban areas and 5.2 percent in rural areas.

Overall, IRFs are estimated to experience a net increase in payments as a result of the policies in this final rule. The largest payment increase is estimated to be a 21.4 percent increase for IRFs transitioning to rural status under the new CBSA delineations, followed by a 10.7 percent increase for IRFs located in the Rural Middle Atlantic region. The analysis above, together with the remainder of this preamble, provides an RIA.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 25, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–16911 Filed 7–31–24; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

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Part VI

The President

Federal Register
Vol. 89, No. 151
Tuesday, August 6, 2024

Presidential Documents

Title 3—

The President

Memorandum of July 3, 2024

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

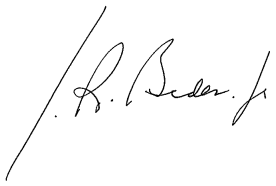
Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State:

(1) the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $150 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown; and

(2) the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $12 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 3, 2024

[FR Doc. 2024–17562
Filed 8–5–24; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of July 19, 2024

Delegation of Functions and Authorities Under the Protecting American Intellectual Property Act of 2022

Memorandum for the Heads of Executive Departments and Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

Section 1. (a) I hereby delegate to the Secretary of State, with input from the Director of National Intelligence, the Attorney General, the Secretary of Commerce, and the heads of other relevant executive departments and agencies (agencies), as appropriate, the functions and authorities vested in the President by section 2(a) of the Protecting American Intellectual Property Act of 2022 (Public Law 117–336; 50 U.S.C. 1709) (the ''Act''). To support the Secretary of State's preparation of the report required under section 2(a) of the Act, the Director of National Intelligence, the Attorney General, the Secretary of Commerce, and, as appropriate, the heads of other relevant agencies, shall provide pertinent information to the Secretary of State at least 90 days before the deadline for submission of the annual report to the appropriate congressional committees.

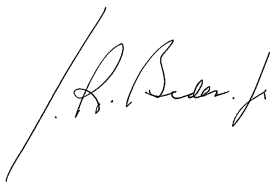
(b) I hereby delegate to the Secretary of State, in consultation with the heads of other relevant agencies, as appropriate, the authority to select the types of sanctions to be imposed under section 2(b)(1) of the Act. Once applicable sanctions are selected pursuant to section 2(b)(1) of the Act, I hereby delegate to the heads of other relevant agencies the authority to implement such sanctions, commensurate with their respective areas of responsibility.

(c) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by section 2(b)(2)(A) and section 2(d) of the Act.

(d) I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 2(c) of the Act.

Sec. 2. The delegations in this memorandum shall apply to any provisions of any future public laws that are the same or substantially the same as the provisions referenced in this memorandum. Any reference in this memorandum to the Act shall be deemed to be a reference to such Act as amended from time to time.

Sec. 3. The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 19, 2024

[FR Doc. 2024–17569
Filed 8–5–24; 11:15 am]
Billing code 4710–10–P

Presidential Documents

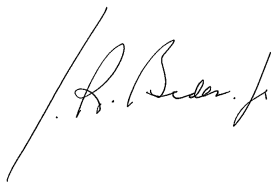
Memorandum of July 11, 2024

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $125 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 11, 2024

[FR Doc. 2024–17568
Filed 8–5–24; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of July 29, 2024

Delegation of Authority Under Section 506(a)(1) and 614(a)(1) of the Foreign Assistance Act of 1961

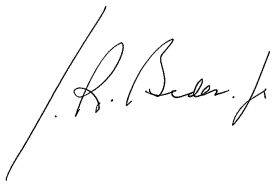
Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State:

(1) the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $200 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown; and

(2) the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $70 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 29, 2024

[FR Doc. 2024–17571
Filed 8–5–24; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2024–08 of July 26, 2024

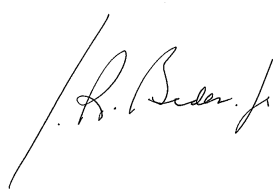
Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Singapore Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Singapore Concerning Peaceful Uses of Nuclear Energy (the ''proposed Agreement''), along with the views, recommendations, and statements of the interested departments and agencies.

I have determined that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 26, 2024

[FR Doc. 2024–17572
Filed 8–5–24; 11:15 am]
Billing code 4710–10–P

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Federal Register

Vol. 89, No. 151

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